IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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Publications Editing Office (Administrative Code)	Telephone:	515.281.3355	Email: AdminCode@legis.iowa.gov

CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rulemaking
2024

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
2	**Friday, July 5, 2024**	**July 24, 2024**
3	**Friday, July 19, 2024**	**August 7, 2024**
4	**Friday, August 2, 2024**	**August 21, 2024**

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, July 16, 2024, at 11 a.m. in Room 116, State Capitol, Des Moines, Iowa. For more information, contact Jack Ewing at jack.ewing@legis.iowa.gov. The following rules will be reviewed:

ECONOMIC DEVELOPMENT AUTHORITY[261]

Iowa energy center grant program, ch 404 Filed **ARC 8072C** 6/26/24
Major economic growth attraction (MEGA) program, ch 67
Notice **ARC 8047C**, also Filed Emergency **ARC 8046C** 6/12/24

EDUCATION DEPARTMENT[281]

Senior year plus program, ch 22 Filed **ARC 8048C** 6/12/24
Private instruction and dual enrollment, ch 31 Filed **ARC 8049C** 6/12/24
Standards for teacher intern preparation programs; standards for practitioner and administrator preparation programs, rescind ch 77; adopt ch 79 Filed **ARC 8050C** 6/12/24

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"
Authorizations—career and technical cluster endorsement, 22.9(3)"c"
Notice **ARC 8062C**, also Filed Emergency **ARC 8061C** 6/12/24

HUMAN SERVICES DEPARTMENT[441]

Payment of small claims, ch 8 Filed **ARC 8066C** 6/12/24
Program evaluation, ch 13 Filed **ARC 8067C** 6/12/24
Optional 90-day supply for select medications, 78.2(6) Notice **ARC 8084C** 6/26/24
Fiscal oversight of the early childhood Iowa initiative, ch 122 Filed **ARC 8068C** 6/12/24
Iowa adoption exchange, ch 203 Filed **ARC 8069C** 6/12/24

INSURANCE DIVISION[191]

INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]"umbrella"
Property and casualty insurance, 20.11 Filed Emergency After Notice **ARC 8056C** 6/12/24

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Board administrative processes, ch 4 Filed **ARC 8077C** 6/26/24
Fees, ch 5 Filed **ARC 8078C** 6/26/24
Complaints and investigations, ch 9 Filed **ARC 8079C** 6/26/24
Contested cases and informal settlement, ch 11 Filed **ARC 8080C** 6/26/24
Discipline, ch 13 Filed **ARC 8081C** 6/26/24
Use of criminal convictions in eligibility determinations and initial licensing decisions, ch 14
Filed **ARC 8082C** 6/26/24
Licensure by verification and of applicants with work experience, ch 19 Filed **ARC 8083C** 6/26/24
Licensure of massage therapists, ch 131 Filed **ARC 8051C** 6/12/24
Massage therapy education curriculum, ch 132 Filed **ARC 8052C** 6/12/24
Continuing education for massage therapists, ch 133 Filed **ARC 8053C** 6/12/24
Discipline for massage therapists, ch 134 Filed **ARC 8054C** 6/12/24
Licensure of respiratory care practitioners, polysomnographic technologists, and respiratory care and polysomnography practitioners, ch 261 Filed **ARC 8073C** 6/26/24
Continuing education for respiratory care practitioners and polysomnographic technologists, ch 262 Filed **ARC 8074C** 6/26/24
Discipline for respiratory care practitioners and polysomnographic technologists, rescind ch 263 Filed **ARC 8075C** 6/26/24
Practice of respiratory care practitioners and polysomnographic technologists, ch 265
Filed **ARC 8076C** 6/26/24
Licensure of social workers, ch 280 Filed **ARC 8057C** 6/12/24
Continuing education for social workers, ch 281 Filed **ARC 8058C** 6/12/24
Practice of social workers, ch 282 Filed **ARC 8059C** 6/12/24
Discipline for social workers, ch 283 Filed **ARC 8060C** 6/12/24

PUBLIC HEALTH DEPARTMENT[641]

Reportable diseases, poisonings and conditions, and quarantine and isolation, ch 1 Filed **ARC 8070C** 6/12/24
Consumable hemp products, ch 156 Notice **ARC 8064C** 6/12/24

REVENUE DEPARTMENT[701]

Employer child care tax credit, 304.58, 501.51, 601.26 Notice **ARC 8071C** 6/26/24

TRANSPORTATION DEPARTMENT[761]
Interstate motor carriers; commercial driver licensing; railroad safety; school transportation services; adoption by reference of federal regulations—amendments to chs 529, 607, 800, 810, 911 Filed **ARC 8055C** 6/12/24

UTILITIES DIVISION[199]
Reorganization, ch 32 Filed **ARC 8063C** 6/12/24

WORKFORCE DEVELOPMENT DEPARTMENT[871]
Research and information services division, ch 10 Notice **ARC 8065C** 6/12/24

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mike Klimesh
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Senate District 32

Senator Nate Boulton
Senate District 20

Senator Mike Bousselot
Senate District 21

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Senate District 30

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ECONOMIC DEVELOPMENT AUTHORITY[261]

Entrepreneur investment awards program, ch 102 IAB 6/26/24 **Regulatory Analysis**	1963 Bell Avenue Des Moines, Iowa	July 16, 2024 1:30 to 1:45 p.m.
Innovative and other business development—demonstration fund and proof of commercial relevance; innovative and other business development—applied research and manufacturing extension partnership, chs 105, 108 IAB 6/26/24 **Regulatory Analysis**	1963 Bell Avenue Des Moines, Iowa	July 16, 2024 1:45 to 2 p.m.
Strategic infrastructure program, ch 118 IAB 6/26/24 **Regulatory Analysis**	1963 Bell Avenue Des Moines, Iowa	July 16, 2024 2 to 2:15 p.m.
Manufacturing 4.0 technology investment program, ch 119 IAB 6/26/24 **Regulatory Analysis**	1963 Bell Avenue Des Moines, Iowa	July 16, 2024 2:15 to 2:30 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Authorizations—career and technical cluster endorsement, 22.9(3)"c" IAB 6/12/24 **ARC 8062C** (See also **ARC 8061C**)	Board Room, Suite A 701 East Court Avenue Des Moines, Iowa	July 3, 2024 9 to 10 a.m.

HUMAN SERVICES DEPARTMENT[441]

Optional 90-day supply for select medications, 78.2(6) IAB 6/26/24 **ARC 8084C**	Microsoft Teams Meeting ID: 256 591 168 664 Passcode: MVfyaH	July 23, 2024 11 to 11:30 a.m.
	Microsoft Teams Meeting ID: 256 326 064 144 Passcode: mhyryx	July 24, 2024 1:30 to 2 p.m.

PUBLIC HEALTH DEPARTMENT[641]

Consumable hemp products, ch 156 IAB 6/12/24 **ARC 8064C**	Via Zoom: www.zoomgov.com/webinar/register/WN_4v-kXwUvQ7Od-RqURA3hKQ	July 2, 2024 3 to 4 p.m.
	Via Zoom: www.zoomgov.com/webinar/register/WN_4we0tvLHQ7m_Ap4MV65ExA	July 8, 2024 10 to 11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Educator professional permit to carry weapons, amendments to chs 91, 121 IAB 6/12/24 **Regulatory Analysis**	First Floor Public Conference Room 125 Oran Pape State Office Building Des Moines, Iowa	July 2, 2024 8 to 8:30 a.m.

REVENUE DEPARTMENT[701]

Employer child care tax credit, 304.58, 501.51, 601.26 IAB 6/26/24 **ARC 8071C**	Via video/conference call Contact Michael Mertens Email: michael.mertens@iowa.gov	July 16, 2024 11 a.m. to 12 noon July 16, 2024 2 to 3 p.m.

SECRETARY OF STATE[721]

Proposed constitutional amendments, 21.200 IAB 5/29/24 **ARC 8027C**	Room 19 Iowa Capitol Building Des Moines, Iowa	July 1, 2024 10 to 11 a.m. (If requested)

TRANSPORTATION DEPARTMENT[761]

Contested cases, ch 13 IAB 6/12/24 **Regulatory Analysis**	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 447 468 064#	July 8, 2024 9 to 9:30 a.m.

UTILITIES DIVISION[199]

Practice and procedure, ch 7 IAB 5/15/24 **ARC 7939C**	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa	June 27, 2024 9 to 10 a.m.
Hazardous liquid pipelines and underground storage, ch 13 IAB 6/12/24 **Regulatory Analysis**	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa	July 30, 2024 1 p.m.
Assessments, ch 17 IAB 5/15/24 **ARC 7938C**	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa	June 27, 2024 9 a.m. to 12 noon
Management efficiency evaluation, ch 29 IAB 5/29/24 **ARC 8030C**	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa	July 2, 2024 9 to 11 a.m.
Energy efficiency and demand response planning and reporting for rate-regulated natural gas and electric utilities, ch 35 IAB 6/26/24 **Regulatory Analysis**	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa	July 17, 2024 2 p.m.

UTILITIES DIVISION[199](cont'd)

Competitive bidding process, rescind ch 40 IAB 5/29/24 **ARC 8029C**	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa	July 16, 2024 9 to 10 a.m. July 30, 2024 9 to 10 a.m.
Electric interconnection of distributed generation facilities, ch 45 IAB 6/12/24 **Regulatory Analysis**	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa	July 18, 2024 2 p.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Research and information services division, ch 10 IAB 6/12/24 **ARC 8065C**	Capitol View Room 1000 East Grand Avenue Des Moines, Iowa	July 2, 2024 9 to 10 a.m. July 2, 2024 10 to 11 a.m.
Unemployment insurance services division, ch 21 IAB 6/26/24 **Regulatory Analysis**	1000 East Grand Avenue Des Moines, Iowa	July 9, 2024 9 a.m.
Employer rules and records, ch 22 IAB 6/26/24 **Regulatory Analysis**	1000 East Grand Avenue Des Moines, Iowa	July 9, 2024 10 a.m.
Benefit payment control, ch 25 IAB 6/26/24 **Regulatory Analysis**	1000 East Grand Avenue Des Moines, Iowa	July 9, 2024 11 a.m.

The following list will be updated as changes occur.

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

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

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

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Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 102
"Entrepreneur Investment Awards Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.106A
State or federal law(s) implemented by the rulemaking: Iowa Code sections 15E.362 and 15E.363

Public Hearing

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

July 16, 2024	1963 Bell Avenue
1:30 to 1:45 p.m.	Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 102 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures applicable to the Entrepreneur Investment Awards Program. The program supports providers of technical and financial assistance to entrepreneurs and start-up companies seeking to create, locate, or expand a business in the state.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons interested in applying for or receiving assistance through the program will bear the costs of the rulemaking.

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

Persons interested in applying for or receiving assistance through the program and businesses that receive technical assistance from program awardees will benefit from the rulemaking.

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

- Quantitative description of impact:

Entities interested in applying for financial assistance may require staff time to complete an application for financial assistance. Recipients may similarly incur costs to comply with reporting and monitoring requirements of the program. Some applicants may choose to rely on an external service provider to complete these tasks. The amount of the costs will vary, depending on the compensation of staff or service providers involved.

- Qualitative description of impact:

The program supports providers of technical and financial assistance to entrepreneurs and start-up companies seeking to create, locate, or expand a business in the state. The providers of assistance receive the direct benefit of the funds, and the entrepreneurs and start-up companies also benefit from the services of recipients.

3. Costs to the State:

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

Authority staff time is required to review and approve applications, draft and execute program contracts, disburse funds, review reports, and communicate with program applicants and recipients.

- Anticipated effect on state revenues:

The rules have no anticipated impact on state revenues. The Authority is directed to administer the program by Iowa Code section 15E.362. Financial assistance is provided from the Entrepreneur Investment Awards Program Fund created pursuant to Iowa Code section 15E.363. The amount deposited in the fund each year depends on the amount allocated for such purposes pursuant to Iowa Code section 15.335B.

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

Only the entities that will potentially benefit from financial assistance bear the costs of the rulemaking. The costs to the State to administer the program are proportional to the activities supported by financial assistance.

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

The Authority has not identified any less costly methods or less intrusive methods for administering the program.

6. Alternative methods considered by the agency:

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

The Authority did not consider any other methods.

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

The Authority did not consider any other methods.

Small Business Impact

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

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

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

The proposed rules do not have a substantial impact on small business. The application, contracting, and monitoring requirements related to the program are no more than necessary to administer the statutory requirements of the program. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 102 and adopt the following **new** chapter in lieu thereof:

CHAPTER 102
ENTREPRENEUR INVESTMENT AWARDS PROGRAM

261—102.1(15E) Purpose and funding. The entrepreneur investment awards program supports providers of technical and financial assistance to entrepreneurs and start-up companies seeking to create, locate, or expand a business in the state. Moneys for financial assistance under the program will be awarded from the moneys in the entrepreneur investment awards program fund created pursuant to Iowa Code section 15E.363. The amount deposited in the fund each year depends on the amount allocated for such purposes pursuant to Iowa Code section 15.335B.

261—102.2(15E) Definitions. As used in this chapter unless the context otherwise requires:

"Applicant" means a provider applying to the authority for financial assistance under the program.

"Authority" means the same as defined in Iowa Code section 15.102.

"Board" means the same as defined in Iowa Code section 15.102.

"Business development services" means the same as defined in Iowa Code section 15E.362.

"Committee" means a committee of application reviewers appointed by the director.

"Deliverables" means the performance of duties or other obligations required for the receipt of financial assistance under the program.

"Director" means the same as defined in Iowa Code section 15.102.

"Financial assistance" means the same as defined in Iowa Code section 15.327.

"Program" means the same as defined in Iowa Code section 15E.362.

"Provider" means an "eligible entrepreneurial assistance provider" as defined in Iowa Code section 15E.362.

261—102.3(15E) Application procedures. Providers may be invited to submit applications to the authority. The authority will review applications to confirm program eligibility pursuant to Iowa Code section 15E.362(3). Eligible applications will be sent to the committee to develop a recommendation on funding pursuant to rule 261—102.4(15E). The committee will provide its recommendation to the board for a final determination on funding. The amount of financial assistance awarded to a provider is within the discretion of the authority as determined by the board.

261—102.4(15E) Evaluation and recommendation process.

102.4(1) *Eligibility.* To be eligible for financial assistance under the program, an applicant must meet all the requirements in Iowa Code section 15E.362(3), in addition to all of the following requirements:

a. The applicant must have its principal place of operations in the state of Iowa.

b. The applicant must be actively providing business development services in the state of Iowa.

102.4(2) *Competitive scoring criteria.* In addition to the considerations identified in Iowa Code section 15E.362(8), the committee will develop its recommendations for funding based on the following criteria:

a. The extent to which the applicant's project addresses an unmet need of entrepreneurs in the state of Iowa; and

b. The extent to which the applicant has identified adequate resources to sustain the applicant's project following the provision of financial assistance by the authority.

102.4(3) *Committee recommendation.* The evaluation and recommendation of the committee will be summarized in a report to the board for the board's use in making a final determination. The committee may recommend applicable terms and conditions of financial assistance.

261—102.5(15E) Administration of financial assistance.

102.5(1) *Contract required.* An applicant awarded financial assistance under the program shall enter into a contract with the authority for the receipt of such funds. The provider shall maintain all eligibility requirements for the duration of a contract. The contract may include such deliverables and other terms and conditions as the authority deems necessary. The authority will make the final determination as to compliance with the terms of the contract and will make the final determination as to whether and when to disburse funds to the applicant.

102.5(2) *Use of funds.* Funds shall be used consistent with the requirements in Iowa Code section 15E.362(9). For the purposes of determining whether funds have been used consistent with Iowa Code section 15E.362(9), "operating costs" means the expenses associated with administering a provider's activities on a day-to-day basis. "Operating costs" includes both fixed costs and variable costs. "Operating costs" does not include expenses associated with nonoperating activities, such as interest expenses, repayment of principal, or moneys invested by the provider in a client's businesses or in other ventures.

102.5(3) *Reporting.* An applicant receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

These rules are intended to implement Iowa Code sections 15E.362 and 15E.363.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 105 "Demonstration Fund" and 261—Chapter 108 "Acceleration and Development of Innovative Ideas and Businesses"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.411(6)
State or federal law(s) implemented by the rulemaking: Iowa Code section 15.411

Public Hearing

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

July 16, 2024	1963 Bell Avenue
1:45 to 2 p.m.	Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapters 105 and 108 and adopt new chapters in lieu thereof. Chapter 105 describes the policies and procedures applicable to the Demonstration Fund. The fund provides financial assistance to encourage prototype development and concept development activities pursuant to Iowa Code section 15.411. Chapter 108 describes the policies and procedures applicable to the following program components related to innovative and other business development established pursuant to Iowa Code section 15.411(5): a component for proof of commercial relevance, a component for the expansion of investment in applied research, and a component for a manufacturing extension partnership program.

The proposed Chapter 105 addresses both the Demonstration Fund and proof of commercial relevance program components as the programs are currently administered consistently. The proposed new Chapter 108 references only the components for the expansion of investment in applied research and the manufacturing extension partnership program.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons interested in applying for or receiving assistance through the program components will bear the costs of the rulemaking.

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

Persons interested in applying for or receiving assistance through the program components will benefit from the rulemaking.

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

- Quantitative description of impact:

Businesses interested in applying for financial assistance may require staff time to complete an application for financial assistance. Some applicants may choose to rely on an external service provider to complete these tasks. The amount of the costs will vary, depending on the compensation of staff or service providers involved.

- Qualitative description of impact:

The program components support varied funding avenues for prototype and concept development and other activities related to innovative businesses. Updating rules to be clearer and more concise will benefit those seeking information about the program. Combining the rules relating to the Demonstration Fund and proof of commercial relevance components will solidify the consistent practices already applied to these components.

3. Costs to the State:

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

Authority staff time is required to review and approve applications, draft and execute program contracts, disburse funds, review reports, and communicate with program applicants and recipients. Additionally, the Authority has contracted with VentureNet Iowa to perform certain administrative functions related to the program pursuant to Iowa Code section 15.411(1).

- Anticipated effect on state revenues:

The rules have no anticipated impact on state revenues. The Authority is directed to administer the program components by Iowa Code section 15.411. Financial assistance is provided from the Innovation and Commercialization Development Fund created pursuant to Iowa Code section 15.412. The amount deposited in the fund each year depends on the amount allocated for such purposes pursuant to Iowa Code section 15.335B.

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

Only the entities that will potentially benefit from financial assistance bear the costs of the rulemaking. The costs to the State to administer the program are proportional to the activities supported by financial assistance.

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

The Authority has not identified any less costly methods or less intrusive methods for administering the program.

6. Alternative methods considered by the agency:

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

The Authority did not consider any other methods.

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

The Authority did not consider any other methods.

Small Business Impact

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

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

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

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

The proposed rules do not have a substantial impact on small business. The application, contracting, and monitoring requirements related to the program are no more than necessary to administer the statutory requirements of the program. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 105 and adopt the following **new** chapter in lieu thereof:

CHAPTER 105
INNOVATIVE AND OTHER BUSINESS DEVELOPMENT—DEMONSTRATION FUND AND PROOF OF COMMERCIAL RELEVANCE

261—105.1(15) Purpose and delegation of functions. The proof of commercial relevance program component is established pursuant to Iowa Code section 15.411(5) for the purpose of accelerating the generation and development of innovative ideas and businesses. The demonstration fund program component is established pursuant to Iowa Code section 15.411(2) to encourage prototype development and concept development activities. The authority may delegate certain administrative functions to a service provider engaged pursuant to Iowa Code section 15.411.

261—105.2(15) Definitions.

"Authority" means the same as defined in Iowa Code section 15.102.

"Board" means the same as defined in Iowa Code section 15.102.

"Committee" means the technology commercialization committee established pursuant to Iowa Code section 15.116.

"Demo" means the demonstration fund program component.

"IP" means intellectual property.

"NAICS" means the North American Industry Classification System.

"POCR" means the proof of commercial relevance program component.

261—105.3(15) Project funding.

105.3(1) Awards are made on a per-project basis upon board approval.

105.3(2) The maximum POCR award shall not exceed $50,000 for a single project. The maximum demo award shall not exceed $150,000 for a single project. The committee and board may establish lower maximum award amounts for each program component based on the availability of funds.

105.3(3) POCR funds may be used for third-party technology evaluation, regulatory analysis, identifying partners or manufacturers, IP development and evaluation, validation of market potential, beta testing, or team assembly. Demo funds may be used for marketing, sales, distribution, product refinement or market research.

105.3(4) Funds may not be used for university overhead expenses or any work that was conducted by the applicant or any third-party consultant prior to the term of the financial assistance contract.

105.3(5) The forms of financial assistance may consist of but are not limited to loans, forgivable loans, grants and such other forms of assistance the committee and the board deem appropriate and consistent with the needs of a given project.

261—105.4(15) Matching funds requirement. In order to receive financial assistance, an applicant must demonstrate the ability to secure one dollar of nonstate moneys for every two dollars received from the authority.

261—105.5(15) Eligible applicants. Eligible applicants must be located in Iowa, demonstrate the potential for high growth, and be included in one of the following industries classified by the NAICS:

1. Biosciences.
2. Information technologies.
3. Advanced manufacturing.

261—105.6(15) Ineligible applicants. The following businesses are not eligible:

105.6(1) A business that is engaged in retail sales or provides health services is ineligible. In determining whether a business is engaged in retail sales, factors the authority will consider include but are not limited to the sources of the business's revenue, whether the business manufactures a product it sells, and whether the business owns intellectual property associated with a product the business sells.

105.6(2) A business that closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state is ineligible for 36 consecutive months at any of the business's Iowa sites from the date the new establishment opens.

261—105.7(15) Application and review process.

105.7(1) An eligible business seeking financial or technical assistance must submit an application to the authority in the form and with the content specified by the authority.

105.7(2) The authority will review applications to confirm program eligibility pursuant to Iowa Code section 15.411 and this chapter. Eligible applications will be sent to the committee to develop a recommendation on funding. The committee will make funding recommendations to the board. The board has final decision-making authority on requests for financial assistance. The board may approve, defer or deny an application.

105.7(3) An application for assistance will include but not be limited to the following:

a. Proposed product or service. A description of the proposed product or service, the experience of those involved in the proposed project, and the company resources.

b. Market research. A market research analysis that addresses competing or alternative technologies, advantages of the proposed product or service compared to competing or alternative technologies, distribution plans, and estimated return on investment.

c. Commercialization. A description of the key next steps to making an impact with the innovation and a description of funding requirements, based on standard financial documents, necessary to overcome obstacles to success.

d. Work plan. A description of the strategy and key elements to be funded to address goals of the work plan, including project milestones.

e. Resources and budget. A budget that includes a detailed description of the sources, including the required match, and uses of the funds.

261—105.8(15) Application selection criteria. In reviewing applications for financial assistance, the committee and board shall consider the following criteria:

105.8(1) *Intellectual property.* How the ownership of the IP is structured. Preference will be given to applicants with greater IP control by the business.

105.8(2) *Experience.* The business's experience in productization and commercialization, and ongoing product maintenance.

105.8(3) *Estimate to completion.* The business's work requirements and estimated timeline for completion, the credibility of the estimated timeline for completion relative to the business's experience, and the business's resources available to fulfill requirements and a timeline.

105.8(4) *Market.* The business's competitors, market for the business's product in Iowa and outside of Iowa, credibility of the business's marketing plan, and the business's experience in the industry.

105.8(5) *Financial requirement.* The availability of matching funds and other necessary funds to take the product to market.

105.8(6) *Distribution.* The availability of channels to take the product to market.

105.8(7) *Expected return.* Whether the expected return can be quantified, based on time to break even and long-term economic impact.

261—105.9(15) Contract and reporting.

105.9(1) Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

105.9(2) The authority will prepare a contract that includes but is not limited to a description of the project to be completed by the business, conditions to disbursement, required reports, and applicable repayment requirements.

105.9(3) The committee and the board must approve any substantive amendments to the contract. Authority staff may approve nonsubstantive amendments.

105.9(4) An applicant shall submit any information requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

These rules are intended to implement Iowa Code section 15.411.

ITEM 2. Rescind 261—Chapter 108 and adopt the following **new** chapter in lieu thereof:

CHAPTER 108
INNOVATIVE AND OTHER BUSINESS DEVELOPMENT—APPLIED RESEARCH AND MANUFACTURING EXTENSION PARTNERSHIP

261—108.1(15) Purpose and description of program components. This chapter applies to program components established pursuant to Iowa Code section 15.411(5) for the expansion of investment in applied research and a component for a manufacturing extension partnership program. The authority may delegate certain administrative functions to a service provider engaged pursuant to Iowa Code section 15.411.

261—108.2(15) Definitions. As used in this chapter unless the context otherwise requires:

"Applicant" means an innovative business or other business, a university, a nonprofit organization, or another entity applying to the authority for assistance under the program.

"Applied research" means a systematic inquiry into the practical application of science and technology. Applied research includes translational research, participative research, and other related terms that are similar to or share the goals of applied research.

"Assistance" means technical and financial assistance available under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Committee" means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

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

"Innovative business" means the same as defined in Iowa Code section 15E.52(1)*"c."*

"MEP" means a manufacturing extension partnership and its associated program component.

"Program" means the components of the program established in this chapter pursuant to Iowa Code section 15.411.

261—108.3(15) Program description, application procedures, and delegation of functions.

108.3(1) *Description.* The program provides technical assistance and financial assistance for the expansion of applied research and support for an MEP. All awards of financial assistance must be approved by the board, after submission of a proposal by the applicant and a recommendation on the proposal by the committee. A contract must be entered into with the authority before moneys will be disbursed to an applicant.

a. The applied research component makes financial assistance available to innovative businesses to connect university research to the innovative businesses' needs and to accelerate the transfer of new technologies to the marketplace. The authority may award financial assistance to university researchers who are attempting to align their research with market and industrial needs by forming partnerships with innovative businesses. Financial assistance under this component may take the form of grant funds. If grant funds are awarded, the applicant shall be required to match the amount of grant funds with other moneys at a ratio of one to one. Applicants may submit applications to the authority for assistance under this component. Such applications should describe in detail what activities the applicant will engage in to accelerate the validation of technology for the marketplace.

b. The MEP component makes financial assistance available to service providers that form partnerships with innovative businesses to conduct workshops for the purpose of providing assistance in determining and prioritizing applied research needs based on gaps in productivity or product needs and that offer to broker connections between innovative businesses and the researchers who can perform the necessary applied research. Financial assistance is also available to innovative businesses under this component for product development, design verification, custom equipment development, manufacturing process development, and technology development and commercialization. The authority will award financial assistance to eligible innovative businesses. Applicants may submit applications to the authority for assistance under this component. Such applications should describe in detail the nature of the partnerships being formed, what activities the partnership will undertake, and how such activities will further the goals of this component. Applicants must submit applications for assistance under this component and must describe in detail how the proposed services will expand the applicant's market penetration, create a new product with market relevance, or enhance an existing product by further innovation.

108.3(2) *Application and award procedures.* Applicants to the program may submit applications to the authority for financial assistance. To be eligible, an applicant must meet the requirements of one of the components described in subrule 108.3(2). The applications will receive an initial review to confirm program eligibility before being sent to the committee for a recommendation on funding. The committee will provide its recommendation to the board for a final determination on the provision of financial assistance. The board may approve, deny, or defer each application for financial assistance under the program. The board will consider applications for financial assistance on a first-come, first-served basis. If the board approves funding for a business, the authority will prepare a required contract specifying the terms and conditions under which the financial assistance is to be provided to the business.

261—108.4(15) Program funding. Each year, the authority allocates moneys for purposes of the programs listed in Iowa Code section 15.411, including this program. The amount allocated each year will depend on the amount appropriated to the authority by the general assembly. The authority may allocate other funds to the program as such funds may from time to time become available.

261—108.5(15) Contract and report information required.

108.5(1) *Contract required.* An applicant awarded financial assistance under the program shall enter into a contract with the authority for the receipt of such funds. The authority will include in the contract all terms and conditions for receipt of the funds. The authority will make the final determination as to compliance with the terms of the contract and as to whether and when to disburse funds to the applicant.

108.5(2) *Reporting information required.* An applicant may be required to submit all information necessary for the authority to compile a report on the results of the program. The authority will include terms in the required contract effectuating this requirement.

These rules are intended to implement Iowa Code section 15.411.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 118
"Strategic Infrastructure Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.313
State or federal law(s) implemented by the rulemaking: Iowa Code section 15.313

Public Hearing

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

July 16, 2024	1963 Bell Avenue
2 to 2:15 p.m.	Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 118 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures applicable to the Strategic Infrastructure Program. The program assists projects that develop commonly utilized assets that provide an advantage to one or more private sector entities or that create necessary physical infrastructure in the state, and such projects are not adequately provided by the public or private sectors.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons interested in applying for or receiving assistance through the program will bear the costs of the rulemaking.

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

Persons interested in applying for or receiving assistance through the program will benefit from the rulemaking.

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

- Quantitative description of impact:

Entities interested in applying for financial assistance may require staff time to complete an application for financial assistance. Recipients may similarly incur costs to comply with reporting and monitoring requirements of the program. Some applicants may choose to rely on an external service provider to complete these tasks. The amount of the costs will vary, depending on the compensation of staff or service providers involved.

- Qualitative description of impact:

The program supports the development of commonly utilized assets that provide an advantage to one or more private sector entities or that create necessary physical infrastructure in the state, and such projects are not adequately provided by the public or private sectors.

3. Costs to the State:

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

Authority staff time is required to review and approve applications, draft and execute program contracts, disburse funds, review reports, and communicate with program applicants and recipients.

- Anticipated effect on state revenues:

The proposed rules have no anticipated impact on state revenues. The Authority is directed to administer the program by Iowa Code section 15.313. Financial assistance is provided from the fund created pursuant to Iowa Code section 15.313(1)"a."

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

Only the entities that will potentially benefit from financial assistance bear the costs of the proposed rulemaking. The costs to the State to administer the program are proportional to the activities supported by financial assistance.

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

The Authority has not identified any less costly methods or less intrusive methods for administering the program.

6. Alternative methods considered by the agency:

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

The Authority did not consider any other methods.

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

The Authority did not consider any other methods.

Small Business Impact

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

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

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

The proposed rules do not have a substantial impact on small business. The application, contracting, and monitoring requirements related to the program are no more than necessary to administer the statutory requirements of the program. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 118 and adopt the following **new** chapter in lieu thereof:

CHAPTER 118
STRATEGIC INFRASTRUCTURE PROGRAM

261—118.1(15) Purpose. The purpose of the strategic infrastructure program is to assist projects that develop commonly utilized assets that provide an advantage to one or more private sector entities or that create necessary physical infrastructure in the state of Iowa, and such projects are not adequately provided by the public or private sectors.

261—118.2(15) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Council" means the Iowa innovation council established pursuant to Iowa Code section 15.117A, any panel or committee composed of members of the council, or a committee appointed pursuant to Iowa Code section 15.117A(7) as enacted by 2024 Iowa Acts, Senate File 2385.

"Director" means the director of the economic development authority.

"Financial assistance" means the same as defined in Iowa Code section 15.102.

"Program" means the strategic infrastructure program established in this chapter.

"Strategic infrastructure" means the same as defined in Iowa Code section 15.313.

"Vertical improvement" means the same as defined in Iowa Code section 15J.2.

261—118.3(15) Program eligibility and application requirements. To be eligible for financial assistance under the program, an applicant shall do all of the following:

118.3(1) The applicant must propose to invest in strategic infrastructure and describe how each element in Iowa Code section 15.313(4)*"b"* is satisfied.

118.3(2) The applicant must describe in detail the nature, scope, design, and goals of the proposed strategic infrastructure project, including the relationships of the entities and individuals involved.

118.3(3) The applicant must describe the proposed strategic infrastructure project's proposed financing structure, including the sources of funds and the proposed uses of the funds.

261—118.4(15) Application submittal and review process.

118.4(1) The authority will develop a standardized application process and invite applicants with strategic infrastructure projects that may be eligible for the program to apply. To apply for assistance under the program, an applicant shall submit an application to the authority in the form and manner prescribed by the authority.

118.4(2) Applications will be accepted on a continuing basis and processed by authority staff. Applications will be reviewed in the order received by the authority.

118.4(3) The authority may refuse to accept incomplete applications or may refuse to accept applications because of insufficient funds.

118.4(4) The council will score applications according to the criteria specified in rule 261—118.7(15) and make recommendations to the board pursuant to Iowa Code section 15.313(3). The board will take final action on all applications for financial assistance.

261—118.5(15) Application scoring criteria. The criteria under which each application will be scored are:

118.5(1) The overall quality of the proposed strategic infrastructure project, including the project's estimated economic impact. The council will consider the structure of the proposed strategic infrastructure project and the partnerships proposed to be formed.

118.5(2) The extent to which the commonly utilized asset proposed by applicant benefits one or more private sector entities and the extent to which the commonly utilized asset creates necessary physical

infrastructure in the state. More points will be awarded to proposed strategic infrastructure projects demonstrating greater benefits or benefits to more entities and to proposed strategic infrastructure projects demonstrating more critical necessary physical infrastructure.

118.5(3) The extent to which the proposed strategic infrastructure project provides benefits that are not adequately provided by the public or private sectors.

118.5(4) The importance of the vertical infrastructure improvement developments, facilities and equipment upgrades, or the redevelopment or repurposing of underutilized property or other assets that are proposed, the extent to which the proposed strategic infrastructure project will attract additional public or private sector investment, and the likelihood that the proposed strategic infrastructure project will result in broad-based prosperity in the state of Iowa.

118.5(5) The sufficiency of the proposed strategic infrastructure project's financing structure, the feasibility of the sources of funds, and the appropriateness of the proposed uses of the funds. The council will consider a proposed strategic infrastructure project's overall financing gap and the total amount of funds leveraged from other sources.

261—118.6(15) Award administration and reporting.

118.6(1) *Notice of award.* Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the award.

118.6(2) *Contract administration and amendments.* The authority will prepare a contract for each award approved by the board. The contract will reflect the terms of the award and may include other terms and conditions reasonably necessary for implementation of the program pursuant to this chapter. Substantial amendments to a contract must be approved by the board. Substantial amendments include the amount of financial assistance, the length of the contract, and the terms of a settlement following an event of default. Other changes or amendments to the contract may be negotiated by the authority with the approval of the director.

118.6(3) *Disbursement of funds.* The authority will disburse funds to a strategic infrastructure project only after a complete application has been received, an award has been recommended by the council and approved by the board, a contract has been executed between the applicant and the authority, and all applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the contract will be on a reimbursement basis for expenses incurred by the applicant as provided under the contract.

118.6(4) *Reporting.* An applicant receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

These rules are intended to implement Iowa Code section 15.313.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 119
"Manufacturing 4.0 Technology Investment Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.371
State or federal law(s) implemented by the rulemaking: Iowa Code section 15.371

Public Hearing

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

July 16, 2024
2:15 to 2:30 p.m.
1963 Bell Avenue
Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 119 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures applicable to the Manufacturing 4.0 Technology Investment Program. The program provides financial assistance to projects intended to lead to the adoption of, and integration of, smart technologies into existing manufacturing operations located in the state.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons interested in applying for or receiving assistance through the program will bear the costs of the rulemaking.

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

Persons interested in applying for or receiving assistance through the program will benefit from the rulemaking.

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

- Quantitative description of impact:

Entities interested in applying for financial assistance may require staff time to complete an application for financial assistance. Recipients may similarly incur costs to comply with reporting and monitoring requirements of the program. Some applicants may choose to rely on an external service provider to complete these tasks. The amount of the costs will vary, depending on the compensation of staff or service providers involved.

- Qualitative description of impact:

The program supports the adoption of, and integration of, smart technologies into existing manufacturing operations located in the state.

3. Costs to the State:

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

Authority staff time is required to review and approve applications, draft and execute program contracts, disburse funds, review reports, and communicate with program applicants and recipients.

- Anticipated effect on state revenues:

The proposed rules have no anticipated impact on state revenues. The Authority is directed to administer the program by Iowa Code section 15.371. Financial assistance is provided from the Manufacturing 4.0 Technology Investment Fund created pursuant to Iowa Code section 15.371(3). The General Assembly appropriated $2,016,675 to the program for fiscal year 2025 (2024 Iowa Acts, Senate File 2432).

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

Only the entities that will potentially benefit from financial assistance bear the costs of the rulemaking. The costs to the State to administer the program are proportional to the activities supported by financial assistance.

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

The Authority has not identified any less costly methods or less intrusive methods for administering the program.

6. Alternative methods considered by the agency:

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

The Authority did not consider any other methods.

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

The Authority did not consider any other methods.

Small Business Impact

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

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

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

The proposed rules do not have a substantial impact on small business. The application, contracting, and monitoring requirements related to the program are no more than necessary to administer the statutory requirements of the program. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 119 and adopt the following **new** chapter in lieu thereof:

CHAPTER 119
MANUFACTURING 4.0 TECHNOLOGY INVESTMENT PROGRAM

261—119.1(15) Purpose. The purpose of the manufacturing 4.0 technology investment program is to provide financial assistance to projects intended to lead to the adoption of, and integration of, smart technologies into existing manufacturing operations located in the state.

261—119.2(15) Definitions.

"Applicant" means a business applying for assistance under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Authority's website" means the information and related content found at www.iowaeda.com and may include integrated content at affiliate sites.

"Board" means the same as defined in Iowa Code section 15.102.

"Eligible business" means a business meeting the requirements of rule 261—119.3(15).

"Financial assistance" means the same as defined in Iowa Code section 15.102.

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

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

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

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

"Manufacturing 4.0 technology investments" or *"investments"* means the same as "manufacturing 4.0 technology investments" as defined in Iowa Code section 15.371.

"Program" means the manufacturing 4.0 technology investment program established in this chapter.

261—119.3(15) Program eligibility. To be eligible for financial assistance under the program, an applicant must propose a manufacturing 4.0 technology investment that has not been made prior to the date of application and meet all the requirements established in Iowa Code section 15.371(5). For the purposes of determining whether an applicant employs a minimum of 3 employees and no more than 125 employees pursuant to Iowa Code section 15.371(5)*"e,"* "employee" means an individual filling a full-time equivalent job that is part of the payroll of the business receiving financial assistance under this program. "Employee" does not include a business's part-time, leased, or contract employees.

261—119.4(15) Application submittal and review process.

119.4(1) The authority will develop a standardized application process and make information on applying available on the authority's website. To apply for assistance under the program, an applicant shall submit an application to the authority in the manner prescribed by the authority. The authority will identify specific types of investments for which it intends to provide financial assistance on the application form or forms.

119.4(2) Applications will be accepted and processed by authority staff on a continuing basis, or the authority may establish application periods as announced on the authority's website. The authority may engage an outside technical review panel to complete technical reviews of applications. Applications will be reviewed in the order received by the authority.

119.4(3) The authority may refuse to accept incomplete applications or may refuse to accept applications because of insufficient funds.

119.4(4) The board, after considering the recommendations made by authority staff or a technical review panel, will determine the financial assistance award if the board determines that financial assistance should be awarded. The board has final decision-making authority on requests for financial assistance for the program. The board will take final action on all applications for financial assistance, except those rejected pursuant to subrule 119.4(3). The board may approve an award, decline to award, or refer an application back to staff or a technical review panel for further review and recommendation. The board will consider applications on a continuing basis.

119.4(5) An applicant may submit multiple applications. The maximum amount of financial assistance awarded to any eligible business under the program for all of the eligible business's applications shall not exceed $75,000.

119.4(6) Applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the award, or of a denial of an award of financial assistance.

261—119.5(15) Application scoring criteria.

119.5(1) When applications for financial assistance under the program are reviewed by authority staff or a technical review panel, the criteria below will be considered and the application scored as described.

119.5(2) The criteria under which each application will be scored are:

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

b. The extent to which the manufacturer's proposed manufacturing 4.0 technology investment is consistent with the opportunities identified in the assessment completed by the center for industrial research and service at Iowa state university of science and technology pursuant to Iowa Code section 15.371(5)*"f."*

c. The extent to which the investment integrates smart technologies into existing manufacturing operations and the amount and scope of the business's investment.

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

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

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

g. Whether and the extent to which the business has previously received financial assistance from the program.

261—119.6(15) Contract administration.

119.6(1) The authority will prepare a contract for each award approved by the board. The contract will reflect the terms of the award and may include other terms and conditions reasonably necessary for implementation of the program pursuant to this chapter.

119.6(2) Any substantive change to a proposed investment shall require an amendment to the contract. Amendments shall be requested in writing. No amendment shall be valid until approved by the board. The authority may execute nonsubstantive or corrective changes to the contract without board approval.

261—119.7(15) Disbursement of funds. The authority will disburse funds for an investment only after a complete application has been received, an award has been approved by the board, a contract has been executed between the applicant and the authority, and all applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the contract will be on a reimbursement basis for expenses incurred by

the applicant after the date of application and as provided under the contract. Expenditures for labor performed by a business's employees are not eligible for reimbursement.

261—119.8(15) Reporting. An applicant receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

These rules are intended to implement Iowa Code section 15.371.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 35
"Energy Efficiency and Demand Response Planning and Reporting for
Rate-Regulated Natural Gas and Electric Utilities"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 476.2 and 476.6(15)
State or federal law(s) implemented by the rulemaking: Iowa Code section 476.6

Public Hearing

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

July 17, 2024 2 p.m.	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

The purpose of this proposed rulemaking is to explain the procedures governing energy efficiency and demand response proceedings.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The proposed rules apply to rate-regulated natural gas and electric utilities that are required by the Iowa Code to file five-year energy efficiency plans and demand response plans for review and approval by the Board.

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

The proposed rules benefit rate-regulated natural gas and electric utilities and other parties that wish to participate in energy efficiency and demand response proceedings.

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

- Quantitative description of impact:

By describing and detailing the rules governing such proceedings, these proposed rules are intended to assist rate-regulated natural gas and electric utilities and members of the public who wish to participate in energy efficiency and demand response proceedings. The rules are further intended to ensure that such proceedings are fairly and efficiently conducted. While these proceedings may result in costs to rate-regulated natural gas and electric utilities and participating members of the public, those costs are more directly caused by the Iowa Code provisions that require the energy efficiency and demand response

proceedings. The proposed rules in Chapter 35 are intended to assist in minimizing the costs and time spent participating in such proceedings.

- Qualitative description of impact:

Proposed Chapter 35 assists rate-regulated natural gas and electric utilities and members of the public who wish to participate in energy efficiency and demand response proceedings. The proposed rules detail proceeding expectations and procedures.

3. Costs to the State:

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

Because proposed Chapter 35 only provides the framework for energy efficiency and demand response proceedings, the rules are not viewed as directly causing costs to the Board; rather, the Board costs associated with such proceedings are more directly caused by Iowa Code section 476.6, which requires the energy efficiency and demand response proceedings.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

As discussed in previous responses, because proposed Chapter 35 imposes no direct costs on the public, including rate-regulated natural gas and electric utilities, or the Board (or any other agency), and because the public benefits from the availability of the information contained in Chapter 35, the benefits of providing the information outweigh the cost. Inaction is not advised because the public would not be aware of what was needed to fully participate in energy efficiency and demand response proceedings.

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

Because proposed Chapter 35 imposes no direct costs, the Board does not believe there is a less costly or intrusive method.

6. Alternative methods considered by the agency:

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

The Board considered inaction.

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

As stated above, inaction is not advisable because there is value in rules that inform the public of the procedures governing energy efficiency and demand response proceedings.

Small Business Impact

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

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

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

The agency does not believe proposed Chapter 35 has an adverse effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 35 and adopt the following **new** chapter in lieu thereof:

CHAPTER 35
ENERGY EFFICIENCY AND DEMAND RESPONSE PLANNING AND REPORTING FOR RATE-REGULATED NATURAL GAS AND ELECTRIC UTILITIES

199—35.1(476) Authority and purpose. These rules are intended to implement Iowa Code sections 476.6(13) and 476.6(15) relating to the energy efficiency and demand response plans and reports filed by rate-regulated natural gas and electric utilities. The purpose of these rules is to establish requirements for energy efficiency and demand response plans, modifications, prudence reviews, and cost-recovery tariffs.

199—35.2(476) Definitions. Except where otherwise specifically defined by law:

"Annual Iowa retail rate revenue" means the utility's expected revenue forecast based on customer growth rate, usage per customer, volumes, margin rate, customer charge rate, and the cost of generation or fuel.

"Assessment of potential" means development of cost-effective energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings and considering market factors, including but not limited to the effects of rate impacts, the need to capture lost opportunities, the nonenergy benefits of measures, and the strategic value of energy efficiency and demand response to the utility.

"Avoided cost" means the cost the utility would have to pay to provide energy and capacity from alternative sources of supply available to utilities as calculated pursuant to subparagraphs 35.5(4)*"l"*(7) and 35.5(4)*"m"*(4).

"Cost-effectiveness tests" means one of the five acceptable economic tests used to compare the present value of applicable benefits to the present value of applicable costs of an energy efficiency or demand response program or plan. The tests are the participant cost test, the ratepayer impact measure test, the societal cost test, the total resource cost test, and the utility cost test. A program or plan passes a cost-effectiveness test if the cost-effectiveness ratio is equal to or greater than one.

"Customer incentive" means an amount or amounts provided to or on behalf of customers for the purpose of having customers participate in energy efficiency programs. Customer incentives do not include the cost of information provided by the utility, nor do customer incentives include customers' bill reductions associated with reduced energy usage due to the implementation of energy efficiency programs. For the purposes of energy efficiency pricing strategies, "incentive" means the difference between a customer's bill on an energy efficiency customized rate and the customer's bill on a traditional rate considering factors such as the elasticity of demand.

"Demand response" means changes in a customer's consumption pattern in response to changes in the price of electricity over time, or in response to incentive payments to induce reduced consumption during periods of high wholesale prices or when system reliability is jeopardized.

"Economic potential" means the energy and capacity savings that result in future years when measures are adopted or applied by customers at the time it is economical to do so. For purposes of this chapter, economic potential may be determined by comparing the utility's avoided cost savings to the incremental cost of the measure.

"Energy efficiency measures" means activities on the customers' side of the meter that reduce customers' energy use or demand, including but not limited to end-use efficiency improvements or pricing strategies.

"Energy savings performance standards" means those standards that are cost-effectively achieved, with the exception of programs for qualified low-income persons, tree-planting programs, educational programs, and assessments of consumers' needs for information to make effective choices regarding energy use and energy efficiency, and includes the annual capacity savings stated either in kilowatt per day (kW/day), in dekatherm per day (dth/day), or in thousand cubic feet per day (Mcf/day) and the annual energy savings stated in either kilowatt hour (kWh), dth, or Mcf.

"Free riders" means program participants who would have implemented energy efficiency measures or practices even without the program.

"Marginal energy cost" means the cost associated with supplying the next Mcf or dth of natural gas for a natural gas utility and the energy or fuel cost associated with generating or purchasing the next kWh of electricity for an electric utility.

"Market effects" means a change in the structure of a market or the behavior of participants in a market that is reflective of an increase (or decrease) in the adoption of energy-efficient products, services, or practices and is related to market intervention(s) (e.g., programs).

"Net benefits" means the present value of benefits less the present value of costs as defined in the cost-effectiveness test.

"Nonenergy benefits" means the many and diverse benefits produced by energy efficiency, in addition to energy and demand savings. The beneficiaries of these benefits can be utility systems, participants, and society.

"Participant cost test" means an economic test used to compare the present value of benefits to the present value of costs over the useful life of an energy efficiency or demand response measure or program from the participant's perspective. Present values are calculated using a discount rate appropriate to the class of customers to which the energy efficiency or demand response measure or program is targeted. Benefits are the sum of the present values of the customers' bill reductions, tax credits, nonenergy benefits and customer incentives for each year of the useful life of an energy efficiency or demand response measure or program. Costs are the sum of present values of the customer participation costs (including initial capital costs, ongoing operations and maintenance costs, removal costs less a salvage value of existing equipment, and the value of the customer's time in arranging installation, if significant) and any resulting bill increases for each year of the useful life of the measure or program. The calculation of bill increases and decreases must account for any time-differentiated rates to the customer or class of customers being analyzed.

"Persistence of energy savings" means the savings due to changed operating hours, human behavior, interactive factors, and the degradation in equipment efficiency over the life of the measure compared to the baseline.

"Process-oriented industrial assessment" means an analysis that promotes the adoption of energy efficiency measures by examining the facilities, operations, and equipment of an industrial customer in which energy efficiency opportunities may be embedded.

"Ratepayer impact measure test" means an economic test used to compare the present value of the benefits to the present value of the costs over the useful life of an energy efficiency or demand response measure or program from a rate level or utility bill perspective. Present values are calculated using the utility's discount rate. Benefits are the sum of the present values of utility avoided capacity and energy costs (excluding the externality factor) and any revenue gains due to the energy efficiency or demand response measure or program for each year of the useful life of the measure or program. Costs are the sum of the present values of utility increased supply costs, revenue losses due to the energy efficiency or demand response measures, utility program costs, and customer incentives for each year of the useful life of the measure or program. The calculation of utility avoided capacity and energy, increased utility supply costs, and revenue gains and losses must use the utility costing periods.

"Societal cost test" means an economic test used to compare the present value of the benefits to the present value of the costs over the useful life of an energy efficiency or demand response measure or program from a societal perspective. Present values are calculated using a 12-month average of the 10-year and 30-year Treasury Bond rate as the discount rate. The average is calculated using the most recent 12 months at the time the utility calculates its cost-effectiveness tests for its energy efficiency or

demand response plan. Benefits are the sum of the present values of the utility avoided supply; nonenergy benefits; and energy costs, including the effects of externalities. Costs are the sum of the present values of utility program costs (excluding customer incentives), participant costs, and any increased utility supply costs for each year of the useful life of the measure or program. The calculation of utility avoided capacity and energy and increased utility supply costs must use the utility costing periods.

"Spillover (free drivers)" means the reduction in energy consumption or demand, or the reduction in both, caused by the presence of an energy efficiency or demand response program, beyond the program-related gross savings of the participants and without financial or technical assistance from the program. The term "free drivers" may be used for individuals who have spillover effects.

"Take-back effect" means a tendency to increase energy use in a facility, or for an appliance, as a result of increased efficiency of energy use. For example, a customer's installation of high-efficiency light bulbs and the subsequent longer operation of lights constitutes "taking back" some of the energy otherwise saved by the efficient lighting.

"Total resource cost test" means an economic test used to compare the present value of the benefits to the present value of the costs over the useful life of an energy efficiency or demand response measure or program from a resource perspective. Present values are calculated using a 12-month average of the 10-year and 30-year Treasury Bond rate as the discount rate. The average is calculated using the most recent 12 months at the time the utility calculates its cost-effectiveness tests for its energy efficiency or demand response plan. Benefits are the sum of the present values of the utility avoided supply, energy costs, nonenergy benefits, and federal tax credits. Costs are the sum of the present values of utility program costs (excluding customer incentives), participant costs, and any increased utility supply costs for each year of the useful life of the measure or program. The calculation of utility avoided capacity and energy and increased utility supply costs must use the utility costing periods.

"Useful life" means the number of years an energy efficiency measure will produce benefits.

"Utility cost test" means an economic test used to compare the present value of the benefits to the present value of the costs over the useful life of an energy efficiency or demand response measure or program from the utility revenue requirement perspective. Present values are calculated using the utility's discount rate. Benefits are the sum of the present values of each year's utility avoided capacity, nonenergy benefits, and energy costs (excluding the externality factor) over the useful life of the measure or program. Costs are the sum of the present values of the utility's program costs, customer incentives, and any increased utility supply costs for each year of the useful life of the measure or program. The calculation of utility avoided capacity and energy and increased utility supply costs must use the utility costing periods.

199—35.3(476) Energy efficiency and demand response plan filing.

35.3(1) Each electric and natural gas utility shall file a five-year energy efficiency plan. Each electric utility shall file a five-year demand response plan. Combination electric and natural gas utilities may file combined assessments of potential and energy efficiency and demand response plans but separately specify which energy efficiency programs and costs are attributable to the electric operation, which are attributable to the natural gas operation, and which are attributable to both. If a combination utility files separate plans, the board may consolidate the plans for purposes of review and hearing.

35.3(2) Written notice of the energy efficiency and demand response plans.

a. Each electric and natural gas utility shall:

(1) Deliver a written notice of its plan filing to all affected customers no more than 62 days prior to the filing of its energy efficiency and demand response plans.

(2) File the written notice with the board for approval not less than 45 days prior to the delivery of the proposed notification to affected customers.

b. Additional information not related to the energy efficiency and demand response plans shall be kept to a minimum and not distract from the required content.

c. The form of the notice, once approved by the board, shall not be altered except to include the rate and bill impact dollars and percentages. The type size and quality shall be easily legible. The notice shall, at a minimum, include the following elements:

(1) A statement that the utility will be filing energy efficiency and demand response plans with the board.

(2) A brief identification of the proposed energy efficiency and demand response programs, a description of benefits and savings associated with the energy efficiency and demand response plans, and the estimated annual cost of the proposed energy efficiency and demand response programs during the five-year budget time frame.

(3) The estimated annual rate and bill impacts of the proposed energy efficiency and demand response plans on each class of customer, and the estimated annual jurisdictional rate impact for each major customer grouping in dollars and as a percentage, with the proposed actual increases to be filed at the time of notice to customers. The utility may represent the estimated annual rate and bill impact dollars and percentages with blank spaces; however, the board may require the utility to submit additional information necessary for review of the proposed form of notice. A copy of the notice with the final annual rate and bill impact dollars and percentages shall be filed with the board at the time of customer notification.

(4) A statement that the board will be conducting a contested case proceeding to review the application and that a customer may file comments in the board's electronic filing system.

(5) The telephone numbers; websites; email addresses; and mailing addresses of the utility, the board, and the consumer advocate for the customer to contact with questions.

199—35.4(476) Assessment of potential and collaboration.

35.4(1) *Assessment of potential.* The utility shall conduct an assessment of potential study to determine the cost-effective energy and capacity savings available in accordance with Iowa Code section 476.6(15). The utility's assessment shall address the potential energy and capacity savings in each of ten years subsequent to the year the assessment is filed and include economic and impact analyses of measures that address benefits and costs over the entire estimated useful lives of energy efficiency measures.

35.4(2) *Collaboration.* A utility shall offer interested persons the opportunity to participate in the development of its energy efficiency and demand response plans by providing the opportunity for interested persons to offer suggestions for programs, to offer suggestions for the assessment of potential, and to review and comment on the utility's draft of the assessment of potential and energy efficiency and demand response plans. The utility may analyze proposals from participants to help determine the effects of the proposals on the utility's plan. A participant is responsible for providing sufficient supporting information to enable the utility to analyze the participant's proposal. The opportunity to participate shall commence at least 180 days prior to the date the utility submits the utility's energy efficiency and demand response plans and assessment of potential to the board.

199—35.5(476) Energy efficiency and demand response plan requirements.

35.5(1) Each electric and natural gas utility shall file with the board an energy efficiency plan, and each electric utility shall file a demand response plan.

35.5(2) The utility's energy efficiency and demand response plans shall include testimony, exhibits, and workpapers, including Microsoft Excel or similar software versions of exhibits and workpapers.

35.5(3) A utility's plan shall include a range of programs that address all customer classes across the utility's Iowa jurisdictional territory and include a program for qualified low-income residential customers, including a cooperative program with any community action agency, as defined and listed on the Iowa department of health and human services website, within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low-income customers. The utility shall consider including in the utility's plan a program for tree-planting, educational programming, and assessments of consumers' needs for information to make effective choices regarding energy use and energy efficiency.

35.5(4) The following information shall be provided by the utility with the utility's energy efficiency and demand response plan:

a. A summary of the energy efficiency and demand response plans and results of the assessment of potential written in a nontechnical style for the benefit of the general public.

b. The assessment of potential study.

c. Cost-effectiveness test analysis.

(1) The utility shall analyze cost-effectiveness for the plan as a whole and for each proposed program, using the total resource cost, societal cost, utility cost, and ratepayer impact measure and participant tests. If the utility uses a test other than the societal cost test as the criterion for determining cost-effectiveness of utility implementation of energy efficiency measures, the utility shall describe and justify the utility's use of the alternative test or combination of tests and compare the resulting impacts with the impacts from the societal cost test. The utility shall describe and justify the level or levels of cost-effectiveness, if greater or less than a cost-effectiveness ratio of 1.0, to be used as a threshold for determining cost-effectiveness of programs. The utility's threshold of cost-effectiveness for the utility's plan as a whole shall be a cost-effectiveness ratio of 1.0 or greater.

(2) The utility's analyses shall use inputs or factors reasonably expected to influence cost-effective implementation of programs, including escalation rates and avoided costs for each cost and benefit component of the cost-effectiveness test, to reflect changes over the useful lives of the programs.

(3) The utility shall provide the analyses, assumptions, inputs, and results of cost-effectiveness tests, including the cost-effectiveness ratios and net benefits, for the plans as a whole and for each program. Low-income programs, tree-planting programs, educational programs, and assessments of consumers' needs for information to make effective choices regarding energy use and energy efficiency need not be tested for cost-effectiveness unless the utility wishes to present the results of cost-effectiveness tests for informational purposes.

d. Descriptions of each program. If a proposed program is identical to an existing program, the utility may reference the program description currently in effect. A description of each proposed program shall include:

(1) The name of the program.

(2) The customers the program targets.

(3) The energy efficiency or demand response measures promoted by the program.

(4) The proposed utility promotional techniques, including the rebates or incentives offered through the program.

(5) The proposed rates of program participation or implementation of measures, including both eligible and estimated actual participants.

e. The gross and net estimated annual energy and demand savings for the plan and each program for each year of the program that accounts for free riders, take-back effects, spillover (free drivers), market effects, and persistence of energy savings.

f. The budget for the plan and for each program for each year of implementation or for each of the next five years of implementation, whichever is less, itemized by proposed costs and consistent with the accounting plan required pursuant to subrule 35.9(1). Cost categories for the plan and program budgets include overhead and incentives as described herein, and the cost categories shall be further described by the following subcategories: classifications of persons working on energy efficiency and demand response programs, full-time equivalents, dollar amount of labor costs, and the name of outside firm(s) employed and a description of service(s) to be provided.

(1) Overhead consists of:

1. Planning and design costs, which include internal and third-party expenses associated with program development, design for new programs, modifications to existing programs, the assessment of potential, and the Iowa Technical Reference Manual.

2. Administrative costs, which include internal and third-party expenses associated with program implementation and support functions, such as fully loaded utility labor costs, office supplies and technology costs associated with program operations and delivery, program implementation costs, and labor costs for vendors required for successful operation and implementation of programs.

3. Advertising and promotional costs, which include internal and third-party labor and materials expenses associated with program-specific marketing and training and demonstration aimed at promoting

energy efficiency awareness or the programs included in a utility's plan. Advertising that is part of an approved energy efficiency or demand response plan is deemed to be advertising required by the board for purposes of Iowa Code section 476.18(3).

4. Monitoring and evaluation costs, which include internal and third-party expenses associated with ongoing program review; prepayment verification inspections; and evaluation, measurement and verification required to be completed at least once during the five-year plan.

5. Education costs, which include internal and third-party labor and material expenses associated with program-specific or general energy efficiency education.

6. Miscellaneous costs, which are all other costs related to the implementation of the plan that are not attributable to any other cost category.

(2) Incentives consist of:

1. Customer incentives, which are utility contributions provided to participants, such as rebates, direct-install measures, energy audits, energy efficiency kits, and low-income weatherization. This includes nonrebate contributions to participants, such as payments to dealers, rate credits, and bill credits.

2. Equipment costs, which include program-specific costs associated with hardware purchased by the utility and given to customers to facilitate the customer's participation in the program.

3. Installation costs, which include internal and third-party labor associated with installation or replacement of equipment provided to participants, such as the installation of direct-install measures or load control devices.

g. A description of a pilot project as a program, if the pilot project is justified by the utility. Pilot projects are expected to explore areas of innovative or unproven approaches and include proposed evaluation procedures.

h. The rate impacts and average bill impacts, by customer class, resulting from the plan.

i. The utility's forecasted electric, natural gas, or electric and natural gas annual Iowa retail rate revenue for each of the five plan years, identifying all adjustments and eliminations to the utility's revenue forecasts and the Federal Energy Regulatory Commission (FERC) accounts used to develop the utility's forecasts.

j. A monitoring and evaluation plan describing how the utility proposes to monitor and evaluate the implementation of the utility's proposed programs, including how the utility will accumulate and validate the information needed to measure the plan's performance against the standards, a timeline that outlines each phase of the monitoring and evaluation plan, and a proposed format for monitoring reports and a description of how annual results will be reported to the board on a detailed, accurate and timely basis.

k. A summary of collaborative efforts and a summary of collaboration participants' suggestions, utility responses to the suggestions, and specific reasons for incorporating or declining to incorporate the suggestions in the utility's energy efficiency or demand response plans.

l. These additional requirements for electric utilities:

(1) Load forecast. Information specifying forecasted demand and energy use on a calendar-year basis, which shall include:

1. A statement, in numerical terms, of the utility's current 20-year forecasts, including summer and winter peak demand reserve margins and annual energy requirements that account for the effects to date of current and ongoing utility energy efficiency programs but not the effects of the proposed programs in paragraph 35.5(4)*"d."*

2. The date and amount of the utility's highest peak demand within the past five years, stated on both an actual and a weather-normalized basis. The utility shall include an explanation of the weather-normalization procedure.

3. A comparison of the forecasts made for each of the previous five years to the actual and weather-normalized demand in each of the previous five years.

4. An explanation of all significant methods and data used, as well as assumptions made, in the current 20-year forecast, including all forecasts of variables used in its demand and energy forecasts and separate identification of all sources of variables used, such as implicit price deflator, electricity prices

by customer class, gross domestic product, sales by customer class, number of customers by class, fuel price forecasts for each fuel type, and other inputs.

5. A statement of the margin of error for each assumption or forecast.

6. An explanation of the results of sensitivity analyses performed, including a specific statement of the degree of sensitivity of estimated need for capacity to potential errors in assumptions, forecasts and data. The utility may present the results and an explanation of other methods of assessing forecast uncertainty.

(2) Class load data. Load data for each class of customer that is served under a separate rate schedule or is identified as a separate customer class and accounts for 10 percent or more of the utility's demand in kW at the time of the monthly system peak for every month in the year. If those figures are not available, the data shall be provided for each class of customer that accounts for 10 percent of the utility's electric sales in kWh for any month in the reporting period. The data shall be based on a sample metering of customers that is designed to achieve a statistically expected accuracy of plus or minus 10 percent at the 90 percent confidence level for loads during the yearly system peak hour(s). These data must appear in all filings, except as provided for in numbered paragraph 35.5(4)*"l"*(2)"3."

1. The following information shall be provided for each month of the previous year:

- Total system class maximum demand (in kW), number of customers in the class, and system class sales (in kWh);
- Jurisdictional class contribution (in kW) to the monthly maximum system coincident demand as allocated to jurisdiction;
- Total class contribution (in kW) to the monthly maximum system coincident demand, if not previously reported;
- Total system class maximum demand (in kW) allocated to jurisdiction, if not previously reported; and
- Hourly total system class loads for a typical weekday, a typical weekend day, the day of the class maximum demand, and the day of the system peak.

2. The company shall file an explanation, with all supporting workpapers and source documents, as to how class maximum demand and class contribution to the maximum system coincident demand were allocated to jurisdiction.

3. The load data for each class of customer described above may be gathered by a multijurisdictional utility on a uniform integrated system basis rather than on a jurisdictional basis. Adjustments for substantive and unique jurisdictional characteristics, if any, may be proposed. The load data for each class of customer shall be collected continuously and filed annually, except for the period associated with necessary interruptions during any year to modify existing or implement new data collection methods. Data filed for the period of interruption shall be estimated. An explanation of the estimation technique shall be filed with the data. To the extent consistent with sound sampling and the required accuracy standards, an electric public utility is not required to annually change the customers being sampled.

(3) Existing capacity and firm commitments. Information specifying the existing generating capacity and firm commitments to provide service. The utility shall include in its filing a copy of its most recent load and capability report submitted to Midcontinent Independent System Operator, Inc. (MISO).

1. For each generating unit owned or leased by the utility, in whole or in part, the energy efficiency and demand response plan shall include the following information:

- Both summer and winter net generating capability ratings as reported to the North American Electric Reliability Corporation (NERC).
- The estimated remaining time before the unit will be retired or require life extension.

2. For each commitment to own or lease future generating firm capacity, the plan shall include the following information:

- The type of generating capacity.
- The anticipated in-service year of the capacity.
- The anticipated life of the generating capacity.

- Both summer and winter net generating capability ratings as reported to the NERC.

3. For each capacity purchase commitment that is for a period of six months or longer, the plan shall include the following information:

- The entity with which commitments have been made and the time periods for each commitment.
- The capacity levels in each year for the commitment.

4. For each capacity sale commitment that is for a period of six months or longer, the plan shall include the following information:

- The entity with which a commitment has been made and the time periods for the commitment.
- The capacity levels in each year.
- The capacity payments to be received per kW per year in each year.
- The energy payments to be received per kWh per year.
- Any other payment to be received by the utility in each year.

(4) Capacity surpluses and shortfalls. Information identifying projected capacity surpluses and shortfalls over the 20-year planning horizon shall include:

1. A numerical and graphical representation of the utility's 20-year planning horizon comparing forecasted demand in each year from subparagraph 35.5(4)*"l"*(1) to committed capacity in each year from numbered paragraphs 35.5(4)*"l"*(3)"1" to "4." Forecasted peak demand shall include reserve requirements.

2. For each year of the 20-year planning horizon, the plan shall list in megawatts (MW) the amount by which committed capacity either exceeds or falls below the forecasted demand.

(5) Capacity outside the utility's system. Information about capacity outside of the utility's system that could meet the utility's future needs, including but not limited to cogeneration and independent power producers, expected to be available to the utility during each of the 20 years in the planning horizon. The utility shall include in the utility's filing a copy of its most recent load and capability report submitted to MISO.

(6) Future supply options and costs. Information about future supply options and their costs identified by the utility as the most effective means of satisfying all projected capacity shortfalls in the 20-year planning horizon in subparagraph 35.5(4)*"l"*(4), which shall include:

1. The following information that describes each future supply option as applicable:

- The anticipated year the supply option would be needed.
- The anticipated type of supply option, by fuel.
- The anticipated net capacity of the supply option.

2. The utility shall use the actual capacity cost of any capacity purchase identified in numbered paragraph 35.5(4)*"l"*(6)"1" and shall provide the anticipated annual cost per net kW per year.

3. The utility shall use the installed cost of a combustion turbine as a proxy for the capacity cost of any power plant identified in numbered paragraph 35.5(4)*"l"*(6)"1." For the first power plant option specified in numbered paragraph 35.5(4)*"l"*(6)"1," the following information shall be provided:

- The anticipated life.
- The anticipated total capital costs per net kW, including allowance for funds used during construction (AFUDC) if applicable.
- The anticipated revenue requirement of the capital costs per net kW per year.
- The anticipated revenue requirement of the annual fixed operations and maintenance costs, including property taxes, per net kW for each year of the 20-year planning horizon.
- The anticipated net present value of the revenue requirements per net kW.
- The anticipated revenue requirement per net kW per year calculated by utilization of an economic carrying charge.
- The after-tax discount rate used to calculate the revenue requirement per net kW per year over the life of the supply option.
- Adjustment rates (for example, inflation or escalation rates) used to derive each future cost in numbered paragraph 35.5(4)*"l"*(6)"3."

4. The capacity costs of the new supply options allocated to costing periods. The utility shall describe its method of allocating capacity costs to costing periods. The utility shall specify the hours,

days, and weeks that constitute the utility's costing periods. For each supply option identified in numbered paragraph 35.5(4)*"l"*(6)"1," the plan shall include:

- The anticipated annual cost per net kW per year of capacity purchases from numbered paragraph 35.5(4)*"l"*(6)"2" allocated to each costing period if each new supply option is the highest cost supply option in that year.
- The anticipated total revenue requirement per net kW per year from numbered paragraph 35.5(4)*"l"*(6)"3" allocated to each costing period if each new supply option is the highest cost supply option in that year.

(7) Avoided capacity and energy costs. Avoided capacity costs shall be based on the future supply option with the highest value for each year in the 20-year planning horizon identified in subparagraph 35.5(4)*"l"*(6). Avoided energy costs shall be based on the marginal costs of the utility's generating units or purchases. The utility shall use the same costing periods identified in numbered paragraph 35.5(4)*"l"*(6)"2" when calculating avoided capacity and energy costs. A party may submit, and the board shall consider, avoided capacity and energy costs derived by an alternative method. A party submitting alternative avoided costs shall also submit an explanation of the alternative method.

1. Avoided capacity costs. Calculations of avoided capacity costs in each costing period shall be based on the following formula:

AVOIDED CAPACITY COST = C × (1 + RM) × (1 + DLF) × (1 + EF)

C (capacity) is the greater of NC or RC.

NC (new capacity) is the value of future capacity purchase costs or future capacity costs expressed in dollars per net kW per year of the utility's new supply options from numbered paragraphs 35.5(4)*"l"*(6)"2" and "3" in each costing period.

RC (resalable capacity) is the value of existing capacity expressed in dollars per net kW per year that could be sold to other parties in each costing period.

RM (reserve margin) is the generation reserve margin criterion adopted by the utility.

DLF (demand loss factor) is the system demand loss factor expressed as a fraction of the net power generated, purchased, or interchanged in each costing period. For example, the peak system demand loss factor would be equal to peak system power loss (in MW) divided by the net system peak load (in MW) for each costing period.

EF (externality factor) is a 10 percent factor applied to avoided capacity costs in each costing period to account for societal costs of supplying energy. In addition, the utility may propose a different externality factor but must document the factor's accuracy.

2. Avoided energy costs. Calculations of avoided energy costs in each costing period shall be based on the following formula:

AVOIDED ENERGY COSTS = MEC × (1 + ELF) × (1 + EF)

MEC (marginal energy cost) is the marginal energy cost expressed in dollars per kWh, inclusive of variable operations and maintenance costs, for electricity in each costing period.

ELF (system energy loss factor) is the system energy loss factor expressed as a fraction of net energy generated, purchased, or interchanged in each costing period.

EF (externality factor) is a 10 percent factor applied to avoided energy costs in each costing period to account for societal costs of supplying energy. In addition, the utility may propose a different externality factor but must submit documentation of the factor's accuracy.

m. These additional requirements for natural gas utilities:

(1) Forecast of demand and transportation volumes. Information specifying the natural gas utility's demand and transportation volume forecasts, which includes:

1. A statement in numerical terms of the utility's current 12-month and five-year forecasts of total annual throughput and peak day demand, including reserve margin, based on the purchased gas adjustment (PGA) year by customer class, including the effects to date of current ongoing utility energy efficiency programs but not including the effects of the proposed energy efficiency programs in paragraph 35.5(4)*"d."*

2. A statement in numerical terms of the utility's highest peak day demand and annual throughput for the past five years by customer class.

3. A comparison of the forecasts made for the preceding five years to the actual and weather-normalized peak day demand and annual throughput by customer class, including an explanation of the weather-normalization procedure.

4. A forecast of the utility's demand for transportation volume for both peak day demand and annual throughput for each of the next five years.

5. The existing contract deliverability by supplier, contract and rate schedule for the length of each contract.

6. An explanation of all significant methods and data used, as well as assumptions made, in the current five-year forecast(s). The utility shall file all forecasts of variables used in the utility's demand and energy forecasts. If variables are not forecasted, the utility shall indicate all sources of variable inputs.

7. A statement of the margin of error for each assumption or forecast.

8. An explanation of the results of the sensitivity analysis performed by the utility, including a specific statement of the degree of sensitivity of estimated need for capacity to potential errors in assumptions, forecasts, and data.

(2) Capacity surpluses and shortfalls. Information identifying projected capacity surpluses and shortfalls over the five-year planning horizon, which includes a numerical and graphical representation of the utility's five-year planning horizon comparing forecasted peak day demand in each year from numbered paragraph 35.5(4)*"m"*(1)"1" to the total of existing contract deliverability, from numbered paragraph 35.5(4)*"m"*(1)"5." The comparison shall list in dth or Mcf any amount for any year that contract deliverability falls below the forecast of peak day demand. Forecasted peak day demand shall include reserve margin.

(3) Supply options. Information about new supply options identified by the utility as the most effective means of satisfying all projected capacity shortfall in the 12-month and five-year planning horizons in subparagraph 35.5(4)*"m"*(2). For each supply option identified, the plan shall include:

1. The year the option would be needed.
2. The type of option.
3. The net peak day capacity.
4. The estimated future capacity costs per dth or Mcf of peak day demand of the options.
5. The estimated future energy costs per dth or Mcf of each option in current dollars.
6. A description of the method used to estimate future costs.

(4) Natural gas avoided capacity and energy costs. Information regarding avoided costs shall specify the days and weeks that constitute the utility's peak and off-peak periods. Avoided costs shall be calculated for the peak and off-peak periods and adjusted for inflation to derive an annual avoided cost over a 20-year period. In addition, all parties may submit information specifying the hours, days, and weeks that constitute alternative costing periods. A party may submit, and the board shall consider, alternative avoided capacity and energy costs derived by an alternative method. A party submitting avoided cost methodology shall also submit an explanation of the alternative method.

1. Avoided capacity costs. Calculations of avoided capacity costs in the peak and off-peak periods shall be based on the following formula:

AVOIDED CAPACITY COSTS = [(D + OC) × (1 + RM)] × (1 + EF)

D (demand) is the greater of CD or FD.

CD (current demand cost) is the utility's average demand cost expressed in dollars per dth or Mcf during peak and off-peak periods.

FD (future demand cost) is the utility's average future demand cost over the 20-year period expressed in dollars per dth or Mcf when supplying natural gas during peak and off-peak periods.

OC (other cost) is the value of any other costs per dth or Mcf related to the acquisition of natural gas supply or transportation by the utility over the 20-year period in the peak and off-peak periods.

RM (reserve margin) is the reserve margin adopted by the utility.

EF (externality factor) is a 7.5 percent factor applied to avoided capacity costs in the peak and off-peak periods to account for societal costs of supplying energy. In addition, the utility may propose a different externality factor but must submit documentation of the factor's accuracy.

2. Avoided energy costs. Calculations of avoided energy costs in the peak and off-peak periods on a seasonal basis shall be based on the following formula:

AVOIDED ENERGY COSTS = (E + VOM) × (1 + EF)

E (energy costs) are the greater of ME or FE.

ME (current marginal energy costs) are the utility's current marginal energy costs expressed in dollars per dth or Mcf during peak and off-peak periods.

FE (future energy costs) are the utility's average future energy costs over the 20-year period expressed in dollars per dth or Mcf during peak and off-peak periods.

VOM (variable operations and maintenance costs) are the utility's average variable operations and maintenance costs over the 20-year period expressed in dollars per dth or Mcf during peak and off-peak periods.

EF (externality factor) is a 7.5 percent factor applied to avoided energy costs in the peak and off-peak periods to account for societal costs of supplying energy. In addition, the utility may propose a different externality factor but must submit documentation of the factor's accuracy.

199—35.6(476) Contested case proceeding.

35.6(1) The board shall conduct a contested case proceeding for the purpose of developing specific capacity and energy savings performance standards for each utility required to be rate-regulated and reviewing energy efficiency and demand response plans and budgets designed to achieve those savings.

35.6(2) Within 30 days after filing, each application for approval of an energy efficiency and demand response plan that is submitted with the information and supporting documentation required by this chapter, and that complies with the filing requirements of 199—Chapter 14, shall be docketed as a contested case proceeding. The Iowa economic development authority shall be considered a party to the proceeding. The proceeding shall follow the applicable provisions of 199—Chapter 7.

35.6(3) With the filing of a utility's application for approval of the utility's energy efficiency plan, each utility shall provide, for the board's review, a calculation of the percentage of the utility's expected annual Iowa retail rate revenue, which the utility shall determine by dividing the total projected budget for the five-year plan by the total projected Iowa retail rate revenues for the five-year plan period. The calculation of a utility's percentage of Iowa retail rate revenue may be subject to confidential treatment under Iowa Code chapters 22 and 550 upon request of the utility and as determined by the board based on the board's review of such request.

199—35.7(476) Exemptions from participation.

35.7(1) The utility shall allow customers to request exemption from participating in the utility's electric energy efficiency plan if the combined ratepayer impact test result for the utility's approved five-year electric energy efficiency and demand response plan is less than 1.0. The utility shall file a draft customer notice within 20 days following the board's approval of the utility's five-year energy efficiency plan. The form of the notice, once approved by the board, shall not be altered except to include the rate and bill impact dollars and percentages. The type size and quality shall be easily legible. The notice shall, at a minimum, provide the following elements:

a. A brief statement informing all customers that they are eligible to request an exemption from participation in the utility's electric energy efficiency plan.

b. The estimated annual rate and bill impacts of the approved electric energy efficiency plan on each class of customers and an estimate of the annual jurisdictional rate impact for each major customer grouping in dollars and as a percentage, with the proposed actual increases to be filed at the time of notice to customers. The utility may represent the estimated annual rate and bill impact dollars and percentages with blank spaces; however, the board may require the utility to submit additional information necessary for review of the proposed form of notice. A copy of the notice with the final annual rate and bill impact dollars and percentages shall be filed with the board at the time of customer notification.

c. A statement that customers requesting to be exempt from participation in the electric energy efficiency plan will not be eligible to participate in any utility-sponsored electric energy efficiency programs and will not be eligible to receive rebates from the utility for electric energy efficiency

programs during the five-year plan cycle, beginning January 1 of the first year of the five-year plan cycle.

d. An explanation that customers requesting to be exempt from participation in the electric energy efficiency plan will no longer be assessed the energy efficiency cost recovery factor for the electric energy efficiency programs on their utility bills.

e. An explanation that customers requesting to be exempt from participation in the electric energy efficiency plan will be eligible to participate in demand response and natural gas energy efficiency programs and will be assessed costs related to those programs on their utility bills.

f. A statement that the exemption from participation in the electric energy efficiency plan is applicable for the five-year plan cycle. The ability to request an exemption from participation in future electric energy efficiency plans will depend on the specifics of the utility's energy efficiency plan and demand response plan filing as approved by the board.

g. The utility's telephone number, website address, and email address the customer should use to request an exemption from participation in the electric energy efficiency plan.

h. A deadline by which customers must request an exemption. The deadline shall not be less than 30 days from the date of the notice.

35.7(2) The utility shall deliver the approved notice to all affected customers within 30 days of board approval.

199—35.8(476) Annual reporting requirements. Each utility shall file by May 1 of each year an energy efficiency annual report that shall include the utility's energy efficiency and demand response spending compared to the approved budgets; actual demand and energy savings compared to the performance standards approved by the board; cost-effectiveness results for the prior calendar year; the results of any monitoring and verification activities; and any additional information pertinent to the implementation or performance of the energy efficiency or demand response plan for the previous calendar year, such as changes in outside firms used to implement energy efficiency programs, updates on pilot projects, and other information as required by board order.

199—35.9(476) Energy efficiency and demand response cost recovery. Each utility shall be allowed to recover the authorized energy efficiency and demand response plan expenditures adjusted for any overcollections or undercollections calculated on an annual basis. The utility may propose to recover the portion of the costs of process-oriented industrial assessments related to energy efficiency.

35.9(1) *Accounting for costs.* Each utility shall maintain accounting plans and procedures to account for all energy efficiency and demand response costs.

a. Each utility shall maintain a subaccount system, work order system, or accounting system that identifies individual costs by each program.

b. Each utility shall maintain accurate employee, equipment, material, and other records that identify all amounts related to each individual energy efficiency or demand response program.

35.9(2) *Automatic adjustment mechanism.* Each utility shall file by June 1 of each year energy efficiency and demand response costs proposed to be recovered in rates for the 12-month recovery period beginning at the start of the first utility billing month at least 30 days following board approval.

35.9(3) *Energy efficiency cost recovery (EECR) and demand response cost recovery (DRCR) factors.* Each utility shall calculate an EECR factor to recover the costs associated with the energy efficiency plan, and each electric utility shall also calculate a DRCR factor to recover costs associated with the demand response plan. The utility shall calculate EECR/DRCR factors separately for each customer classification or grouping previously approved by the board. A utility shall not use customer classifications or allocations of indirect or other related costs, other than those previously approved by the board, without filing for a modification of the energy efficiency and demand response plan and receiving board approval.

a. EECR/DRCR factors shall be calculated according to the following formula:

$$\text{EECR/DRCR factor} = \frac{\text{authorized recovery} + \text{overcollection/undercollection}}{\text{annual sales units}}$$

b. EECR/DRCR factor is the energy efficiency or demand response recovery amount per unit of sales.

c. Authorized recovery is the difference between the actual energy efficiency or demand response expenditures by customer class for the previous calendar year and the approved energy efficiency or demand response budget by customer class for the previous calendar year plus the approved energy efficiency or demand response budget by customer class for the current calendar year.

d. Overcollection or undercollection is the actual amount recovered by customer class for the previous recovery period less the amount authorized to be recovered by customer class for the previous recovery period. Overcollection or undercollection may also include adjustments ordered by the board in prudence reviews.

e. Annual sales units are the estimated sales for the 12-month recovery period for customers who have not requested an exemption as allowed by rule 199—35.7(476).

35.9(4) *Filing requirements.* Each utility proposing to recover energy efficiency or demand response costs through an automatic adjustment mechanism shall provide the following information:

a. Restatement of the derivation of each EECR/DRCR factor previously approved by the board.

b. New EECR/DRCR factors based on allocation methods and customer classifications and groupings approved by the board in previous proceedings.

c. All worksheets and detailed supporting data used to determine new EECR/DRCR factors. Information already on file with the board may be incorporated by reference in the filing.

d. A reconciliation comparing the amounts actually collected by the previous EECR/DRCR factors to the amounts expended. Overcollection or undercollection shall be used to compute adjustment factors.

e. If the board has determined in a prudence review that previously recovered energy efficiency or demand response costs were imprudently incurred, adjustment factors that shall include reductions for these amounts.

35.9(5) *Tariff sheets.* Upon approval of the new EECR/DRCR factors, the utility shall file separate tariff sheets for board approval to implement the EECR/DRCR factors in the utility's rates.

35.9(6) *Customers' bills.*

a. Each electric and natural gas utility shall include the EECR factor, the customer's usage, and the dollar amount charge on the customer's bill. Customers who receive one bill for electric and natural gas service shall have a separate line item on the bill for the electric EECR and the natural gas EECR.

b. Each electric utility shall represent the DRCR factor, the customer's usage, and the dollar amount charge on the customer's bill.

199—35.10(476) Modification of an approved plan.

35.10(1) An approved energy efficiency plan or an approved demand response plan and associated budget may be modified if the modification is approved by the board.

a. Electric utilities may request a modification to an approved energy efficiency plan due to changes in the funding as a result of customers requesting exemptions from the electric energy efficiency plan.

b. Natural gas and electric utilities may request modification of an approved energy efficiency plan, or electric utilities may request modification of an approved demand response plan, for any reason.

c. The board, on its own motion, may consider modification of the energy efficiency or demand response plan and budget.

35.10(2) All applications to modify shall be filed in the same docket in which the energy efficiency or demand response plan was approved. All parties to the docket in which the energy efficiency or demand response plan was approved shall be served copies of the application to modify and have 14 days to file

an objection or agreement. Objections should be specifically related to the contents of the modification. Failure to file timely objection shall be deemed agreement.

35.10(3) Each application to modify an approved energy efficiency or demand response plan shall include:

a. A statement of the proposed modification and the party's interest in the modification.

b. An analysis supporting the requested modification.

c. An estimated implementation schedule for the modification.

d. A statement of the effect of the modification on attainment of the utility's performance standards and on projected results, including cost-effectiveness, of the utility's implementation of the utility's plan.

35.10(4) If the board finds that any reasonable grounds exist to investigate the proposed modification, a procedural schedule shall be set and the board shall take action within 90 days after the modification request is filed.

35.10(5) If an application to modify is filed and the board finds that there is no reason to investigate, then the board shall issue an order within 90 days after the modification request is filed stating the reasons for the board's decision relating to the application.

35.10(6) If the board rejects or modifies a utility's plan, the board may require the utility to file a modified plan and may specify the minimum acceptable contents of the modified plan.

199—35.11(476) Prudence review.

35.11(1) The board shall periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of the utility's implementation of energy efficiency and demand response plans and budgets. The prudence review shall be based upon the information filed by a utility in the annual report required by rule 199—35.8(476) or based on discovery conducted in review of the annual reports.

35.11(2) The consumer advocate or another person may request the board to conduct a prudence review based upon the information filed by a utility in the annual report required by rule 199—35.8(476) or based on discovery conducted in review of the annual reports. The request to initiate the prudence review shall identify specific issues to be evaluated and may include a proposed procedural schedule.

35.11(3) The board shall determine whether a contested case proceeding is necessary to address the issues raised in a request for a prudence review.

35.11(4) Disallowance of past costs. If the board finds the utility did not take all reasonable and prudent actions to cost-effectively implement its energy efficiency or demand response programs, the board shall determine the amount in excess of those costs that would have been incurred under reasonable and prudent implementation. That amount shall be deducted from the next EECR/DRCR factors calculated pursuant to subrule 35.9(3) until the disallowed costs have been satisfied.

199—35.12(476) New structure energy conservation standards. A utility providing natural gas or electric service shall not provide service to any structure completed after April 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under 661—Chapter 303. If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not governed by 661—Chapter 303.

These rules are intended to implement Iowa Code section 476.6.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 21
"Unemployment Insurance Services Division"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 96
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 96

Public Hearing

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

July 9, 2024	1000 East Grand Avenue
9 a.m.	Des Moines, Iowa

Public Comment

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

Jeffrey Koncsol
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Phone: 515.725.5400
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

Chapter 21 governs the organization of bureaus within the Unemployment Insurance Services Division of the Department as provided in Iowa Code chapter 96.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Not applicable.

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

The general public will benefit.

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

- Quantitative description of impact:

There is no quantitative impact. This proposed rulemaking simply outlines the organizational structure of the Unemployment Insurance Services Division.

- Qualitative description of impact:

The general public will understand the organizational structure of the Unemployment Insurance Services Division within the Department.

3. Costs to the State:

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

There are no implementation or enforcement costs since this proposed chapter simply outlines the organizational structure within the agency.

- Anticipated effect on state revenues:

There is no impact on state revenues.

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

Not applicable.

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

Not applicable.

6. Alternative methods considered by the agency:

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

Not applicable.

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

Not applicable.

Small Business Impact

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

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

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

By removing outdated rules from Chapter 21, this proposed rulemaking reduces confusion related to and time spent by small businesses on trying to understand the organizational structure of the Unemployment Insurance Services Division within the Department.

Text of Proposed Rulemaking

ITEM 1. Rescind 871—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
UNEMPLOYMENT INSURANCE SERVICES DIVISION

871—21.1(96) Unemployment insurance services division. The primary responsibility of the unemployment insurance services division is to administer the provisions of the Iowa employment security law and related federal programs in accordance with pertinent laws, regulations, and policies. The division administers the payment of job insurance benefits to eligible individuals, determines which employers are subject to the state and federal laws enacted in this area, supervises the collection

of taxes from these employers, and oversees a program to control the quality of benefit payment and revenue collection. These functions are performed by the following bureaus:

21.1(1) *Benefits bureau.* The benefits bureau determines the eligibility of individuals claiming unemployment insurance. It processes unemployment compensation in accordance with Iowa Code sections 96.1A(32), 96.7(2)*"d,"* and 96.40 and is responsible for payments of other special federal unemployment insurance benefits as agreed to by the United States Department of Labor and the state of Iowa. The benefits bureau is responsible for:

a. Screening all employer protests,

b. Investigating all labor dispute protests and issuing appropriate decisions,

c. Performing fact-finding interviews with claimants and employers to resolve issues such as the determination of claimant eligibility and employer liability for benefit charges,

d. Responding to communications involving technical matters related to unemployment insurance,

e. Correcting records due to reversal or modification of a decision on appeal,

f. Processing initial interstate claims; processing combined wage claims; and issuing duplicate benefit payments for lost, stolen, outdated, or returned payments,

g. Retaining and organizing records, producing records as required by law, and collecting fees for such production, and

h. Maintaining the voluntary income tax withholding program in accordance with Iowa Code section 96.3(10) and reporting tax withholding and taxable benefits to the relevant federal and state authorities.

21.1(2) *Tax bureau.* The tax bureau is responsible for contacting Iowa and out-of-state employers that do business in Iowa to establish taxpayers' liability under the law. This includes:

a. Maintaining and controlling all records of unemployment insurance taxes paid in the state and assigning rates each year to each employer,

b. Collecting and depositing all money received for contribution reports, delinquent contribution reports, benefit reimbursements, interest, and penalties with the state treasurer's office,

c. Initiating routine legal actions such as the filing of liens, garnishments, and bankruptcies,

d. Conducting investigations on Federal Unemployment Tax Act (FUTA) discrepancy problems, contractor registration issues, business closings, and claimant requests for omitted wage credits, and

e. Determining employer/employee and independent contractor relationship issues.

21.1(3) *Integrity bureau.* The integrity bureau consists of the following three distinct work units:

a. Investigations and recovery unit. The investigations and recovery unit was established to prevent, detect, investigate, and penalize unemployment insurance benefit fraud. The unit verifies whether aliens are entitled to unemployment insurance and investigates and disqualifies those who are not eligible, conducts the fictitious employer detection program to discover employers set up for the purpose of fraudulent activities, and investigates and determines whether an unemployment insurance warrant has been forged and whether it should be reissued.

b. Benefits collections unit. The benefits collections unit is responsible for benefit overpayment recovery, including the collection of benefit overpayments and penalties; initiating routine legal actions similar to those of the tax bureau; and utilizing state and federal programs to access claimants' Iowa and federal income tax refunds, Iowa lottery prizes, and Iowa vendor payments.

c. Quality control unit. The quality control unit works to support the development and execution of corrective action plans for the improvement of the unemployment insurance program. The unit is responsible for the collection and analysis of data pertaining to the accuracy of unemployment insurance benefit payments and denial determinations, validation of the unemployment insurance data reports, identification and analysis of risk factors that could threaten the unemployment insurance program, and maintenance of the data-processing capabilities to store and transmit various agency-required reports to the federal government.

This rule is intended to implement Iowa Code chapter 96.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 22
"Employer Rules and Records"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 96

State or federal law(s) implemented by the rulemaking: Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136)

Public Hearing

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

July 9, 2024	1000 East Grand Avenue
10 a.m.	Des Moines, Iowa

Public Comment

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

Jeffrey Koncsol
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Phone: 515.725.5400
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

Proposed Chapter 22 governs employer rules and records, as authorized by Iowa Code chapter 96 and the federal CARES Act.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Employers will bear the costs of implementing the proposed rulemaking.

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

Both employers and employees will benefit from the proposed rulemaking.

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

- Quantitative description of impact:

Employers will have administrative costs involved with implementing these rules.

- Qualitative description of impact:

Employers have standard guidance on rules and records related to unemployment insurance services in the state of Iowa.

3. Costs to the State:

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

The Department's Unemployment Insurance Services Bureau bears the cost of implementing and enforcing employer rules and regulations. A team of workers explains agency rules, facilitates a functioning system, and utilizes field auditors to verify compliance.

- Anticipated effect on state revenues:

No change is anticipated.

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

There is no comparable difference in costs or benefits of retaining the current chapter or implementing the new chapter.

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

No less costly or intrusive methods currently exist.

6. Alternative methods considered by the agency:

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

Not applicable.

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

Not applicable.

Small Business Impact

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

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

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

By removing outdated rules from Chapter 22, this proposed rulemaking reduces confusion and time spent reviewing rules that no longer apply, thus reducing the burden on small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 871—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
EMPLOYER RULES AND RECORDS

871—22.1(96) Records to be kept by the employer.

22.1(1) Each employing unit shall maintain, for a period of five years after the calendar year in which the remuneration to which they relate was paid or, if not paid, was due, records evidencing remuneration made by the employing unit and reportable to the department.

22.1(2) Such records shall show with respect to each employee:

a. Name of worker.

b. Social security number.

c. Date on which the employee was hired, was rehired, or returned to work after a temporary layoff and the date on which the employee was separated from work and the reason therefor.

d. Scheduled hours, except for workers without a fixed schedule of hours, such as those working outside of the employer's establishment in such a manner that the employer has no definite knowledge of their working hours.

e. Total wages paid for employment in each period and the date of payment. For all pay periods ending in each quarter, the records must show separately the following: money wages; the cash value of other remuneration, including wages in lieu of notice, bonuses, gifts, and prizes; the nature of payments such as accounts paid to employees as allowance or reimbursement for traveling and other business expenses; and the amounts of such expenditures actually incurred and accounted for by the employees.

f. The state or states, and the name of the Iowa county, if applicable, in which the services are performed. If any of such services are performed outside of this state, employers are subject to 871—subrule 23.24(1).

g. When the pay period covers services performed both in covered employment and in excluded work, the hours and wages for covered employment under the Iowa employment security law, hereinafter referred to as the "Act," and hours and wages for excluded work.

h. The physical worksite at which each employee worked during each pay period that includes the twelfth of each month. If an employee worked at more than one worksite, the worksite at which the majority of the work was performed should be the one on record.

22.1(3) Such payroll records may be preserved by the employer in an electronic format, provided the employer is willing to provide access to such records as may be required by the department.

22.1(4) Any employing unit having its principal place of business outside of Iowa shall maintain payroll records in this state with respect to wages paid to employees who perform some service in this state. An out-of-state employing unit may, with the approval of the department, maintain such payroll records outside the state if the employing unit agrees to furnish the department with a true and correct copy of such payroll records upon request. The department may make estimated reports and payroll listings upon an out-of-state employing unit's failure to maintain said records in Iowa as required.

This rule is intended to implement Iowa Code section 96.11(6)*"a."*

871—22.2(96) Reports. Each employing unit shall comply with the instructions issued by the department pertaining to the preparation and filing of reports.

This rule is intended to implement Iowa Code section 96.11(1).

871—22.3(96) Filing employer's contribution and payroll report.

22.3(1) Each employer shall, by the due date, electronically submit contribution and payroll for each quarter listing wages paid with respect to all the employer's business maintained within this state computed in accordance with the Iowa Code and these rules.

22.3(2) A copy of each such report shall be preserved by each such employer for a period of at least five years from the end of the calendar year in which the report was due.

22.3(3) Every qualified or subject employer is required to file contribution and payroll each quarter, even if an employer finds that for some particular quarter no contributions are due or the employer has no employees during the period covered.

22.3(4) Combined reports, leased employees, and concurrently employed individuals.

a. Consolidated or combined reports of parent and subsidiary corporations or other employing units, whether or not the employing units are related, are not permitted.

b. Employees of parent and subsidiary corporations or other employing units, whether or not they are related, shall be reported on the quarterly reports of the employing unit for which the services are performed regardless of which employing unit actually issues the employees' paychecks.

c. Leased employees.

(1) Except as described in subparagraphs 22.3(4)*"c"*(2) through 22.3(4)*"c"*(5), individuals leased from an employee leasing company, by the client of the employee leasing company, shall be considered to be employed by the client and shall be reported on the quarterly reports of the client, at the contribution rate of the client, unless and until it is shown to the satisfaction of the department that the individuals are and will continue to be under the exclusive direction and control of the employee leasing company, both under a written contract and in fact.

In order for a contract to be considered evidence that individuals are the employees of the employee leasing company, the contract shall:

1. Specify the service to be performed by the individuals, on behalf of the employee leasing company, for the client.

2. Specify the fee the client must pay for this service. The fee must be large enough to cover the actual cost of the individuals' wages and fringe benefits plus provide a reasonable profit on the service performed for the client.

3. Specify that the employee leasing company has the exclusive right to determine the number of individuals needed to provide the service for the client and to direct and control the individuals in the performance of the service.

4. Specify that the employee leasing company has the exclusive right to hire, fire, discipline, and reassign any of the individuals to another position or to another client without the consent of the client.

(2) If an individual is leased to fill a temporary need from a company whose business is primarily to provide workers to fill temporary needs, the individual shall be considered to be the employee of the leasing company as long as a written contract is in place.

(3) If an individual is a truck driver leased from a company that leases truck tractors with drivers to trucking companies, the individual shall be considered to be the employee of the leasing company unless and until it is shown to the satisfaction of the department that the trucking company has the exclusive right to hire, fire, discipline, reassign, and direct and control the services performed by the individual, both under a written contract and in fact.

(4) If an individual leased from an employee leasing company is a corporate officer of the client, the individual shall always be considered the employee of the client and not the employee of the leasing company.

(5) If an individual leased from an employee leasing company holds an exempt relationship, as described in Iowa Code section 96.1A(16)*"g,"* with the client, the individual shall not be considered to be an employee of either the client or the leasing company unless an election to cover the individual has been filed and approved in accordance with Iowa Code section 96.8(3)*"b."*

d. Concurrently employed individuals.

(1) Except as described in subparagraph 22.3(4)*"d"*(2), individuals who perform services concurrently for more than one employing unit, whether or not the employing units are related, shall be considered as working for each of the employing units and shall be reported on the quarterly reports of each of the employing units. Each of the employing units shall be required to pay contributions on the wages attributable to that employing unit up to the taxable wage base limit for each calendar year.

(2) An individual who concurrently performs services as a corporate officer for two or more related corporations and who is paid through a common paymaster that is one of the related corporations may be treated as working for only the common paymaster at the discretion of the related corporations.

22.3(5) The employer's contribution and payroll report shall include:

a. The social security number of, name (last name first) of, and total wages paid to each employee during the calendar quarter. All corrections to previous reports must be submitted electronically. All employees' wages will be reported by the reporting unit under which the work was performed.

b. Wages paid. The electronic system will calculate the taxable wages for each employee, contribution, interest, and penalty due for the calendar quarter and provide the employer with the sum of the total and taxable wages paid to all employees during the calendar quarter. If the employer is claiming taxable wages reported to another state, the amount claimed and the state that the wages were reported to will be listed.

c. The amount of extraordinary pay that was paid to the employees during the calendar quarter for each reporting unit.

d. The total number of employees who were paid wages during the pay periods that include the twelfth day of each month of the calendar quarter for each reporting unit.

e. The number of the county in which the reporting unit is located if only one business activity is conducted at only one worksite during the calendar quarter; however, if the same business activity is conducted at more than one worksite or if different business activities are conducted at one or more worksites, the employer shall include for each worksite the total number of employees paid wages during the pay periods that include the twelfth day of each month of the calendar quarter and the total wages paid during the calendar quarter. The system will compute and enter taxable wages.

The total number of employees paid wages during the pay periods that include the twelfth day of each month of the calendar quarter for all worksites should equal the total number of employees reported for that month.

f. The reason for the increase or decrease in total employment during the calendar quarter.

g. The electronic signature of the owner, responsible officer, or authorized agent of the employer certifying that the information given is true and correct to the best of the signer's knowledge and belief; the date the report was submitted; and the telephone number of the signer.

h. Such other schedules or reports as may be required, duly completed in all substantial respects on such forms and in accordance with instructions provided or approved by the department.

i. The amount of net remittance due. If the amount of net remittance due is less than $1, the employer need not submit payment. The system will compute and enter the net remittance due.

j. The total number of employees on the report, which will be computed and entered by the system.

This rule is intended to implement Iowa Code sections 96.1A(15), 96.7, 96.11(6), and 96.11(11).

871—22.4(96) Reporting of earnings data by secure file transfer.

22.4(1) An employer, agent, or third-party administrator may submit an electronic file. Authorization for this reporting method will be given if the submitting party meets the department's technical specifications, which will be furnished upon request.

22.4(2) The electronic file submitted must contain, for each reporting unit, all of the required employer information, wage information, and labor market information. Adjustments to prior submitted reports should be submitted electronically via the system application.

22.4(3) The director shall annually designate the number of wage lines per report that will require the report to be filed electronically.

This rule is intended to implement Iowa Code section 96.11(6)*"a."*

871—22.5(96) Filing of quarterly contribution and payroll by newly subject or covered employers. Any employing unit that becomes an employer subject to this chapter within any calendar quarter other than by a voluntary election of the employing unit shall file contribution and payroll for each calendar quarter. Payroll includes all wages paid during the current quarter as well as separate quarterly reports for wages paid in prior quarters of the same calendar year. The first quarterly reports are due on the last day of the calendar month following the close of the calendar quarter in which the employing unit becomes subject to the Act. Any employer filing a voluntary election for coverage must begin filing reports in the quarter the employer's election is effective.

This rule is intended to implement Iowa Code sections 96.7(1), 96.8(3), 96.14(1), and 96.14(2).

871—22.6(96) Employer changing status, address or name required to file report. Any employer that terminates business for any reason whatsoever; transfers or sells all or a substantial part of the assets of the organization, trade or business to another; or changes the trade name of such business or address thereof shall, within ten days, provide electronic notification to the department of such change, including the former name and address of the business; the new name, telephone number, and address; the name of any new owner; and the employer's own name, telephone number, and present address.

This rule is intended to implement Iowa Code sections 96.8(4) and 96.11.

871—22.7(96) Exempt employing units and exempt employment.

22.7(1) The department may request, and the employing unit having workers performing services for the unit who the unit considers exempt from this Act may file, Form 68-0192, Questionnaire for Determining Status of Workers, along with supporting exhibits and documents to enable the department to determine whether an exemption exists.

22.7(2) Any employing unit exempt under this Act or for whom certain employment performed is not subject to contributions shall immediately notify the department of any changes that may impact the exemption, including the character of its organization, the purposes and manner of its operation, or the changed manner in which employment is performed.

22.7(3) The burden is on the employer to prove the exemption claimed.

This rule is intended to implement Iowa Code section 96.1A(16)*"f."*

871—22.8(96) Subject employers.

22.8(1) Whenever an employing unit is in doubt as to whether or not an individual is an employee or is engaged in employment subject to the Act, the department may request and the employing unit shall submit Form 68-0192, Questionnaire for Determining Status of Workers.

22.8(2) The department will maintain a separate account for each employer and notify the employer of any status change. This notice will advise the employer of:

a. The effective subjectivity date.

b. The date of the determination.

c. The assigned industry code.

d. The section of the law under which the employer was found liable.

e. The federal identification number (if available).

f. The workforce development unemployment insurance account number.

g. The contribution rate for that year and preceding four years, if applicable.

h. Whether the account was new, reestablished or inactive.

22.8(3) An appeal of an employer liability determination may be perfected according to rules 871—23.52(96) through 871—23.56(96).

This rule is intended to implement Iowa Code section 96.7(4).

871—22.9(96) Registration of employing units to determine liability.

22.9(1) Each employing unit doing business in the state of Iowa, within 30 days of commencing business in the state in any manner whatsoever, whether by succession to a business already being operated, by starting a new business, or otherwise, shall inform the department and complete a registration.

22.9(2) The registration shall provide the department with the following:

a. The names and addresses of the owners of the business, or if a corporation, association, or joint stock company or limited liability company, the names and addresses of its officers or members.

b. The employing unit's principal place of business, the nature of its business, the number of individuals whom it customarily hires to perform services for it, the place or places where such services are performed, the time when such business was begun, the number of weeks in the year for which it is customary to operate such business, and such other information as may be required.

22.9(3) The employing unit must also file contribution and payroll for all reporting units, if applicable.

This rule is intended to implement Iowa Code section 96.11(1).

871—22.10(96) Report of a partnership on change in partners.

22.10(1) If a partnership alters its ownership structure and the Internal Revenue Service does not require the partnership to obtain a new federal identification number, the partnership has ten days to notify the department of the change. The department will subsequently update the partnership account to reflect this change.

22.10(2) If the Internal Revenue Service requires the partnership to obtain a new federal identification number, or if there has been a change of ownership as described in Iowa Code section 96.1A(16)*"b"* or rule 871—23.28(96), then the old partnership has ten days to electronically file the change of ownership with the department and to complete a registration.

This rule is intended to implement Iowa Code section 96.11(6).

871—22.11(96) Employer account.

22.11(1) An employer that has more than one establishment or business is considered to be one employing unit entitled to one account and a single experience rate. If an establishment or business owned by an employer is a separate legal entity in its own right (i.e., a subsidiary corporation), it will be considered to be a separate employer with its own experience rate. When an already covered employer acquires another establishment or business, the employer will have a separate account number with a separate experience rate for the acquired business only if that business retains its character as a separate legal entity. If the acquired business is merged with that of the employer so that they become a single legal entity under the law, the successor is not entitled to separate rates for each establishment or business.

22.11(2) Each employer shall report all wages paid and pay all contributions into the unemployment account maintained by the department. The title of the employer's account shall be the name of the employing unit and may contain its trade name. Where the employing unit is a fiduciary agent or legal representative, the title of the account will be the name of the fiduciary or legal representative and the official title.

22.11(3) The department shall assign each employer's account a number that may only be changed if the system of numbering accounts is changed.

22.11(4) As used in this rule, "establishment" means an economic unit, generally at a single physical location, where business is conducted, where services or industrial operations are performed, or from which employees are dispatched.

This rule is intended to implement Iowa Code sections 96.1A(15) and 96.7(2)*"a"*(1).

871—22.12(96) Reporting units. Any employer having two or more separate establishments will file those establishments as separate reporting units. Additionally, at the employer's discretion, the employer may establish reporting units to report according to function within the business. When filing employer's contribution and payroll, all reporting units will be submitted together unless the department authorizes otherwise. The submission is not complete until all reporting units are completed. It is the responsibility of the employer to maintain current status for the reporting units, and if any reporting units are deleted or added, the employer must notify the department within ten working days from the date of change.

This rule is intended to implement Iowa Code sections 96.1A(6) and 96.7(2)*"a."*

871—22.13(96) Procedure to be followed by an employer wishing to have an active reporting unit coded for notice of claim for unemployment benefit mailing.

22.13(1) Any employing unit reporting under an assigned account and having one or more reporting units in the state may request a reporting unit number for the specific purpose of receiving a Notice of Claim Filing so that the employing unit may make a timely protest if the employment separation was for a disqualifiable reason. Those accounts so wishing may request that all unemployment insurance material other than the Notice of Claim Filing be sent to the home office or regional accounting office. All such requests must be from a responsible financial or operating officer of the firm and must indicate:

a. The full trade name and address of each location to be coded.

b. The full employer name and address of the home office or financial office where all unemployment insurance material other than the Notice of Claim Filing is to be sent.

22.13(2) Qualified personnel in the tax bureau may accept this information over the telephone provided that the employer makes known all of the above requested information and the person receiving this information notes the date it was received, the time it was received, who telephoned the information to the department, and the name and telephone number of a responsible party that can be contacted if further verification is needed with respect to the location coding procedure. Tax bureau

personnel receiving this classified information by telephone will accordingly note this and make it a matter of permanent record.

This rule is intended to implement Iowa Code section 96.6(2).

871—22.14(96) Notification by employer of employee's rights. Notification is in accordance with Iowa Code section 96.11(2).

This rule is intended to implement Iowa Code section 96.11(2).

871—22.15(96) 940 certification.

22.15(1) Upon request, the department shall furnish to the Internal Revenue Service a certification of an employer's account for a particular year. Certification requests may be on an individual basis or may be part of a bulk yearly certification. Such certification will include the employer's state account number, yearly taxable payroll, contribution rate, contributions paid prior to January 31 of the next succeeding year, and the date and amount of contributions after January 31 of the next succeeding year.

22.15(2) In addition to the information certified in subrule 22.15(1), yearly certification shall include:

a. Employers that filed a federal unemployment tax return (Form 940) that did not file with the department.

b. Employers that filed returns with the department but not with the Internal Revenue Service, except governmental employers and employers that department records indicate to be 501(c)(3) nonprofit organizations.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.11(6)*"c"*(2).

871—22.16(96) Electronic transmittal of contribution payments. Employing units must transmit payment of contributions to the department electronically.

This rule is intended to implement Iowa Code sections 96.7(1) and 96.14(2).

871—22.17(96) Procedures of field auditors.

22.17(1) Field auditors are to provide a cost-effective method of promoting employers' understanding of employer rights and responsibilities under Iowa unemployment insurance laws.

22.17(2) The department, through duly appointed field auditors, may examine an employer's records at any reasonable time to determine compliance with the Act.

22.17(3) The department has enforcement authority. An employer, when requested to produce records by an auditor, must make the records available. If an employer does not comply with the auditor's request to produce records, a subpoena duces tecum may be served on the employer.

22.17(4) The department, through duly appointed field auditors, may perform a systematic audit of an employer's records as authorized by Iowa Code section 96.11(7) and as mandated by the United States Department of Labor. In addition to the provisions of subrules 22.17(1) through 22.17(3), the following provisions apply to systematic audits:

a. The employer is to be given reasonable notice of the intent to audit, and a preaudit interview, typically in the form of a preaudit questionnaire, is to be conducted with the employer or a designated representative.

b. The records required, if maintained, may include individual pay records, Internal Revenue Service Forms W-2 and 1099, cash disbursement journals, check registers, general ledgers, balance sheets, profit and loss statements, federal and state tax returns, and other records to the extent they relate to possible hidden or misclassified wages.

c. To verify the existence of the business, the auditor may require a visit to the business premises or request other evidence of legitimate business activity.

d. To verify the correct business entity is listed on department files, the auditor may examine various employer business licenses, legal documents or other tax returns.

e. To verify the reporting of all workers reportable to the department under the Act, questionable entries will be investigated and documented. If the employer disagrees with the audit decision on coverage of a worker, the auditor may require the employer to complete Form 68-0192, Questionnaire

for Determining Status of Workers. In any disputed case, the auditor is to be granted access to records as necessary to determine the remuneration paid for any given calendar quarter.

f. To verify proper employer posting to department reports, a detailed audit of check stubs or other maintained source documents will be made and documented for at least one worker for at least one quarter. The detailed audit may be more comprehensive at the discretion of the auditor or if discrepancies are found.

g. Employer records will be compared and reconciled to amounts reported to the department on contribution and payroll reports and audit findings documented.

h. Discrepancies will be resolved or explained, and report adjustments prepared, as necessary.

i. The audit will cover four calendar quarters; however, if material errors are found, the audit may be expanded to cover prior or subsequent years subject to limitations of subrule 22.1(1).

j. Additional amounts due will be calculated and collected, including applicable interest and penalties, or an explanation will be given.

k. Upon completion of the audit, the department will communicate the results to the employer or designated representative. An audit report with all worksheets, adjustments, and reports will be retained by the department.

22.17(5) There are several other reasons department representatives may make employer contacts and demands under authority of this rule. Any of these activities may be expanded into a systematic compliance audit as described in subrule 22.17(4) upon approval of the duly authorized representative of the department.

a. An auditor may request to examine business records to determine the date employment began and the date the employing unit became subject to the Act.

(1) To determine whether an employing unit is to be a covered employer and whether an individual, or class of individuals, is an employee whose remuneration would be subject to contributions, the auditor will examine employment contracts and related documents.

(2) If it is determined that the employing unit is to be a covered employer, the auditor will examine legal documents such as leases, purchase contracts, partnership agreements, articles of incorporation, limited liability operating agreements, and stock records to determine ownership of the business; to establish responsibility for filing reports and paying contributions; and to assist in the determination of the unemployment insurance tax rate.

(3) If liability is determined, the payroll/remuneration records may be examined to establish the correct amount of covered wages and the period to which they belong. Reports will be completed; the correct amount of contribution, penalty, and interest due will be computed; and collection action will be initiated.

b. When an unemployment insurance claim is filed, an auditor may request to examine the records of an employer to establish the claimant's rights to benefits under the Act. Form 68-0192, Questionnaire for Determining Status of Workers, and supporting documents may be required in contested cases. If the department determines that the claimant is an employee, the records will be examined to determine the correct amount of wages paid to the claimant and the period to which the wages apply.

c. When an employer fails or refuses to file contribution and payroll, the auditor may examine the records to determine the correct amount of wages that should be reported and may compute and collect contributions, penalty, and interest due. Should records not be made available, the auditor may estimate the wages paid and amounts due pursuant to 871—subrule 23.59(2).

d. When an employer is delinquent in paying contributions due, the auditor may examine records including cash accounts, accounts receivable, real and personal property accounts, accounts payable, notes payable, installment contracts, and mortgages payable to determine the employer's equity in the assets on which a lien may be filed and judgment obtained.

22.17(6) When a temporary writ of injunction has been filed by the department against an employer because of the employer's failure or refusal to file a required report or to pay assessed contributions, penalty, and interest, a field auditor may inspect the enjoined business premises during reasonable hours and interview any interested parties having knowledge of or being involved with the enjoined employer

to ensure that such enjoined employer and all of the employer's agents, servants, employees, and assigns are observing the conditions of the temporary writ of injunction.

This rule is intended to implement Iowa Code sections 96.7(1), 96.7(3), 96.8(1), 96.11(1), 96.11(6)*"a,"*96.11(7), 96.14, 96.16 and 96.20(3).

871—22.18(96) Agents and other practitioners or firms representing employers in unemployment insurance matters.

22.18(1) An agent, tax practitioner, accounting firm, attorney or any other firm or individual that represents or intervenes on behalf of an employer in any unemployment insurance matter must file with the department:

a. A power of attorney, or

b. A letter of authorization from the employer, or

c. An electronic designation of authority from the employer.

22.18(2) The foregoing documents must contain:

a. Employer's full legal name, address, and account number.

b. Employer doing business as (DBA) or trade name, if any.

c. Legal name, address, telephone number and federal employer identification number (FEIN) of the agent or firm representing the employer.

d. Employer's email address.

e. Address of the designated agent.

f. Roles that the agent or firm is authorized to perform for the employer.

g. Signature of the employer.

This rule is intended to implement Iowa Code section 96.11(7).

871—22.19(96) Notification of availability of unemployment insurance. Upon an employee's separation from employment, an employer must provide to the employee documentation informing that:

22.19(1) Unemployment insurance benefits are available to workers who are unemployed and who meet the state's eligibility requirements;

22.19(2) Employees may file a claim in the first week that employment stops or work hours are reduced;

22.19(3) Employees may file claims online at iowaworks.gov; and

22.19(4) Employees must provide the department with the following information to process the claim:

a. Full legal name;

b. Social security number;

c. Authorization to work (if the employee is not a U.S. citizen or resident);

d. Last employer name and address;

e. Start and end dates of the employee's last employment; and

f. Additional information upon request of the department.

This rule is intended to implement Iowa Code chapter 96 and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 25
"Benefit Payment Control"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 96
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 96

Public Hearing

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

July 9, 2024	1000 East Grand Avenue
11 a.m.	Des Moines, Iowa

Public Comment

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

Jeffrey Koncsol
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Phone: 515.725.5400
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

Proposed Chapter 25 governs benefit payment control regarding fraudulent activity in unemployment insurance benefits.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The general public will bear the costs.

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

The general public will benefit.

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

- Quantitative description of impact:

Those engaged with fraudulent unemployment insurance benefits may face financial issues under the proposed rules. However, the State of Iowa will overall be more fiscally responsible with this oversight.

- Qualitative description of impact:

Those who attempt to fraudulently utilize unemployment insurance benefits will face repercussions.

3. Costs to the State:

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

The Unemployment Insurance Services Division within the Department employs a team of people to pursue fraudulent unemployment insurance benefit activities.

- Anticipated effect on state revenues:

There will be no significant impact on state revenues.

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

The proposed rulemaking makes no changes to costs and benefits. The same administrative costs will exist as prior to this update.

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

No less costly or intrusive methods exist.

6. Alternative methods considered by the agency:

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

Not applicable.

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

Not applicable.

Small Business Impact

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

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

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

By removing outdated rules from Chapter 25, this proposed rulemaking reduces confusion and time spent reviewing rules that no longer apply, thus reducing the burden on small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 871—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
BENEFIT PAYMENT CONTROL

871—25.1(96) Definitions.

"Administrative penalty" means the disqualification of a claimant from the receipt of benefits due to fraud or misrepresentation or the willful and knowing failure to disclose a material fact for a period of not more than the remaining benefit year, including the week in which such determination is made.

"Allegation of fraud" means any form of communication from a party that implies fraudulent activity.

"Anonymous tip" means information about suspected fraudulent activity received from a party who wishes to remain unidentified.

"Appeals" means a request for a review by an appeals authority of the department from any determination made by a representative of the department, including any request for a review by a higher appeals authority of a decision made by a lower appeals authority. It also includes any appeal from a determination of a representative, or any appeal or request for a hearing by a properly affected party.

"Benefits" means the same as defined in 871—subrule 24.1(18).

"Claim" means the same as defined in 871—subrule 24.1(25).

"Claimant" means the same as defined in 871—subrule 24.1(26).

"Earnings" means the remuneration for services performed.

"Employing unit" means the same as defined in Iowa Code section 96.1A(15).

"Evidence" means any witnesses' testimony, records, documents, copies of documents, statements, demonstrations, or any other relevant testimony or concrete objects before the department or at an employment appeal hearing or trial of an issue for the purpose of inducing belief in the minds of the hearing officer, department, court or jury as to the truth of a contention.

"Fact-finding interview" means a discussion between a claimant or an employer and an investigator for the purpose of obtaining from the claimant or employer a statement containing information on a specific eligibility or disqualification issue.

"Fraud" means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury.

"Fraudulent activity" means actions based on or in the spirit of fraud.

"Initial determination" means the first determination with respect to a claim or a request for determination of insured status.

"Intent" means the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective.

"Investigator" means an investigation and recovery section investigator.

"Local office" means the workforce development center office in which claims functions are performed.

"Material fact" means a fact that necessarily has some bearing on the subject matter, such as is necessary to determine the issue.

"Misconduct" means the same as defined in Iowa Code section 96.5(2).

"Misrepresentation" means to give misleading or deceiving information or omit material information; and to present or represent in a manner at odds with the truth.

"Month" means the time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.

"Overpayment" means the amount of unemployment insurance benefits erroneously paid to a claimant due to error, misrepresentation, or fraud.

"Social security number" means the same as defined in 871—subrule 24.1(115).

"Surveillance" means the observance of activities.

"Wage cross match audit" means the computerized quarterly cross match of benefits received by Iowa claimants and wages reported by employers to the state of Iowa.

"Wages" means the same as defined in Iowa Code section 96.1A(40).

"Week" means the same as defined in 871—subrule 24.1(135).

This rule is intended to implement Iowa Code chapter 96.

871—25.2(96) Policy of the investigation and recovery unit. The policy of the investigation and recovery unit is to:

25.2(1) Take aggressive action to prevent, detect, and deter benefits paid through error and to investigate and penalize fraud;

25.2(2) Maximize the recovery of benefit overpayments; and

25.2(3) Seek prosecution when the unit believes a person has committed a serious violation of the employment security law.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

871—25.3(96) Functions of the investigation and recovery unit. The function of the investigation and recovery unit is to:

25.3(1) Investigate and make determinations on issues within the unit's scope that are referred by the general public, employing units, agency personnel, other agencies, or anonymous sources. The unit examines allegations of the following type:

a. Failure to report earnings while receiving benefits.

b. Collusion between claimant and employer, or between two or more claimants, in fraudulently obtaining or attempting to obtain benefits.

c. Utilizing the identity of another to fraudulently obtain or attempt to obtain benefits.

d. Employing units fraudulently attempting to evade unemployment insurance coverage and tax assessment. The unit determines the resulting status of claimants employed by these entities.

e. Claims involving contrived or fictitious employment (e.g., family relationships).

f. Cases of possible concurrency in claiming workers' compensation, railroad retirement, or social security while receiving benefits. Also concurrency of claiming benefits outside of Iowa while receiving unemployment insurance benefits. Possible welfare concurrency will be referred to the appropriate agency.

g. Issues of availability, capability, voluntary leaving of employment, refusal of employment, misconduct, intervening employment, and industrial controversy where the facts are complex and field work is necessary to establish proper findings.

h. Validity of alien registration numbers through a cross-check with U.S. Citizenship and Immigration Services. If an alien has falsely claimed to be a U.S. citizen or used a false alien registration card in order to receive benefits, prosecution cases will be prepared when appropriate. "Alien" means the same as described in rule 871—24.60(96).

25.3(2) Collect refunds of overpayments resulting from determinations of claimant fraud.

25.3(3) Prepare all cases for prosecution.

a. Submit cases to the county attorneys.

b. Assist county attorneys and others by presenting evidence and giving testimony in court proceedings.

25.3(4) Formulate methods and procedures to prevent and detect all types of fraud by claimants, employing units, and unemployment insurance services personnel.

25.3(5) Provide liaison with local, state, and federal law enforcement agencies.

25.3(6) Testify and produce evidence before hearing officers and employment appeal board hearings regarding fraudulent activities.

25.3(7) Conduct internal audits as established by federal guidelines.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

871—25.4(96) Allegation of claimant fraud.

25.4(1) If the party alleging fraud supplies sufficient information to proceed with an investigation, the information is to be forwarded to the investigation and recovery unit, which will advise the alleging party that the unit will fully investigate. The unit is to provide its findings to the alleging party if the investigation may impact the alleging party's employer account of claim for benefits.

25.4(2) If the results of the investigation indicate that a disqualification would have resulted for the period benefits were paid, the unit is to schedule an informal fact-finding interview to allow testimony by the parties. The unit may recommend separate fact-finding interviews if necessary.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

871—25.5(96) Allegation of employing unit fraud.

25.5(1) If the party alleging fraud supplies sufficient information to proceed with an investigation, the information is to be forwarded to the investigations and recovery unit. The unit will advise the alleging party that the unit will fully investigate. The unit may seek the assistance of the tax unit staff. The unit is to provide its findings to the alleging party if the investigation may impact the alleging party's employer account of claim for benefits.

25.5(2) If the results of the investigation indicate that misrepresentation occurred on the part of the employer, the unit is to schedule an informal fact-finding interview to allow testimony by the parties.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

871—25.6(96) Investigation of fraud (procedure).

25.6(1) Upon receipt of an allegation of fraudulent activity, the investigation and recovery unit will prepare an investigation file containing all necessary documents, assign an investigation number, and assign the case to an investigator. All investigation files will remain confidential.

25.6(2) The investigator will make a thorough review of all documents contained within the file and determine what issues need to be investigated. Documented evidence will be obtained from any necessary source.

25.6(3) An investigator has the authority to request all necessary information in the investigation of any error or potential fraudulent activity committed by a claimant, employing unit, or other party. Likewise, testimony may be taken from any person who has relevant information or records. Any person, when requested by an investigator to produce records or give testimony, must be available to give testimony to the department or to produce records within a reasonable time. If any person does not comply with the investigator's request for the person to give testimony to the department or produce records, a subpoena may be issued summoning the person to appear before the investigator to give testimony or present the records.

If the investigator determines that any request for the voluntary production of pertinent records might endanger the existence of such records, the investigation and recovery unit may immediately issue a subpoena duces tecum to ensure the production of such records.

25.6(4) The investigation and recovery unit may seek the assistance of field auditors.

25.6(5) The investigator may surveil any relevant individual or location.

25.6(6) Upon completion of the investigation, a determination shall be made as to whether fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated. The unit is to provide its findings to the alleging party if the investigation may impact the alleging party's employer account of claim for benefits. The case may be prepared for prosecution if warranted.

25.6(7) A detailed report will be entered in the case management system upon completion.

This rule is intended to implement Iowa Code sections 96.16, 96.11(6) and 96.11(7).

871—25.7(96) Determination of overpayment by reason of claimant's fault or fraud.

25.7(1) The investigation and recovery unit may determine that a claimant has received benefits to which the claimant was not entitled due to the claimant's own fault, the employer's fault, the agency's fault, or fraud as provided in Iowa Code section 96.16.

25.7(2) A dated notice of such determination shall promptly be mailed to the claimant at the claimant's last-known address. Such notice shall advise the claimant of the reason for and total amount of the overpayment as well as the benefit weeks involved. The determination is final unless the claimant, within ten calendar days of the date shown on the notification, files a written request for review or appeal.

25.7(3) Upon receiving a written request for review, the investigation and recovery unit, based upon such facts as it has or may acquire, may affirm, modify, or reverse the prior decision or refer the matter to an administrative law judge. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within ten calendar days after the date of mailing, such decision shall be final.

25.7(4) The claimant may directly appeal the decision, without request for review, to the department of inspections, appeals, and licensing.

25.7(5) Claimants affected by determinations made in accordance with this rule have the same rights to further appeal as are provided in Iowa Code section 96.6.

25.7(6) When a determination has become final, the benefits shall be recovered.

a. Recovery of overpayments due to misrepresentation or fraud may also include the filing of a notice of lien or other civil action. Upon finalization of the determination of overpayment by reason of a claimant's fault or fraud, interest shall accrue at a rate of 1/30th of 1 percent per day until the overpayment is paid in full.

b. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment to the department.

c. If a claimant fails to respond to the first statement of overpayment, a demand letter shall be sent 30 days later. The demand letter notifies the claimant that full repayment must be made. If the claimant cannot make full repayment, the department will consider a monthly repayment agreement. Monthly amounts based on the minimum repayment agreement schedule below will be printed on the demand letter. The first repayment is expected ten days from the date of the demand letter and the additional repayments every 30 days thereafter until the debt is paid in full. The following minimum repayment agreement is acceptable to the department, though the department reserves the right to accept or reject any proposed repayment agreement.

Amount of Original Overpayment	Minimum Monthly Payments	Number of Months Required to Liquidate the Overpayment
Under $199	$ 25	1 to 8
$200 to $399	$ 50	4 to 8
$400 to $599	$ 75	5 to 8
$600 to $799	$ 90	6 to 9
$800 to $999	$ 100	8 to 10
$1,000 to $1,499	$ 150	6 to 10
$1,500 to $1,999	$ 200	7 to 10
$2,000 to $2,999	$ 250	8 to 12
$3,000 and over	$ 300	10 to —

d. After sending the demand letter, the department may proceed with any appropriate lien or civil action to collect the debt, which would include but not be limited to a judgment in a court having jurisdiction over the matter. The department may pursue the same type of action where a claimant defaults on a repayment agreement.

e. If the department receives a cash repayment of an overpayment, the department shall issue a receipt and mail it to the claimant's last-known address. If the department receives a repayment that is not identified by a social security number, name, or other means of identification, the department will retain the money until such time as a positive identification can be made and proper credit given to the claimant.

f. An overpayment to the claimant will cause the employer to be relieved of charges except when the overpayment is a result of payment of a back pay award.

g. An underpayment of $5 or less will not be set up and paid to an individual unless the individual requests the payment in writing.

This rule is intended to implement Iowa Code sections 96.1A(37), 96.3(3), 96.3(7), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.8(5), 96.11(1), and 96.16.

871—25.8(96) Recovery of benefit overpayments when benefits are erroneously received.

25.8(1) *Good faith overpayment.* The department shall recover good faith overpayments. The department shall issue the overpayment decision to the claimant's last-known address or through the claimant's preferred contact method. Once the overpayment amount has been established, an

overpayment schedule will be established to leave an audit trail even if the claimant fully repays the overpayment in one payment.

a. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment.

b. If a claimant fails to respond to the first statement of overpayment, a demand letter shall be sent 30 days later notifying the claimant that full repayment must be made. If the claimant cannot make full repayment, the department will consider a monthly repayment agreement.

c. If an individual has acted in good faith and is without fault in claiming federal unemployment compensation under Unemployment Compensation Federal Employees (UCFE), Unemployment Compensation Ex-servicemembers (UCX), Trade Readjustment Allowances (TRA), or Disaster Unemployment Assistance (DUA), and it is subsequently determined that the individual is not entitled to the benefits, the department has the right to recover the benefits in accordance with the procedure outlined in subrule 25.8(1). Any federal unemployment compensation overpayments recovered will be credited to the appropriate account of the United States. Three years after the federal unemployment compensation overpayment, if the department concludes that continued collection efforts would result in diminishing returns, then the unrecovered amount will be removed from the department accounting records. An administrative record will be maintained for possible collection through offset or other appropriate method. If no collection action has taken place during the three years after the department has removed the overpayment from its accounting records, then the overpayment will be disposed of.

Any overpayment of TRA, Trade Adjustment Assistance, or DUA will be offset at the rate of 50 percent of the benefit amount otherwise payable to the individual for unemployment insurance, extended benefits, or any other federal unemployment compensation program.

25.8(2) *Misrepresentation.*

a. The department may attempt to collect the overpayment by filing a lien on the claimant in the manner provided in Iowa Code section 96.14(3).

b. The employer's account may be relieved of overpayments caused by fraud or misrepresentation.

c. If it is found that an individual has received benefits through misrepresentation and has been assessed with an overpayment under UCFE or UCX, and criminal charges are not involved, the department will limit deduction from future benefits to a two-year period following the original determination of overpayment. If an individual is convicted for fraud, the department shall have the right to recover any resulting overpayment in accordance with the procedure outlined in subrule 25.8(2).

This rule is intended to implement Iowa Code sections 96.7(2), 96.11(1), 96.11(11), 96.11(13), 96.14(3), 96.16, 96.20, and 96.29.

871—25.9(96) Administrative penalties.

25.9(1) An administrative penalty may be imposed on a claimant as per Iowa Code section 96.5(8).

25.9(2) Penalties.

a. Any penalties imposed by this rule shall be in addition to those imposed by Iowa Code section 96.16.

b. The general guide for disqualifications for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the investigator. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The department may also consider the filing of criminal charges whenever an administrative penalty is imposed against a claimant. If the same offense is repeated, loss of benefits through the end of the benefit year will result.

c. The department shall issue a determination that sets forth the specific penalty being applied. The investigator will determine the degree and severity of the penalty based upon the nature of the offense and the facts.

25.9(3) Sources of information concerning the application of an administrative penalty shall be the same as those pertaining to fraud and overpayment, namely:

a. Comparative analysis of employer wage reports and benefit payments.

b. Information obtained by a local office.

c. Tips and leads from other sources.

d. Cross-checking of information regarding vital statistics from the department of health and human services.

e. Review of claims using social security numbers not issued by the social security administration.

f. Cross-checking of information from the Iowa centralized employer registry.

g. Cross-checking of information with the National Directory of New Hires.

h. Cross-checking of information on incarcerated individuals from the department of corrections.

i. Cross-checking of information with fraud detection tools identified by the department.

25.9(4) The claimant shall be notified of the possible application of the administrative penalty by Form 65-5315, Notice of Unemployment Insurance Fact-Finding Interview, in the same manner a claimant is notified of a possible overpayment.

25.9(5) The claimant shall be afforded an opportunity to give testimony, either refuting or affirming the allegation of intent to defraud and may be represented by legal counsel.

25.9(6) In the event any claimant is aggrieved by the representative's determination assessing an administrative penalty or by the severity of the penalty assessed, such claimant shall have the same protest and appeal rights as provided for all other determinations.

25.9(7) A criminal conviction of a claimant for fraud or a court order requiring restitution for the amount of the overpayment shall not preclude the investigation and recovery unit from also imposing an administrative penalty denying further benefits to the claimant for a period of time not to exceed the remainder of said claimant's benefit year and including the week in which such determination is made by the investigation and recovery unit.

This rule is intended to implement Iowa Code sections 96.5(8), 96.11(1), and 96.11(10).

871—25.10(96) Prosecution on overpayments.

25.10(1) When, after an investigation, the department determines an overpayment occurs due to misrepresentation or fraud, the case shall be given a thorough and detailed review to determine if it may be referred to a county attorney or the attorney general for prosecution for fraud.

25.10(2) Restitution or the establishment of a repayment plan of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact does not preclude the investigation and recovery unit from instituting criminal proceedings against the claimant.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.11(96) Prosecution for fraud (procedure).

25.11(1) If prosecution is warranted, supportive documentation and evidence will be requested and thoroughly reviewed by the investigator.

25.11(2) A handwriting sample may be taken from claimant and submitted for investigation.

25.11(3) A summary of the case will be prepared and the case taken to the county attorney for filing of criminal charges.

25.11(4) Upon request by the county attorney, the investigator may make recommendations regarding plea bargaining, dismissals, and sentencing and participate in the mediation process.

25.11(5) Investigators may testify and produce evidence at district court and grand jury proceedings.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.12(96) Wage verification procedure.

25.12(1) Each quarter, wage verification documents are mailed to selected employers requesting wage information on specific claimants with regard to benefit payments.

25.12(2) The completed documents are sent to the investigation and recovery unit for review. Potential cases of conflict will result in an investigation assignment. Claimants will be notified by means of Form 65-5332, Audit Notice of Potential Overpayment, and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031, Decision Overpayment Worksheet, on which the amount, weeks, type, and reason for the overpayment

are identified. Claimants are notified of the determination on Form 65-5352, Unemployment Insurance Decision.

25.12(3) An employer may choose to participate in the automated wage verification procedure by following the electronic submission guidelines.

25.12(4) An employer that fails to respond to a request for wage information pertaining to specific claimant(s) will be charged a fee of $25 per claimant.

This rule is intended to implement Iowa Code section 96.11(1).

871—25.13(96) Duplicate benefit warrants.

25.13(1) *Undelivered warrant.* Any warrant issued in payment of benefits that is returned undelivered to the department will be canceled 90 days after the original issue date unless it can be mailed to the correct address.

25.13(2) *Canceled warrant.* Warrants are canceled as per Iowa Code section 96.11(7). Any individual who has an outdated warrant may contact the department for assistance.

25.13(3) *Lost and uncashed warrant.*

a. The payee of a warrant issued in payment of benefits that is lost, stolen, mutilated, destroyed, or canceled under conditions cited in subrules 25.13(1) and 25.13(2) may contact the department for assistance.

b. The department will ascertain whether the warrant has been cashed and take the following action:

(1) If the warrant has been cashed, the procedure in subrule 25.13(4) shall be followed.

(2) If the warrant has not been cashed, the department shall issue a stop payment order on the warrant and issue Form 68-0163, Affidavit and Agreement for Issuance of Duplicate Warrant, to the individual. The completed affidavit is a sworn statement that the original warrant was not received and that the warrant will be surrendered voluntarily if received by the claimant. The claimant should be warned that the warrant cannot be cashed after the stop payment order is in effect.

c. The affidavit shall be personally prepared in duplicate by the claimant, and the claimant's signature on the affidavit must be notarized. The affidavit shall be transmitted in duplicate to the department.

d. The department will then request that the director of the department of administrative services issue a duplicate warrant, which the department will mail to the claimant.

e. If the claimant should cash the original warrant after the stop payment order is in place, an overpayment shall be set up and the department may refer the matter for criminal prosecution.

f. If the claimant should find the original warrant after the duplicate warrant has been issued, the claimant will send the original warrant to the department.

25.13(4) *Forged warrants.*

a. In the event that the original warrant has been endorsed by and paid to someone allegedly not authorized to receive payment, the payee whose endorsement was forged will be given the opportunity to examine the endorsement on the copy of the warrant.

b. If the payee determines that the endorsement is a forgery, the following action shall be taken:

(1) The claimant will prepare Form 68-0320, Affidavit as to Forged Endorsement, in duplicate, and the claimant's signature must be notarized.

(2) The claimant is required to file a police report with the local law enforcement agency and return a copy of the police report to the department.

(3) The claimant will send a copy of the original warrant, the notarized affidavit, and a copy of the police report to the department for review.

c. The investigation and recovery bureau will make a handwriting analysis to determine if the warrant was forged. If the handwriting is determined to be a forgery, a duplicate warrant will be issued to the payee.

25.13(5) *Employer account credit.* At the time of cancellation of any outstanding benefit warrant, the employer account shall be credited with the amount of the warrant so canceled. The reissuance of any benefit warrant canceled in subrule 25.13(1) or 25.13(2) shall be charged to the employer account.

This rule is intended to implement Iowa Code sections 96.9(7) and 96.11(1).

871—25.14(96) Payments of benefits due a deceased person.

25.14(1) An eligible week for a deceased claimant will be one where the week is claimed by the individual prior to death. If benefits are due a deceased person, the benefits are paid to the person or persons who have been issued letters testamentary or of administration pursuant to an application filed within 30 days after the claimant's death.

25.14(2) In the event that no application for letters testamentary or of administration has been filed within 30 days after the claimant's death, the benefits that were due will be paid to the decedent's surviving spouse, if any; or, if no spouse survives the decedent and the decedent is survived by an unmarried minor child or children, the benefits will, at the discretion of the department, be paid:

a. To the guardian or guardians of unmarried minor child or children for their benefit; or

b. To the person or institution who or which the department finds assumed the obligation of providing support for or maintenance of such minor child or children; or

c. To any person who the department finds has furnished to such child or children necessaries of a value equaling or exceeding the amount of benefits; or

d. To any person who the department finds has paid expenses of the claimant's last illness or burial expenses in an amount equaling or exceeding the amount of benefits.

25.14(3) The director of the department of administrative services will void any unredeemed warrant or warrants payable to a deceased person. Once the warrant is surrendered, the director of the department of administrative services will issue a new warrant or warrants bearing the same dates and numbers and made payable to the entitled person or persons under the provisions of this rule. The issuance of the new warrant or warrants fully discharges the department of its obligation with respect to the claims covered thereby and no other person may claim or assert any right to them.

25.14(4) Any person claiming entitlement to the payment of benefits under this regulation shall present the claim in writing within 60 days after the death of the claimant and shall offer proof thereof in such form as the department may require; however, the department may, upon good cause shown, extend the time for presentation of a claim. In the event no timely claim is made for the benefit payment, the benefits will not be paid but will remain in the unemployment compensation fund.

This rule is intended to implement Iowa Code sections 96.9(3), 96.9(7), and 96.11(1).

871—25.15(96) Back pay—benefit recovery and charging.

25.15(1) Recovery and charging of back pay is governed by Iowa Code section 96.3(8).

a. The department shall first attempt to reach an agreement with the individual and the employer.

b. The burden of proof is on the employer to establish the dollar amount of the back pay award that is remuneration for lost wages and the specific time period to which the remuneration applies.

25.15(2) If the department reaches an agreement with the individual and the employer as per Iowa Code section 96.3(8), then the employer's account shall be relieved of benefit charges in an amount equal to the amount remitted by the employer to the department. If the department fails to reach an agreement, then the benefit charges are not relieved until the benefits paid to the individual are recovered.

This rule is intended to implement Iowa Code section 96.3(8).

871—25.16(96) State payment offset. An individual who is owed a payment from the state of at least $50 and owes an overpayment of benefits of at least $50 is subject to an offset against the individual's payment from the state to recover all or a part of the overpayment and to reimburse the department of

revenue for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

25.16(1) The department will provide the department of revenue with the claimant's name and social security number.

25.16(2) The department of revenue will process the offset according to Iowa Code section 421.65.

25.16(3) In the event that the amount of the offset exceeds the remaining overpayment, the department will issue to the individual a payment equal to the amount of the excess.

This rule is intended to implement Iowa Code section 96.11.

871—25.17(96) Federal payment offset. Pursuant to Section 303(m) of the federal Social Security Act (42 U.S.C. §503) and 26 U.S.C. §6402(f), the department will utilize the treasury offset program in order to collect covered unemployment compensation.

This rule is intended to implement Iowa Code section 96.3(7).

ARC 8071C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to employer child care tax credit and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 304, "Adjustments to Computed Tax and Tax Credits," Chapter 501, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," and Chapter 601, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 237A.31.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 237A.31.

Purpose and Summary

The purpose of the proposed rulemaking is to implement the employer child care tax credit (tax credit) provided in Iowa Code section 237A.31. The tax credit is available to businesses that receive an award certificate from the Iowa Economic Development Authority (IEDA) and that incur expenditures in Iowa that qualify for the federal employer-provided child care tax credit in Section 45F of the Internal Revenue Code. The Department is directed under Iowa Code section 237A.31 to adopt rules to administer the tax credit. The proposed rules describe how to claim and calculate the tax credit and include other restrictions and requirements.

A Regulatory Analysis, including the proposed text, was published on April 17, 2024. A public hearing was held on May 7, 2024. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on May 20, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement. Iowa Code section 237A.31 limits the aggregate amount of tax credits that the IEDA may approve to $2 million annually.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on July 16, 2024. Comments should be directed to:

REVENUE DEPARTMENT[701](cont'd)

Michael Mertens
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.587.0458
Email: michael.mertens@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

July 16, 2024 11 a.m. to 12 noon	Via video/conference call
July 16, 2024 2 to 3 p.m.	Via video/conference call

Persons who wish to participate in the video/conference call should contact Michael Mertens before 8:30 a.m. on July 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** rule 701—304.58(237A):

701—304.58(237A) Employer child care tax credit.

304.58(1) *In general—eligibility.* For tax years beginning on or after January 1, 2023, a taxpayer who has received an employer child care tax credit certificate from the economic development authority and who properly claims the federal employer-provided child care tax credit provided in Section 45F of the Internal Revenue Code may qualify for an employer child care tax credit, subject to the limitations described in Iowa Code section 237A.31, 261—Chapter 57, and this rule. The economic development authority's rules on eligibility for the tax credit may be found in 261—Chapter 57.

304.58(2) *Definitions.* Unless otherwise indicated in this rule or required by the context, all words and phrases used in this rule that are defined under Section 45F of the Internal Revenue Code shall have the same meaning as provided to them under that section. In addition, the following definitions are applicable to this rule:

"Internal Revenue Code" means the Internal Revenue Code of 1986 as amended and in effect on July 1, 2022.

"Iowa-source qualified child care expenditures" means the qualified child care expenditures paid or incurred with respect to qualified child care facilities in Iowa.

"Iowa-source qualified child care resource and referral expenditures" means the qualified child resource and referral expenditures paid or incurred with respect to Iowa employees.

304.58(3) *Calculating the tax credit.*

a. Components of tax credit calculation. To calculate the tax credit, the taxpayer must determine the eligible federal credit ratio, the federal child care expenditure credit for Iowa purposes, the federal child care resource and referral expenditure credit for Iowa purposes, the Iowa share of qualified child care expenditures, and the Iowa share of qualified child care resource and referral expenditures.

b. Eligible federal credit ratio. The eligible federal credit ratio shall be calculated as follows: The sum of 25 percent of the qualified child care expenditures and 10 percent of the qualified child care resource and referral expenditures, less $150,000, shall be divided by the sum of 25 percent of the qualified child care expenditures and 10 percent of the qualified child care resource and referral expenditures. This quotient, expressed as a percentage rounded to the nearest hundredth percent, shall be subtracted from 100 percent. The resulting percentage is the eligible federal credit ratio.

c. Federal qualified child care expenditure credit for Iowa purposes. The federal qualified child care expenditure credit for Iowa purposes shall be 25 percent of the product of the qualified child care expenditures multiplied by the eligible federal credit ratio.

d. Federal qualified child care resource and referral credit for Iowa purposes. The federal child care resource and referral expenditure credit for Iowa purposes shall be 10 percent of the product of the qualified child care resource and referral expenditures multiplied by the eligible federal credit ratio.

e. Iowa share of qualified child care expenditures. The Iowa share of qualified child care expenditures is a ratio equal to the Iowa-source qualified child care expenditures divided by the qualified child care expenditures, rounded to the nearest hundredth percent.

f. Iowa share of qualified child care resource and referral expenditures. The Iowa share of qualified child care resource and referral expenditures is a ratio equal to the Iowa-source qualified child resource and referral expenditures divided by the qualified child care resource and referral expenditures, rounded to the nearest hundredth percent.

g. Amount of tax credit. The Iowa tax credit amount shall be the lesser of the following:

(1) The amount awarded by the economic development authority.

(2) An amount equal to the sum of the following:

1. The Iowa share of qualified child care expenditures multiplied by the federal qualified child care expenditure credit for Iowa purposes, plus

2. The Iowa share of qualified child care resource and referral expenditures multiplied by the federal qualified child care resource and referral credit for Iowa purposes.

304.58(4) *Claiming the tax credit.*

a. Certificate issuance. The taxpayer must receive a tax credit certificate from the economic development authority in order to be eligible to claim the Iowa employer child care tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the amount of the Iowa employer child care tax credit award, the tax year for which the tax credit may be claimed, and any other information required by the department. The tax credit certificate must be included with the Iowa tax return for the tax year in which the tax credit is claimed. The amount of the tax credit certificate represents the maximum amount of tax credit the taxpayer may claim.

b. Filing a claim with the department. The tax credit will be calculated and claimed on Form IA 8882. The taxpayer shall submit the form with the taxpayer's Iowa tax return for the tax year in which the tax credit is claimed. The tax credit shall be claimed for the same tax year in which the federal credit was claimed.

c. Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust. If the taxpayer claiming the employer child care tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual, an individual may claim the credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

d. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year for which the taxpayer claims the tax credit.

e. Transferability. The credit shall not be transferred to any other person.

304.58(5) *Recalculation of federal credit.*

a. Federal audit. If the Internal Revenue Service reviews the taxpayer's return and disallows, in whole or in part, the federal employer-provided child care tax credit under Section 45F of the Internal Revenue Code, the taxpayer must file amended Iowa tax returns, including an amended Form IA 8882, to recalculate the Iowa credit and add back the disallowed Iowa credit to the extent not previously disallowed by the department.

b. Federal recapture event. When the taxpayer's federal employer-provided child care tax credit under Section 45F of the Internal Revenue Code is subject to a recapture event described in Section 45F(d) of the Internal Revenue Code, the Iowa credit must be recalculated by excluding from the Iowa credit calculation the percentage of qualified child care expenditures that is equal to the taxpayer's applicable recapture percentage in Section 45F(d)(2)(A) of the Internal Revenue Code. The taxpayer must file amended Iowa tax returns, including an amended Form IA 8882, to recalculate the Iowa credit and add back any ineligible Iowa credit to the extent not previously disallowed by the Internal Revenue Service or the department.

c. Authority of the department. Nothing in this rule shall limit the department's authority to review, examine, audit, or otherwise challenge an Iowa tax credit claim under Iowa Code section 237A.31, regardless of inaction, a settlement, or a determination by the Internal Revenue Service.

This rule is intended to implement Iowa Code section 237A.31.

ITEM 2. Adopt the following **new** rule 701—501.51(237A):

701—501.51(237A) Employer child care tax credit. An employer child care tax credit is available according to the same requirements, conditions, and limitations as described in rule 701—304.58(237A) and 261—Chapter 57.

This rule is intended to implement Iowa Code section 237A.31.

ITEM 3. Adopt the following **new** rule 701—601.26(237A):

701—601.26(237A) Employer child care tax credit. An employer child care tax credit is available according to the same requirements, conditions, and limitations as described in rule 701—304.58(237A) and 261—Chapter 57.

This rule is intended to implement Iowa Code section 237A.31.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Roby Smith, Superintendent of Credit Unions Katie Averill, Superintendent of Banking James Johnson, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for June is 6.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

TREASURER OF STATE[781](cont'd)

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective June 11, 2024, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum 1.75%
180-364 days	Minimum 1.80%
One year to 397 days	Minimum 1.80%
More than 397 days	Minimum 1.40%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Roby Smith, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2(3)"a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

July 1, 2023 — July 31, 2023	5.50%
August 1, 2023 — August 31, 2023	5.75%
September 1, 2023 — September 30, 2023	6.00%
October 1, 2023 — October 31, 2023	6.25%
November 1, 2023 — November 30, 2023	6.50%
December 1, 2023 — December 31, 2023	6.75%
January 1, 2024 — January 31, 2024	6.50%
February 1, 2024 — February 29, 2024	6.00%
March 1, 2024 — March 31, 2024	6.00%
April 1, 2024 — April 30, 2024	6.25%
May 1, 2024 — May 31, 2024	6.25%
June 1, 2024 — June 30, 2024	6.50%
July 1, 2024 — July 31, 2024	6.50%

USURY(cont'd)

ARC 8084C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rulemaking related to optional 90-day supply for select medications and providing an opportunity for public comment

The Department of Health and Human Services hereby proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

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

Purpose and Summary

Currently, a one-month supply of covered prescription and nonprescription medications for Iowa Medicaid members is permitted, excluding contraceptives that can be prescribed in three-month quantities.

The Department temporarily allowed an optional 90-day supply on all medications from March 19, 2020, through May 12, 2023, due to the Public Health Emergency (PHE). The proposed amendment would allow reimplementation of an optional 90-day supply on a continuing basis for select, cost-effective generic maintenance medications at the discretion of the prescriber while adhering to the guidelines provided by the Medicaid Drug Utilization Review (DUR) Commission, outlined below. Surrounding states that allow 90-day supply prescription quantities for Medicaid members include Nebraska, Missouri, Kansas, Minnesota, and Wisconsin.

DUR Review & Recommendation:

1. DUR Review: The proposal was presented at two DUR meetings (February 1, 2023, and May 3, 2023), and public comment was sought from the medical and pharmacy associations on both dates.
2. No concerns were shared, and all DUR members were in favor.
3. DUR recommendation: The 90-day supply drug selection process will include select, cost-effective, generic medications from Medi-Span maintenance drug categories.
4. Proposed initial categories (select, generic drugs).

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

5. The list of medications will be reviewed annually by the DUR and changes can be submitted to the DUR for review any time throughout the year.
6. Exclusion criteria.

- Safety—e.g., risks associated with a particular class.
- Controlled substances.
- Narrow therapeutic index (NTI) drugs.
- Drugs subject to frequent dose adjustments.
- Over-the-counter (OTC) drugs.
- Brand drugs.
- Prior authorization drug categories (clinical PA).
- Nonpreferred or nonrecommended drugs.
- Other therapeutic categories—antibiotics, ophthalmic, otic, and topical products.

7. Dispensing fee—Medicaid would pay a pharmacy for one dispensing fee per 90-day supply billed rather than three fees.
8. Copayment—a member gets charged one copay (if applicable) per 90-day supply billed.
9. Member exclusions—none.
10. Initial fill—quantity would be at the discretion of prescriber, but consideration should be given to dispensing less than a 90-day supply with the initial fill when starting members on new medications or with dose adjustments to minimize waste.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on July 24, 2024. Comments should be directed to:

Joe Campos
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

July 23, 2024 11 to 11:30 a.m.	Microsoft Teams Meeting ID: 256 591 168 664 Passcode: MVfyaH
July 24, 2024 1:30 to 2 p.m.	Microsoft Teams Meeting ID: 256 326 064 144 Passcode: mhyryx

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's

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

The following rulemaking action is proposed:

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

78.2(6) *Quantity prescribed and dispensed.*

a. Quantity prescribed. When it is not therapeutically contraindicated, the legally qualified practitioner shall prescribe ~~not less than~~ a one-month supply of covered prescription and nonprescription medication. ~~Contraceptives~~ Medications listed on the 90-day generic maintenance supply drug list published on the department's website and contraceptives may be prescribed in three-month quantities.

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

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

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

(2) Automatic refills.

1. and 2. No change.

ARC 8072C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rulemaking related to Iowa energy center grant program

The Iowa Energy Center Board (Board) hereby rescinds Chapter 404, "Iowa Energy Center Grant Program," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 15.120.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 15.120.

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Board has rescinded Chapter 404 relating to the Iowa Energy Center grant program and adopted a new chapter in lieu thereof. The new chapter eliminates language that is duplicative of statutory language. Additionally, the following changes from the existing chapter have been made:

- Rule 261—404.1(15) was updated to remove unnecessary definitions and be more concise.
- Rule 261—404.2(15) was updated to be more concise. Additionally, paragraph 404.3(6)"d" was updated so that private asset development is an eligible project. Such projects are subject to limitations imposed by the rewritten paragraph (which excludes projects that entail improvements to existing buildings) and changes to rule 261—404.4(15).
- Rule 261—404.3(15) was updated for clarity.
- Rule 261—404.4(15) was updated to be more concise and to address equipment purchases.
- Rule 261—404.5(15) was updated to allow for use of application websites other than iowagrants.gov and to correct the Economic Development Authority's website. The review criteria were updated to reflect evaluation of project sustainability in addition to dissemination of project results. The updated rule no longer mandates a preapplication process. The updated rule also eliminates the necessity for the Board to deny or defer applications that are not approved for awards.
- Rule 261—404.6(15) was updated to be more concise and to increase the minimum dollar amount for disbursement requests from $500 to $1,000.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on April 3, 2024, as **ARC 7746C**. Public hearings were held on April 23 and 29, 2024. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on May 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 261—Chapter 404 and adopt the following **new** chapter in lieu thereof:

CHAPTER 404
IOWA ENERGY CENTER GRANT PROGRAM

261—404.1(15) Definitions.

"Activity" means one or more specific activities, projects or programs associated with Iowa energy center grant funds.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the governing board of the Iowa energy center established pursuant to Iowa Code section 15.120(2).

"Co-investigator" means a person who shares the responsibility of conducting grant activities with the principal investigator of a project.

"Funding announcement" means a publicly available document that contains the official information for a grant, including the application deadline, goals of the activity, eligibility, reporting, availability of funds and instructions on applying for the grant.

"Iowa energy center" or *"IEC"* means the Iowa energy center established by Iowa Code section 15.120.

"Principal investigator" means a person with the primary responsibility for conducting research.

"Recipient" means an organization that was awarded an Iowa energy center grant.

"Subrecipient" means an organization contracting with and receiving funds from a recipient to carry out IEC grant activities.

261—404.2(15) Eligibility.

404.2(1) Eligible applicants are identified in Iowa Code section 15.120(3)*"a."*

404.2(2) Any eligible applicant may submit an application that includes one or more subrecipients. The board may limit the amount of an award that a subrecipient can receive.

404.2(3) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

404.2(4) A principal investigator will be allowed to submit one application per funding announcement. An applicant who has submitted an application as the principal investigator for a funding announcement may also be named as a co-investigator on one additional application submitted for the same funding announcement.

404.2(5) Requirements for IEC grant awards include but are not limited to the following:

a. Applicants shall demonstrate a benefit for ratepayers.

b. Applicants shall demonstrate that they are eligible candidates.

c. Applicants shall demonstrate the capacity for grants administration.

d. Applicants who have previously received Iowa energy center awards shall have demonstrated acceptable past performance, including the timely expenditure of funds.

e. Applicants shall demonstrate the feasibility of completing the proposed activities with the funds requested.

f. Applicants shall identify and describe any other sources of funding for the proposed activities.

404.2(6) The following types of projects are ineligible:

a. Relocation of a business.

b. Expansion of a business.

c. Funding for existing training programs.

d. Improvements to existing buildings, including energy efficiency or energy generation projects.

e. Pipeline, transmission line, and distribution line construction.

f. First generation ethanol.

g. Cellulosic ethanol.

261—404.3(15) Funding and award terms.

404.3(1) For each fiscal year that funds are available, the board will determine the amount of funds available to be awarded as grants in that fiscal year.

404.3(2) If any funds are allocated to a specific grant activity but are not awarded after a funding cycle, the board may reallocate those funds to a different grant activity.

404.3(3) The board may reallocate any recaptured funds to a different grant activity.

404.3(4) The maximum grant award is $1 million per application. The minimum grant award is $10,000 per application.

404.3(5) The initial duration of a grant agreement will be no longer than three years. However, a recipient may apply for a no-cost extension of an agreement. If the approval of a no-cost extension would cause the duration of the grant agreement to exceed five years, the no-cost extension will not be granted.

261—404.4(15) Project budget.

404.4(1) Only expenditures directly related to the implementation of the funded grant activity will be reimbursed. Vehicle and equipment purchases are eligible only when the purchase is an integral part of the funded grant activity and must be approved by the board at the time the award is made.

404.4(2) Ineligible expenses include but are not limited to:

a. Purchase or rental of buildings.

b. Office equipment.

c. Furniture and fixtures.

d. Intangible assets.

e. International travel.

f. Insurance.

g. Phone expenses.

404.4(3) Other budget requirements include the following:

a. Indirect costs shall not exceed more than 20 percent of a grant award.

b. IEC grant funds shall not be used as cost share to a federal grant award.

c. Vehicle and equipment purchases or other expenses relating to vehicles or equipment are not eligible if the purchase or expense supports the proposed grant activity but is not an integral part of the proposed grant activity. If a vehicle or equipment purchase is an integral part of a grant activity but a recipient fails to obtain board approval prior to the purchase, then the purchase is ineligible.

261—404.5(15) Application process and review.

404.5(1) The board will issue funding announcements for grant applications at least once per fiscal year, provided funds are available.

404.5(2) Application forms will be available at iowagrants.gov or another website as identified by the authority.

404.5(3) Applications will only be accepted during the established application period, as identified at www.iowaeda.com.

404.5(4) Review criteria may include but are not limited to:

a. The proposed project demonstrates a need for further research, development, training or pilot projects.

b. The proposed project provides a benefit to ratepayers.

c. The application has a well-developed budget that is relevant to the project and that provides documentation of planned project expenses.

d. The application describes a plan for the dissemination of project results or to sustain the project after the grant period ends.

404.5(5) The authority may require applicants to submit a preapplication to determine eligibility and competitiveness for the program.

404.5(6) The authority will review applications for completeness, eligibility, and technical and financial merit. The authority may engage an outside technical review panel to complete technical review of applications. The authority will prepare recommendations for the grant committee. The grant committee will review staff recommendations, score applications, and make recommendations to the board. Upon review of the recommendations of the grant committee, the board may approve grant awards.

261—404.6(15) Administration.

404.6(1) *Notice of approval and agreement execution.* The authority will notify successful applicants in writing of an approved request for funding. After notifying the recipient of an award, the authority will prepare an agreement that reflects the terms of the award. The recipient must execute and return the agreement to the authority within 60 days of the transmittal of the final agreement from the authority. Failure to do so may be cause for the board to terminate the award.

404.6(2) *Disbursement of funds.* Recipients shall submit requests for grant funds in the manner prescribed by the authority. Disbursements shall be made on a reimbursement basis. No advance disbursements shall be allowed. Disbursements may be withheld if applicable performance reports have not been received and approved. Individual requests for funds shall be made in an amount equal to or greater than $1,000 per request, except for the final draw of funds.

404.6(3) *Recordkeeping and retention.* Recipients shall retain all financial records, supporting documents and all other records pertinent to the grant for five years after agreement closeout.

404.6(4) *Performance reports and reviews.* Recipients shall submit performance reports to the authority as described in the agreement executed pursuant to subrule 404.6(1). The authority may perform project reviews and site inspections as necessary to ensure program compliance.

404.6(5) *Agreement amendments.*

a. Any substantive change to a funded IEC project, including time extensions, budget revisions, and alterations to proposed activities, will be considered an agreement amendment. The recipient shall request an amendment in writing. No amendment shall be valid until approved by the board, except as provided in paragraph 404.6(7)*"b"* and confirmed in writing by the authority.

b. Staff approvals.

(1) Staff may approve one no-cost extension provided that the extension complies with subrule 404.3(5). Additional no-cost extensions shall be presented to the board for approval.

(2) Budget modifications. Any substantial modification of a project budget shall require board approval. Staff may approve budget modifications that are not substantial. For purposes of this subparagraph, "substantial modification" means a budget modification of either $10,000 or 10 percent of the total grant award, whichever is less.

404.6(6) *Agreement closeout.* Upon agreement expiration or project completion, the authority will initiate project closeout procedures.

404.6(7) *Compliance with state and local laws and rules.* Recipients shall comply with these rules, with any applicable provisions of the Iowa Code, and with any applicable local rules.

404.6(8) *Noncompliance.* At any time during a project, the IEC may, for cause, find that a recipient is not in compliance with the requirements of this program. At the board's discretion, remedies may include penalties up to and including the return of grant funds to the IEC. Findings of noncompliance may include the use of Iowa energy center funds for activities not described in the application; failure to complete approved activities in a timely manner; failure to comply with any applicable state or federal rules, regulations, or laws; or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

These rules are intended to implement Iowa Code section 15.120.

[Filed 5/31/24, effective 7/31/24]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8073C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to licensure of respiratory care practitioners, polysomnographic technologists, and respiratory care and polysomnography practitioners

The Board of Respiratory Care and Polysomnography hereby rescinds Chapter 261, "Licensure of Respiratory Care Practitioners, Polysomnographic Technologists, and Respiratory Care and Polysomnography Practitioners," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.36, 147.76, 148G.5, 152B.6, 272C.3 and 272C.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 148G, 152B and 272C, Executive Order 10.

Purpose and Summary

These rules set minimum standards for entry into the respiratory care and polysomnography professions. Iowa residents, licensees and employers benefit from the rules since the rules articulate the processes by which individuals apply for licensure in the state of Iowa, as directed in statute. The rules include the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the respiratory care and polysomnography professions has minimum competency. Requirements include the application process, minimum educational qualifications and examinations.

This chapter includes amendments made in Adopted and Filed **ARC 6993C** (IAB 4/19/23) that were inadvertently excluded during the initial Regulatory Analysis process.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7503C**. Public hearings were held on February 13 and 14, 2024, at 12:50 p.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on May 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 261 and adopt the following **new** chapter in lieu thereof:

RESPIRATORY CARE PRACTITIONERS

CHAPTER 261 LICENSURE OF RESPIRATORY CARE PRACTITIONERS, POLYSOMNOGRAPHIC TECHNOLOGISTS, AND RESPIRATORY CARE AND POLYSOMNOGRAPHY PRACTITIONERS
CHAPTER 262 CONTINUING EDUCATION FOR RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS
CHAPTER 263 DISCIPLINE FOR RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS
CHAPTER 264 RESERVED
CHAPTER 265 PRACTICE OF RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS

CHAPTER 261
LICENSURE OF RESPIRATORY CARE PRACTITIONERS, POLYSOMNOGRAPHIC TECHNOLOGISTS, AND RESPIRATORY CARE AND POLYSOMNOGRAPHY PRACTITIONERS

645—261.1(148G,152B) Definitions.

"Active license" means a license that is current and has not expired.

"Board" means the board of respiratory care and polysomnography.

"BRPT" means the Board of Registered Polysomnographic Technologists.

"CAAHEP" means the Commission on Accreditation of Allied Health Education Programs.

"CoARC" means the Commission on Accreditation for Respiratory Care.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active.

"Licensee" means any person licensed to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner in the state of Iowa.

"License expiration date" means March 31 of even-numbered years.

"NBRC" means the National Board for Respiratory Care.

"Polysomnographic technologist" means a person licensed by the board to engage in the practice of polysomnography under the general supervision of a physician or a qualified health care professional prescriber.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—261.14(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means the issuance of an Iowa license to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of respiratory care and polysomnography to license persons who have the same or similar qualifications to those required in Iowa.

"Reinstatement" means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

645—261.2(148G,152B) General requirements for licensure. The following general criteria apply to licensure:

261.2(1) An applicant must submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.17(147,152B). The applicant must submit two completed sets of fingerprint cards to facilitate a national criminal history background check. The cost for the evaluation of the fingerprint cards and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) criminal history background checks is assessed to the applicant. The board may withhold issuing a license pending receipt of a report from the DCI and FBI.

a. An applicant must submit a release authorizing the background check.

b. Licensees who were issued their licenses within six months prior to the renewal do not need to renew their licenses until the renewal month two years later.

c. An applicant who has been a licensed respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner under the laws of another jurisdiction shall provide verification of license from the jurisdiction in which the applicant has most recently been licensed. Verification shall be sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;
(2) Date of initial licensure;
(3) Current licensure status; and
(4) All disciplinary action taken against the license.

261.2(2) Incomplete applications that have been on file in the board office for more than two years will be considered invalid and destroyed.

645—261.3(152B) Additional requirements for respiratory care practitioner licensure. The following are additional specific criteria for licensure as a respiratory care practitioner:

261.3(1) Successful completion of a respiratory care education program accredited by, or under a letter of review from, CoARC or CAAHEP.

261.3(2) Foreign-trained respiratory care practitioners shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International Education Research Foundation, Inc., Credentials Evaluation Service; or International Credentialing Associates, Inc. The professional curriculum must be equivalent to that stated in these rules. The candidate bears the expense of the curriculum evaluation.

b. Provide a copy of the certificate or diploma awarded to the applicant from a respiratory care program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

261.3(3) The examination required by the board shall be the Therapist Multiple-Choice Examination or the Certified Respiratory Therapist Examination administered by the NBRC. A score on the examination that meets or exceeds the minimum passing score established by the NBRC is required.

261.3(4) Results of the examination must be received by the board of respiratory care and polysomnography by one of the following methods:

a. Scores are sent directly from the examination service to the board;

b. A copy of a certificate showing proof of the successful achievement of the certified respiratory therapist (CRT) or registered respiratory therapist (RRT) credential awarded by the NBRC is submitted to the board; or

c. A copy of the score report or an electronic web-based confirmation by the NBRC showing proof of successful completion is submitted to the board.

645—261.4(148G,152B) Additional requirements for polysomnographic technologist licensure. The following are additional specific criteria for licensure as a polysomnographic technologist:

261.4(1) Graduation from a polysomnographic educational program accredited by CAAHEP. A transcript shall be submitted to the board office directly from the college or university; or

261.4(2) Graduation from an entry into respiratory care professional practice program accredited by CoARC or CAAHEP for which a transcript will be submitted to the board office directly from the college or university; and direct-source verification of one of the following:

a. Completion of a sleep specialist program option accredited by CoARC or CAAHEP, or

b. Obtaining the sleep disorder specialist credential from the NBRC, or

c. Obtaining the registered polysomnographic technologist credential from the BRPT; or

261.4(3) Graduation from an electroneurodiagnostic technologist program with a polysomnographic technology track that is accredited by CAAHEP with the transcript sent directly to the board from the college or university; or

261.4(4) Requirements for current Iowa licensees holding a license in a profession other than polysomnography. An individual who holds an active license under Iowa Code section 147.2 in a profession other than polysomnography and whose license is in good standing with the board for that profession may receive licensure upon verification from the medical director of the individual's current employer or the medical director's designee that the individual has completed on-the-job training in the field of polysomnography and is competent to perform polysomnography.

261.4(5) Foreign-trained polysomnographic technologists shall:

a. Provide an equivalency evaluation of their educational credentials by either International Education Research Foundation, Inc., Credentials Evaluation Service; or International Credentialing Associates, Inc. The candidate will bear the expense of the curriculum evaluation.

b. Provide a copy of the certificate or diploma awarded to the applicant from a respiratory care program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

261.4(6) Licensure by proof of work experience. An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

261.4(7) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—261.5(148G,152B) Requirements for dual licensure. The following are additional specific criteria for licensure as a respiratory care and polysomnography practitioner. An applicant for licensure as a respiratory care and polysomnography practitioner shall meet the requirements of subrules 261.5(1) and 261.5(2).

261.5(1) The applicant shall have successfully completed a respiratory care education program accredited by, or under a letter of review from, CoARC or CAAHEP.

a. Foreign-trained practitioners shall:

(1) Provide an equivalency evaluation of their educational credentials by International Education Research Foundation, Inc., Credentials Evaluation Service; or International Credentialing Associates, Inc. The professional curriculum must be equivalent to that stated in these rules. The candidate will bear the expense of the curriculum evaluation.

(2) Provide a copy of the certificate or diploma awarded to the applicant from the program in the country in which the applicant was educated.

(3) Receive a final determination from the board regarding the application for licensure.

b. Examination requirements. The examinations required by the board shall be the Therapist Multiple-Choice Examination administered by the NBRC and either the Sleep Disorders Specialist Examination (SDS) administered by the NBRC or the Registered Polysomnographic Technologist Examination administered by the BRPT. The minimum passing score established by the NBRC or BRPT is required.

c. Results of the examination. Results of the examination must be received by the board of respiratory care and polysomnography by one of the following methods:

(1) Scores are sent directly from the examination service to the board;

(2) A copy of a certificate showing proof of the successful achievement of the CRT or RRT credential awarded by the NBRC submitted to the board; or

(3) A copy of the score report or an electronic web-based confirmation by the NBRC showing proof of successful completion of the Therapist Multiple-Choice Examination, State Clinical Examination, or Certified Respiratory Therapist Examination administered by the NBRC submitted to the board.

261.5(2) The applicant must also meet one of the following requirements:

a. Graduation from a polysomnographic educational program accredited by CAAHEP, with the transcript sent directly from the college or university to the board; or

b. Completion of a sleep specialist program option accredited by CoARC or CAAHEP with the transcript submitted to the board office directly from the college or university; and direct-source verification of one of the following:

(1) Completion of the curriculum for a polysomnographic certificate established and accredited by the CAAHEP as an extension of the respiratory care program, or

(2) Obtaining the sleep disorder specialist credential from the NBRC, or

(3) Obtaining the registered polysomnographic technologist credential from the BRPT; or

c. Graduation from an electroneurodiagnostic technologist program with a polysomnographic technology track that is accredited by CAAHEP, with the transcript submitted to the board office directly from the college or university; or

d. Hold an active license under Iowa Code section 147.2 in a profession other than polysomnography that is in good standing with the board for that profession and provide verification from the medical director of the applicant's current employer or the medical director's designee that the applicant has completed on-the-job training in the field of polysomnography and is competent to perform polysomnography.

645—261.6(148G,152B) License renewal.

261.6(1) The biennial license renewal period for a license will begin on April 1 of an even-numbered year and end on March 31 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration.

261.6(2) An individual who was issued an initial license within six months of the license renewal date does not need to renew the license until the subsequent renewal two years later.

261.6(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—262.2(148G,152B,272C) and the mandatory reporting requirements of subrule 261.8(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

261.6(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children and dependent adults in Iowa will complete the applicable department of health and human services training relating to the identification and reporting of child and dependent adult abuse as required by Iowa Code section 232.69(3)*"b."*

b. The requirement for mandatory training for identifying and reporting child and dependent adult abuse will be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 262.

c. The board may select licensees for audit of compliance with the requirements in paragraphs 261.6(4)*"a"* and *"b."*

261.6(5) Upon receiving the information and the fee, a two-year license will be administratively issued. In the event the board receives adverse information on the renewal application, the renewal license will be issued but the board may refer the adverse information for further consideration or disciplinary investigation.

261.6(6) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

261.6(7) Late renewal. A license not renewed by the expiration date will be assessed a late fee as specified in rule 645—5.17(147,152B). Completion of renewal requirements and submission of the late fee within the grace period are needed to renew the license.

261.6(8) Inactive license. A license not renewed by the end of the grace period is inactive. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice respiratory care in Iowa until the license is reactivated. A licensee who practices respiratory care in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—261.7(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

261.7(1) Submit a reactivation application and pay the reactivation fee specified in rule 645—5.17(147,152B).

261.7(2) If the license has been inactive for two or more years, submit two completed fingerprint cards to facilitate a national criminal history background check. The cost for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant. The board may withhold issuing a license pending receipt of a report from the DCI and FBI.

261.7(3) Provide verification of current competence to practice by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in

any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of continuing education that conforms to standards defined in rule 645—262.3(148G,152B,272C) within 24 months immediately preceding submission of the application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction within 24 months immediately preceding an application for reactivation.

1. For respiratory care practitioners: 24 hours of continuing education.
2. For polysomnographic technologists: 24 hours of continuing education.
3. For respiratory care and polysomnography practitioners: 24 hours of continuing education, of which at least 8 hours but no more than 12 hours shall be on sleep-related topics.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of continuing education that conforms to standards defined in rule 645—262.3(148G,152B,272C) within 24 months immediately preceding submission of the application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction within 24 months immediately preceding an application for reactivation.

1. For respiratory care practitioners: 48 hours of continuing education.
2. For polysomnographic technologists: 48 hours of continuing education.
3. For respiratory care and polysomnography practitioners: 48 hours of continuing education of which at least 16 hours but no more than 24 hours shall be on sleep-related topics.

261.7(4) Submit a sworn statement of previous active practice from an employer or professional associate, detailing places and dates of employment and verifying that the applicant has practiced at least 2,080 hours or taught as the equivalent of a full-time faculty member for at least one of the immediately preceding years during the last two-year time period. Sole proprietors may submit the sworn statement on their own behalf.

645—261.8(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—261.14(17A,147,272C) prior to practicing in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148G, 152B, and 272C.

[Filed 5/29/24, effective 7/31/24]
[Published 6/26/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8074C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to continuing education for respiratory care practitioners

The Board of Respiratory Care and Polysomnography hereby rescinds Chapter 262, "Continuing Education for Respiratory Care Practitioners and Polysomnographic Technologists," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.36, 147.76, 148G.5, 152B.6, 152B.11, 272C.3 and 272C.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 148G, 152B and 272C and Executive Order 10.

Purpose and Summary

This rulemaking sets forth continuing education requirements for respiratory care therapists and polysomnographic technologists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that respiratory care therapists and polysomnographic technologists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

This chapter includes amendments made by Adopted and Filed **ARC 6993C** (IAB 4/19/23) that were inadvertently excluded during the initial Regulatory Analysis process.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7504C**. Public hearings were held on February 13 and 14, 2024, at 12:50 p.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings.

A public comment was received via email asking the Board to consider removing the continuing education requirement altogether. The Board did not agree that this was in the best interest of public safety and did not want to make any changes to the rules at this time.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on May 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 262 and adopt the following **new** chapter in lieu thereof:

CHAPTER 262
CONTINUING EDUCATION FOR RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS

645—262.1(148G,152B,272C) Definitions.

"Active license" means a license that is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the board of respiratory care and polysomnography.

"Continuing education" means planned, organized learning acts designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means at least 50 minutes spent by a licensee completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"License" means license to practice.

"Licensee" means any person licensed to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner in the state of Iowa.

645—262.2(148G,152B,272C) Continuing education requirements.

262.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on April 1 of each even-numbered year and ending on March 31 of the next even-numbered year. Each biennium, the licensee will be required to complete continuing education that meets the requirements specified in rule 645—262.3(148G,152B,272C).

a. For respiratory care practitioner licensees: complete a minimum of 24 hours of continuing education.

b. For respiratory care and polysomnography practitioner licensees: complete a minimum of 24 hours of continuing education.

c. For polysomnographic technologist licensees: complete a minimum of 24 hours of continuing education.

262.2(2) Requirements of new licensees. Those persons licensed for the first time will not be required to complete continuing education as a prerequisite for the first renewal of their licenses.

Continuing education hours acquired any time from the initial licensing until the second license renewal may be used. For each subsequent license renewal, the new licensee will be required to complete continuing education per biennium.

262.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

262.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

262.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—262.3(148G,152B,272C) Standards.

262.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

262.3(2) *Specific criteria.* Continuing education hours of credit may be obtained by:

a. Programs/activities of a clinical nature related to the practice of respiratory care or polysomnography.

b. Program presenters who will receive one hour of credit for each hour of presentation for the first offering of the continuing education program/activity.

c. Completing academic coursework that meets the criteria set forth in the rules and is accompanied by an official transcript indicating successful completion of the course. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

d. The following are approved for continuing education credit on a one-time basis per biennium and require a certificate of attendance or verification:

CERTIFICATIONS:

Advanced Cardiac Life Support	12 hours
Basic Cardiac Life Support—Instructor	8 hours
Basic Cardiac Life Support	6 hours
Neonatal Resuscitation	9 hours
Pediatric Advanced Life Support	14 hours
Mandatory Reporting	4 hours
Certified Pulmonary Function Technologist	8 hours
Registered Pulmonary Function Technologist	12 hours

These rules are intended to implement Iowa Code section 272C.2 and chapters 148G and 152B.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8075C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to discipline for respiratory care practitioners

The Board of Respiratory Care and Polysomnography hereby rescinds Chapter 263, "Discipline for Respiratory Care Practitioners and Polysomnographic Technologists," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.36, 147.76, 148G.5, 152B.6, 272C.3 and 272C.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 148G, 152B and 272C and Executive Order 10.

Purpose and Summary

The chapter that sets disciplinary standards for this profession has been rescinded and the content referenced under a shared disciplinary chapter for the boards as part of Executive Order 10 to remove duplication between multiple chapters. The disciplinary sanctions imposed in this chapter are not mutually exclusive to this Board and can be enforced through a shared disciplinary chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7505C**. Public hearings were held on February 13 and 14, 2024, at 12:50 p.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on May 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **645—Chapter 263**.

[Filed 5/29/24, effective 7/31/24]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8076C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to practice of respiratory care practitioners

The Board of Respiratory Care and Polysomnography hereby rescinds Chapter 265, "Practice of Respiratory Care Practitioners and Polysomnographic Technologists," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.36, 147.76, 148G.5, 152B.6, 272C.3 and 272C.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 148G, 152B and 272C and Executive Order 10.

Purpose and Summary

These rules provide Iowans, licensees, and their employers with definitions relevant to the practice of respiratory care and polysomnography, including the code of ethics, guidance on intravenous administration and the setup and delivery of respiratory care equipment, the role of students, requirements for the location of the practice of polysomnography, and services provided by each profession. These rules articulate practice standards and provide a scope of practice for the profession.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7506C**. Public hearings were held on February 13 and 14, 2024, at 12:50 p.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on May 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 265 and adopt the following **new** chapter in lieu thereof:

CHAPTER 265
PRACTICE OF RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS

645—265.1(148G,152B,272C) Definitions.

"Board" means the board of respiratory care and polysomnography.

"Direct supervision" means that the respiratory care and polysomnography practitioner or the polysomnographic technologist providing supervision must be present where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.

"General supervision" means that the polysomnographic procedure is provided under a physician's or qualified health care professional prescriber's overall direction and control, but the physician's or qualified health care professional prescriber's presence is not required during the performance of the procedure.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery or osteopathic medicine and surgery, is board-certified, and is actively involved in the sleep medicine center or laboratory.

"Polysomnographic student" means a person who is enrolled in a program approved by the board and who may provide sleep-related services under the direct supervision of a respiratory care and polysomnography practitioner or a polysomnographic technologist as part of the person's education program.

"Polysomnographic technician" means a person who has graduated from a program approved by the board, but has not yet received an accepted national credential awarded from an examination program approved by the board and who may provide sleep-related services under the direct supervision of a licensed respiratory care and polysomnography practitioner or a licensed polysomnographic technologist for a period of up to 30 days following graduation while awaiting credentialing examination scheduling and results.

645—265.2(148G,152B,272C) Code of ethics.

265.2(1) The respiratory care practitioner or polysomnographic technologist will practice acceptable methods of treatment and will not practice beyond the competence or exceed the authority vested in the practitioner or technologist by physicians.

265.2(2) The respiratory care practitioner or polysomnographic technologist will continually strive to increase and improve knowledge and skill and will render to each patient the full measure of the practitioner's or technologist's ability. All services will be provided with respect for the dignity of the patient, regardless of the patient's social or economic status or personal attributes or the nature of the patient's health problems.

265.2(3) The respiratory care practitioner or polysomnographic technologist will be responsible for the competent and efficient performance of assigned duties and will expose incompetent, illegal or unethical conduct of members of the profession.

265.2(4) The respiratory care practitioner or polysomnographic technologist will hold in confidence all privileged information concerning the patient and refer all inquiries regarding the patient to the patient's physician.

265.2(5) The respiratory care practitioner or polysomnographic technologist will not accept gratuities and shall guard against conflict of interest.

265.2(6) The respiratory care practitioner or polysomnographic technologist will uphold the dignity and honor of the profession and abide by its ethical principles.

265.2(7) The respiratory care practitioner or polysomnographic technologist will have knowledge of existing state and federal laws governing the practice of respiratory therapy or polysomnography and will comply with those laws.

265.2(8) The respiratory care practitioner or polysomnographic technologist will cooperate with other health care professionals and participate in activities to promote community, state, and national efforts to meet the health needs of the public.

645—265.3(152B,272C) Intravenous administration. Starting an intravenous line or administering intravenous medications is outside the scope of practice of a licensed respiratory care practitioner. However, this rule does not preclude a licensed respiratory care practitioner from performing intravenous administration under the auspices of the employing agency if formal training is acquired and documented.

645—265.4(152B,272C) Setup and delivery of respiratory care equipment.

265.4(1) Unlicensed personnel may deliver, set up, and test the operation of respiratory care equipment for a patient but will not perform any type of patient care. Instruction or demonstration of the equipment will be limited to its mechanical operation (on and off switches, emergency button, cleaning, maintenance). Any instruction or demonstration to the patient regarding the clinical use of the equipment; the fitting of any device to the patient or making any adjustment; or any patient monitoring, patient assessment, or other procedures designed to evaluate the effectiveness of the treatment must be performed by a licensed respiratory therapist or other licensed health care provider allowed by Iowa law.

265.4(2) Respiratory care equipment includes but is not limited to:

a. Positive airway pressure (continuous positive airway pressure and bi-level positive airway pressure) devices and supplies;

b. Airway clearance devices;

c. Invasive and noninvasive mechanical ventilation devices and supplies;

d. Nasotracheal and tracheal suctioning devices and supplies;

e. Apnea monitors and alarms and supplies;

f. Tracheostomy care devices and supplies;

g. Respiratory diagnostic testing devices and supplies, including but not limited to pulse oximetry, CO_2 monitoring, and spirometry devices and supplies; and

h. Pulse-dose or demand-type oxygen conserving devices or any oxygen delivery systems beyond the capabilities of a simple mask or cannula or requiring particulate or molecular therapy in conjunction with oxygen.

645—265.5(152B,272C) Respiratory care as a practice. "Respiratory care as a practice" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities that affect the pulmonary system and associated aspects of cardiopulmonary and other systems' functions and includes but is not limited to the following direct and indirect respiratory care services that are safe, of comfort, aseptic, preventative, and restorative to the patient:

1. Observing and monitoring signs and symptoms, general behavior, reactions, and general physical responses to respiratory care treatment and diagnostic testing.
2. Determining whether the signs, symptoms, behavior, reactions, or general responses exhibit abnormal characteristics.
3. Performing pulmonary diagnostic testing.
4. Analyzing blood gases and respiratory secretions.
5. Measuring and monitoring hemodynamic and physiologic function related to cardiopulmonary pathophysiology.
6. Performing diagnostic and testing techniques in the medical management of patients to assist in diagnosis, monitoring, treatment, and research of pulmonary abnormalities, including measurement of ventilatory volumes, pressures, and flows; and collection of specimens of blood and from the respiratory tract.
7. Administering:

- Medical gases, aerosols, and humidification, not including general anesthesia.
- Lung expansion therapies.
- Bronchopulmonary hygiene therapies.
- Hyperbaric therapy.
- Pharmacologic and therapeutic agents necessary to implement therapeutic, disease prevention, pulmonary rehabilitative, or diagnostic regimens prescribed by a licensed physician, surgeon, or other qualified health care professional prescriber.

8. Maintaining natural and artificial airways.
9. Without cutting tissues, inserting and maintaining artificial airways.
10. Initiating, monitoring, modifying and discontinuing invasive or noninvasive mechanical ventilation.
11. Performing basic and advanced cardiopulmonary resuscitation.
12. Performing invasive procedures that relate to respiratory care.
13. Implementing changes in treatment regimen based on observed abnormalities and respiratory care protocols to include appropriate reporting and referral.
14. Managing asthma, COPD, and other respiratory diseases.
15. Performing cardiopulmonary rehabilitation.
16. Instructing patients in respiratory care, functional training in self-care and home respiratory care management and promoting the maintenance of respiratory care fitness, health, and quality of life.

17. Performing those advanced practice procedures that are permitted within the policies of the employing institution and for which the respiratory care practitioner has documented training and demonstrated competence.

18. Managing the clinical delivery of respiratory care services through the ongoing supervision, teaching, and evaluation of respiratory care.

19. Transcribing and implementing a written, verbal, or telephonic order from a licensed physician, surgeon, or other qualified health care professional prescriber pertaining to the practice of respiratory care.

645—265.6(148G,272C) Practice of polysomnography.

265.6(1) The practice of polysomnography consists of but is not limited to the following tasks as performed for the purpose of polysomnography, under the general supervision of a licensed physician or qualified health care professional prescriber:

a. Monitoring, recording, and evaluating physiologic data during polysomnographic testing and review during the evaluation of sleep-related disorders, including sleep-related respiratory disturbances, by applying any of the following techniques, equipment, or procedures:

(1) Noninvasive continuous, bilevel positive airway pressure, or adaptive servo-ventilation titration on spontaneously breathing patients using a mask or oral appliance; provided, however, that the mask or oral appliance does not extend into the trachea or attach to an artificial airway.

(2) Supplemental low-flow oxygen therapy of less than six liters per minute, utilizing a nasal cannula or incorporated into a positive airway pressure device during a polysomnogram.

(3) Capnography during a polysomnogram.

(4) Cardiopulmonary resuscitation.

(5) Pulse oximetry.

(6) Gastroesophageal pH monitoring.

(7) Esophageal pressure monitoring.

(8) Sleep stage recording using surface electroencephalography, surface electrooculography, and surface submental electromyography.

(9) Surface electromyography.

(10) Electrocardiography.

(11) Respiratory effort monitoring, including thoracic and abdominal movement.

(12) Plethysmography blood flow monitoring.

(13) Snore monitoring.

(14) Audio and video monitoring.

(15) Body movement monitoring.

(16) Nocturnal penile tumescence monitoring.

(17) Nasal and oral airflow monitoring.

(18) Body temperature monitoring.

b. Monitoring the effects that a mask or oral appliance used to treat sleep disorders has on sleep patterns; provided, however, that the mask or oral appliance does not extend into the trachea or attach to an artificial airway.

c. Observing and monitoring physical signs and symptoms, general behavior, and general physical response to polysomnographic evaluation and determining whether initiation, modification, or discontinuation of a treatment regimen is warranted.

d. Analyzing and scoring data collected during the monitoring described in this subrule for the purpose of assisting a physician in the diagnosis and treatment of sleep and wake disorders that result from developmental defects, the aging process, physical injury, disease, or actual or anticipated somatic dysfunction.

e. Implementation of a written or verbal order from a physician or qualified health care professional prescriber to perform polysomnography.

f. Education of a patient regarding the treatment regimen that assists the patient in improving the patient's sleep.

g. Use of any oral appliance used to treat sleep-disordered breathing while under the care of a licensed polysomnographic technologist during the performance of a sleep study, as directed by a licensed dentist.

265.6(2) Before providing any sleep-related services, a polysomnographic technician or polysomnographic student who is obtaining clinical experience will give notice to the board that the person is working under the direct supervision of a respiratory care and polysomnography practitioner or a polysomnographic technologist in order to gain the experience to be eligible to sit for a national certification examination. A badge that appropriately identifies the person is to be worn while providing such services.

645—265.7(148G,152B,272C) Students.

265.7(1) A student who is enrolled in an approved respiratory care, sleep add-on, polysomnography training program, or electroneurodiagnostic program and is employed in an organized health care system may render services defined in Iowa Code sections 152B.2 and 152B.3 and chapter 148G under the direct and immediate supervision of a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner for the duration of the program, but not to exceed the duration of the program.

265.7(2) Direct and immediate supervision of a respiratory care or polysomnographic student means that the licensed respiratory care practitioner or polysomnographic technologist will:

a. Be continuously on site and present in the department or facility where the student is performing care;

b. Be immediately available to assist the person being supervised in the care being performed; and

c. Be responsible for care provided by students.

645—265.8(148G,272C) Location of polysomnography services. The practice of polysomnography is to take place only in a facility that is accredited by a nationally recognized sleep medicine laboratory or center accrediting agency, in a facility operated by a hospital or a hospital licensed under Iowa Code chapter 135B, or in a patient's home pursuant to rules adopted by the board; provided, however, that the scoring of data and the education of patients may take place in another setting.

These rules are intended to implement Iowa Code chapters 147, 148G, 152B, and 272C.

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ARC 8077C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to board administrative processes

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 4, "Board Administrative Processes," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapters 17A, 21, 147, 252J, 272C and 272D.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 21, 147, 252J, 272C and 272D and Executive Order 10.

Purpose and Summary

These rules publicly outline administrative processes of the professional licensing boards within the Licensing Division of the Department. This includes expectations of licensees to change their name and address, order duplicate certificates, and provide continuing education information in an audit, as well as board order authority.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7297C**. Public hearings were held on February 13 and 14, 2024, at 9 a.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received.

Nonsubstantive changes from the Notice have been made to be consistent with Iowa Administrative Code style, and the reference to Iowa Code chapter 158 in rule 645—4.2(17A) was removed since it was repealed in 2023 Iowa Acts, House File 652, section 48.

Adoption of Rulemaking

This rulemaking was adopted by the following boards on the dates stated:

- Board of Hearing Aid Specialists: February 28, 2024.
- Board of Sign Language Interpreters and Transliterators: February 29, 2024.
- Board of Psychology: March 4, 2024.
- Board of Massage Therapy: March 5, 2024.
- Board of Mortuary Science: March 7, 2024.
- Board of Athletic Training: March 12, 2024.
- Board of Behavioral Science: March 14, 2024.
- Board of Dietetics: March 22, 2024.
- Board of Nursing Home Administrators: April 3, 2024.
- Board of Optometry: April 4, 2024.
- Board of Chiropractic: April 10, 2024.
- Board of Physical and Occupational Therapy: April 11, 2024.
- Board of Podiatry: April 12, 2024.
- Board of Physician Assistants: April 24, 2024.
- Board of Speech Pathology and Audiology: May 3, 2024.
- Board of Social Work: May 13, 2024.
- Board of Respiratory Care and Polysomnography: May 16, 2024.
- Board of Barbering and Cosmetology Arts and Sciences: May 20, 2024.

Fiscal Impact

This rulemaking will have no fiscal impact to the State of Iowa. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

Jobs Impact

After analysis and review of this rulemaking, there will be a positive impact on jobs in Iowa since the rulemaking reduces the regulatory burdens on Iowans and allows Iowans to more freely engage in individual and business pursuits.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
BOARD ADMINISTRATIVE PROCESSES

645—4.1(17A) Definitions.

"License" means a license to practice the specific practice governed by one of the boards defined in this chapter.

"Licensee" means a person licensed to practice the specific practice governed by one of the boards defined in this chapter.

645—4.2(17A) Purpose of board. The purpose of each professional licensing board is to administer and enforce the provisions of Iowa Code chapters 17A, 21, 147, and 272C and the practice-specific provisions in Iowa Code chapters 148A, 148B, 148C, 149, 151, 152A, 152B, 152C, 152D, 154, 154A, 154B, 154C, 154D, 154E, 155, 156, and 157 applicable to each board. The mission of each professional licensing board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and rules of each board. Responsibilities of each professional licensing board include, but are not limited to:

4.2(1) Licensing qualified applicants by examination, renewal, endorsement, and reciprocity.

4.2(2) Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

4.2(3) Imposing discipline on licensees as provided by statute or rule.

645—4.3(17A,147,272C) Organization of board and proceedings.

4.3(1) Each professional licensing board is composed of members appointed by the governor and confirmed by the senate as defined in Iowa Code chapter 147.

4.3(2) Each board elects a chairperson and vice chairperson from its membership at the first meeting after April 30 of each year.

4.3(3) A majority of the members of each board constitutes a quorum.

4.3(4) Board meetings are governed in accordance with Iowa Code chapter 21.

4.3(5) Each professional licensing board has the authority to:

a. Develop and implement continuing education rules to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board.

d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session. The records shall be stored securely in the board office.

e. Investigate alleged violations of statutes or rules that relate to the practice of licensees upon receipt of a complaint or upon the board's own initiation.

f. Initiate and impose licensee discipline.

g. Monitor licenses that are restricted by a board order.

h. Establish and register peer reviewers.

i. Refer complaints to one or more registered peer reviewers for investigation and review. The peer reviewers will review cases and recommend appropriate action.

j. Perform any other functions authorized by a provision of law.

645—4.4(17A) Name and address changes.

4.4(1) Notice of change of address. Each licensee shall notify the board of a change of the licensee's current mailing address within 30 days after the change of address occurs.

4.4(2) Notice of change of name. Each licensee shall notify the board in writing of a change of name within 30 days after changing the name.

645—4.5(147) Duplicate certificate. A duplicate certificate is required if the current certificate is lost, stolen or destroyed. Duplicate certificates may be purchased online.

645—4.6(17A,147,272C) License denial.

4.6(1) When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing and cite the reasons for which the application was denied.

4.6(2) An applicant who has been denied licensure by the board may appeal the denial and request a hearing by submitting a request in writing within 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing. The hearing and subsequent procedures will be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

645—4.7(272C) Audit of continuing education. The board may select licensees for audit following license renewal.

4.7(1) If selected for audit, the licensee will provide certificates of completion of continuing education within 30 days of notice. The documents will contain the course date, title, contact hours, sponsor and licensee's name. An extension of time may be granted on an individual basis.

4.7(2) All licensees must retain continuing education certificates for two years after the renewal.

4.7(3) If the submitted certificates are incomplete or unsatisfactory, the licensee may submit make-up credit to cover the deficit. The deadline for make-up credit is 90 days from the date of the notice of deficit.

645—4.8(272C,83GA,SF2325) Automatic exemption. A licensee is exempt from the continuing education requirement during the license biennium when the licensee:

1. Served on active duty in the military service; or
2. Resided in another state or district having continuing education requirements; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States.

645—4.9(272C) Continuing education exemption for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption providing an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application.

4.9(1) The board may grant an extension of time to fulfill the continuing education requirement.

4.9(2) The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

4.9(3) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

645—4.10(147,272C) Order for physical, mental, substance abuse or clinical competency examination. If the board has probable cause, a licensee may be required to submit to a physical, mental, substance abuse or clinical competency examination at the licensee's expense.

4.10(1) *Content of order.* A board order for a physical, mental, substance abuse or clinical competency examination shall include the following items:

a. A description of the type of examination.

b. The amount of time the licensee has to complete the examination.

c. A statement indicating that the licensee is to sign necessary releases for the board to communicate with the examiner of the evaluation or treatment facility.

d. A statement that the licensee is to communicate with the board regarding the status of the examination.

e. A statement that the licensee will have the examiner provide the examination results directly to the board within a specified period of time.

4.10(2) *Alternatives.* Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request that the board approve an alternative examiner or treatment facility. The board in its discretion shall determine whether to grant the request.

4.10(3) *Objection to order.* A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. A licensee who fails to timely file a request for hearing to object to an examination order waives any future objection to the examination order in the event formal disciplinary charges are filed for failure to comply with the examination order or on any other grounds. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned to maintain the licensee's confidentiality.

4.10(4) *Closed hearing.* Any hearing on an objection to the examination order shall be closed pursuant to Iowa Code section 272C.6(1).

4.10(5) *Order and reports confidential.* An examination order and any subsequent examination reports issued in the course of a board investigation are confidential investigative information pursuant to Iowa Code section 272C.6(4). However, all investigative information regarding the examination order shall be provided to the licensee in the event the licensee files an objection, under subrule 4.15(3), in order to allow the licensee an opportunity to prepare for hearing.

4.10(6) *Admissibility.* In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

4.10(7) *Failure to submit.* Failure of a licensee to submit to a board-ordered physical, mental, substance abuse or clinical competency examination constitutes a violation of the rules of the board and is grounds for disciplinary action.

645—4.11(252J,272D) Noncompliance rules regarding child support and nonpayment of state debt.

4.11(1) *Child support noncompliance.* The board hereby adopts by reference 641—Chapter 192.

4.11(2) *Nonpayment of state debt.* The board hereby adopts by reference 641—Chapter 194.
These rules are intended to implement Iowa Code chapters 17A, 21, 147, 252J, 272C and 272D.

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[Published 6/26/24]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8078C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to fees

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 5, "Fees," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapters 17A and 272C and section 147.80.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147 and 272C and Executive Order 10.

Purpose and Summary

The purpose of this chapter is to establish fees for licensed professions. This chapter provides fees for the following boards: Hearing Aid Specialist Board, Speech Pathology and Audiology Board, Nursing Home Administrators Board, Optometry Board, Sign Language Interpreters and Transliterators Board, Barbering and Cosmetology Arts and Sciences Board, Physical and Occupational Therapy Board, Athletic Training Board, Mortuary Science Board, Physician Assistants Board, Chiropractic Board, Behavioral Science Board, Psychology Board, Social Work Board, Podiatry Board, Massage Therapy Board, Dietetics Board, and Respiratory Care and Polysomnography Board.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7306C**. Public hearings were held on February 13 and 14, 2024, at 9 a.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received.

Changes from the Notice have been made. Rule 645—5.2(147,158) was not adopted and is now marked as reserved. Rule 645—5.5(147,157) was revised to add fees for Barbering and Cosmetology Arts and Sciences to reflect the merger of the two boards.

Adoption of Rulemaking

This rulemaking was adopted by the following boards on the dates stated:

- Board of Hearing Aid Specialists: February 28, 2024.
- Board of Sign Language Interpreters and Transliterators: February 29, 2024.
- Board of Psychology: March 4, 2024.
- Board of Massage Therapy: March 5, 2024.
- Board of Mortuary Science: March 7, 2024.
- Board of Athletic Training: March 12, 2024.
- Board of Behavioral Science: March 14, 2024.

- Board of Dietetics: March 22, 2024.
- Board of Nursing Home Administrators: April 3, 2024.
- Board of Optometry: April 4, 2024.
- Board of Chiropractic: April 10, 2024.
- Board of Physical and Occupational Therapy: April 11, 2024.
- Board of Podiatry: April 12, 2024.
- Board of Physician Assistants: April 24, 2024.
- Board of Speech Pathology and Audiology: May 3, 2024.
- Board of Social Work: May 13, 2024.
- Board of Respiratory Care and Polysomnography: May 16, 2024.
- Board of Barbering and Cosmetology Arts and Sciences: May 20, 2024.

Fiscal Impact

This rulemaking will have no fiscal impact to the State of Iowa. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

Jobs Impact

After analysis and review of this rulemaking, there will be a positive impact on jobs in Iowa since the rulemaking reduces the regulatory burdens on Iowans and allows Iowans to more freely engage in individual and business pursuits.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
FEES

645—5.1(147,152D) Athletic training license fees. All fees are nonrefundable.

5.1(1) License fee for license to practice athletic training is $120.
5.1(2) Temporary license fee for license to practice athletic training is $120.
5.1(3) Biennial license renewal fee for each biennium is $120.
5.1(4) Late fee for failure to renew before expiration is $60.
5.1(5) Reactivation fee is $180.
5.1(6) Duplicate or reissued license certificate fee is $20.
5.1(7) Verification of license fee is $20.

5.1(8) Returned check fee is $25.

5.1(9) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code chapters 17A, 147, 152D and 272C.

645—5.2 Reserved.

645—5.3(147,154D) Behavioral science license fees. All fees are nonrefundable.

5.3(1) License fee for license to practice marital and family therapy or mental health counseling is $120.

5.3(2) Temporary license fee for license to practice marital and family therapy or mental health counseling is $120.

5.3(3) License fee for license to practice as a behavior analyst or assistant behavior analyst is $120. Behavior analyst and assistant behavior analyst licenses issued for less than one year shall not be subject to a renewal fee for the first renewal.

5.3(4) Biennial license renewal fee for each biennium is $120.

5.3(5) Late fee for failure to renew before expiration is $60.

5.3(6) Reactivation fee is $180.

5.3(7) Duplicate or reissued license certificate fee is $20.

5.3(8) Verification of license fee is $20.

5.3(9) Returned check fee is $25.

5.3(10) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 154D and 272C.

645—5.4(151) Chiropractic license fees. All fees are nonrefundable.

5.4(1) License fee for license to practice chiropractic is $270.

5.4(2) Fee for issuance of annual temporary certificate is $120.

5.4(3) Biennial license renewal fee is $120.

5.4(4) Late fee for failure to renew before the expiration date is $60.

5.4(5) Reactivation fee is $180.

5.4(6) Duplicate or reissued license certificate fee is $20.

5.4(7) Fee for verification of license is $20.

5.4(8) Returned check fee is $25.

5.4(9) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code chapters 17A, 151 and 272C.

645—5.5(147,157) Barbering and cosmetology arts and sciences license fees. All fees are nonrefundable.

5.5(1) License fee for license to practice barbering and cosmetology arts and sciences, license by endorsement, license by reciprocity, or an instructor's license is $60.

5.5(2) Biennial license renewal fee for each license for each biennium is $60.

5.5(3) Late fee for failure to renew before expiration is $60.

5.5(4) Reactivation fee for applicants licensed to practice barbering and cosmetology arts and sciences is $120; for establishments, $144; and for schools, $330.

5.5(5) Duplicate or reissued license certificate fee is $20.

5.5(6) Fee for verification of license is $20.

5.5(7) Returned check fee is $25.

5.5(8) Disciplinary hearing fee is a maximum of $75.

5.5(9) Fee for license to conduct a school teaching barbering and cosmetology arts and sciences is $600.

5.5(10) Fee for renewal of a school license is $270 annually.

5.5(11) Establishment license fee is $80.

5.5(12) Biennial license renewal fee for each establishment license for each biennium is $80.

5.5(13) Demonstrator and not-for-profit temporary permit fee is $42 for the first day and $12 for each day thereafter that the permit is valid.

5.5(14) An initial fee or a reactivation fee for certification to administer microdermabrasion or utilize a certified laser product or an intense pulsed light (IPL) device is $25 for each type of procedure or certified laser product or IPL device.

5.5(15) An initial fee or a reactivation fee for certification of barbers and cosmetologists to perform shaving for hair removal or administer chemical peels is $25.

5.5(16) An initial fee and renewal fee for the one-year permit allowing limited services outside of a licensed establishment as outlined in rules 645—63.16(157) and 645—63.22(157) is $40.

This rule is intended to implement Iowa Code section 147.80 and chapter 157.

645—5.6(147,152A) Dietetics license fees. All fees are nonrefundable.

5.6(1) License fee for license to practice dietetics, license by endorsement, or license by reciprocity is $120.

5.6(2) Biennial license renewal fee for each biennium is $120.

5.6(3) Late fee for failure to renew before expiration is $60.

5.6(4) Reactivation fee is $180.

5.6(5) Duplicate or reissued license certificate fee is $20.

5.6(6) Verification of license fee is $20.

5.6(7) Returned check fee is $25.

5.6(8) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 152A and 272C.

645—5.7(147,154A) Hearing aid specialists license fees. All fees are nonrefundable.

5.7(1) Application fee for a license to practice by examination, endorsement, or reciprocity is $156.

5.7(2) Renewal of license fee is $60.

5.7(3) Temporary permit fee is $42.

5.7(4) Late fee is $60.

5.7(5) Reactivation fee is $120.

5.7(6) Duplicate or reissued license certificate fee is $20.

5.7(7) Verification of license fee is $20.

5.7(8) Returned check fee is $25.

5.7(9) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code chapter 154A.

645—5.8(147) Massage therapy license fees. All fees are nonrefundable.

5.8(1) License fee for license to practice massage therapy is $120.

5.8(2) Biennial license renewal fee for each biennium is $60.

5.8(3) Temporary license fee for up to one year is $120.

5.8(4) Late fee for failure to renew before expiration is $60.

5.8(5) Reactivation fee is $120.

5.8(6) Duplicate or reissued license certificate fee is $20.

5.8(7) Verification of license fee is $20.

5.8(8) Returned check fee is $25.

5.8(9) Disciplinary hearing fee is a maximum of $75.

5.8(10) Initial application fee for approval of massage therapy education curriculum is $120.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

645—5.9(147,156) Mortuary science license fees. All fees are nonrefundable.

5.9(1) License fee for license to practice funeral directing is $120.

5.9(2) Biennial funeral director's license renewal fee for each biennium is $120.

5.9(3) Late fee for failure to renew before expiration is $60.

5.9(4) Reactivation fee for a funeral director is $180 and for a funeral establishment or cremation establishment is $150.

5.9(5) Duplicate or reissued license certificate fee is $20.

5.9(6) Verification of license fee is $20.

5.9(7) Returned check fee is $25.

5.9(8) Disciplinary hearing fee is a maximum of $75.

5.9(9) Funeral establishment or cremation establishment fee is $90.

5.9(10) Three-year renewal fee of funeral establishment or cremation establishment is $90.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 156 and 272C.

645—5.10(147,155) Nursing home administrators license fees. All fees are nonrefundable.

5.10(1) License fee for license to practice nursing home administration is $120.

5.10(2) Biennial license renewal fee for each license for each biennium is $60.

5.10(3) Late fee for failure to renew before expiration is $60.

5.10(4) Reactivation fee is $120.

5.10(5) Duplicate or reissued license certificate fee is $20.

5.10(6) Verification of license fee is $20.

5.10(7) Returned check fee is $25.

5.10(8) Disciplinary hearing fee is a maximum of $75.

5.10(9) Provisional license fee is $120.

This rule is intended to implement Iowa Code section 147.80 and chapter 155.

645—5.11(147,148B) Occupational therapy license fees. All fees are nonrefundable.

5.11(1) License fee for an occupational therapist or occupational therapist assistant license to practice occupational therapy is $120.

5.11(2) Biennial license renewal fee to practice occupational therapy is $60.

5.11(3) Biennial license renewal fee for an occupational therapy assistant is $60.

5.11(4) Late fee for failure to renew before expiration is $60.

5.11(5) Reactivation fee is $120.

5.11(6) Duplicate or reissued license certificate fee is $20.

5.11(7) Verification of license fee is $20.

5.11(8) Returned check fee is $25.

5.11(9) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148B and 272C.

645—5.12(147,154) Optometry license fees. All fees are nonrefundable.

5.12(1) License fee for license to practice optometry, license by endorsement, or license by reciprocity is $300.

5.12(2) Biennial license renewal fee for each biennium is $144.

5.12(3) Late fee for failure to renew before expiration date is $60.

5.12(4) Reactivation fee is $204.

5.12(5) Duplicate or reissued license certificate fee is $20.

5.12(6) Verification of license fee is $20.

5.12(7) Returned check fee is $25.

5.12(8) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code chapters 17A, 147, 154 and 272C.

645—5.13(147,148A) Physical therapy license fees. All fees are nonrefundable.

5.13(1) License fee for license to practice physical therapy or as a physical therapist assistant is $120.

5.13(2) Biennial license renewal fee for a physical therapist is $60.

5.13(3) Biennial license renewal fee for a physical therapist assistant is $60.

5.13(4) Late fee for failure to renew before expiration is $60.
5.13(5) Reactivation fee is $120.
5.13(6) Duplicate or reissued license certificate fee is $20.
5.13(7) Verification of license fee is $20.
5.13(8) Returned check fee is $25.
5.13(9) Disciplinary hearing fee is a maximum of $75.
This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148A and 272C.

645—5.14(148C) Physician assistants license fees. All fees are nonrefundable.
5.14(1) Application fee for a license is $120.
5.14(2) Fee for a temporary license is $120.
5.14(3) Renewal of license fee is $120.
5.14(4) Late fee for failure to renew before expiration is $60.
5.14(5) Reactivation fee is $180.
5.14(6) Duplicate or reissued license certificate fee is $20.
5.14(7) Fee for verification of license is $20.
5.14(8) Returned check fee is $25.
5.14(9) Disciplinary hearing fee is a maximum of $75.
This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148C and 272C.

645—5.15(147,148F,149) Podiatry license fees. All fees are nonrefundable.
5.15(1) License fee for license to practice podiatry, license by endorsement, or license by reciprocity is $400.
5.15(2) License fee for temporary license to practice podiatry is $200.
5.15(3) The fee for a license to practice orthotics, prosthetics, or pedorthics received on or before July 1, 2015, shall be $600. The fee for a license to practice orthotics, prosthetics, or pedorthics received after July 1, 2015, shall be $400.
5.15(4) Biennial license renewal fee is $400 for each biennium.
5.15(5) Reactivation fee is $460.
5.15(6) Temporary license renewal fee is $200.
5.15(7) Late fee for failure to renew before expiration is $60.
5.15(8) Duplicate or reissued license certificate fee is $20.
5.15(9) Verification of license fee is $20.
5.15(10) Returned check fee is $25.
5.15(11) Disciplinary hearing fee is a maximum of $75.
This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148F, 149 and 272C.

645—5.16(147,154B) Psychology license fees. All fees are nonrefundable.
5.16(1) License fee for license to practice psychology is $120.
5.16(2) Biennial license renewal fee is $170.
5.16(3) Late fee for failure to renew before expiration is $60.
5.16(4) Reactivation fee is $230.
5.16(5) Duplicate or reissued license certificate fee is $20.
5.16(6) Verification of license fee is $20.
5.16(7) Returned check fee is $25.
5.16(8) Disciplinary hearing fee is a maximum of $75.
5.16(9) Processing fee for exemption to licensure is $60.
5.16(10) Certification fee for a health service provider is $60.
5.16(11) Biennial renewal fee for certification as a certified health service provider in psychology is $60.
5.16(12) Reactivation fee for certification as a certified health service provider in psychology is $60.
5.16(13) Provisional license fee is $120.

5.16(14) Provisional license renewal fee is $170.

This rule is intended to implement Iowa Code sections 147.80 and 154B.6 and chapters 17A, 154B and 272C.

645—5.17(147,152B) Respiratory care and polysomnography license fees. All fees are nonrefundable.

5.17(1) Initial license fee.

a. The initial license fee for a respiratory care practitioner license is $75, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

b. The initial license fee for a polysomnographic technologist license is $75, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa DCI and the FBI.

c. The initial license fee for a respiratory care and polysomnography practitioner license is $90, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa DCI and the FBI.

5.17(2) Biennial license renewal fee for each biennium.

a. The biennial license renewal fee for each biennium for a respiratory care practitioner license is $75.

b. The biennial license renewal fee for each biennium for a polysomnographic technologist license is $75.

c. The biennial license renewal fee for each biennium for a respiratory care and polysomnography practitioner license is $90.

5.17(3) Late fee for failure to renew before expiration is $60.

5.17(4) Reactivation fee.

a. The reactivation fee to practice respiratory care is $135, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa DCI and the FBI if the license has been on inactive status for two or more years.

b. The reactivation fee to practice as a polysomnographic technologist is $135, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa DCI and the FBI if the license has been on inactive status for two or more years.

c. The reactivation fee to practice respiratory care and polysomnography is $150, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa DCI and the FBI if the license has been on inactive status for two or more years.

5.17(5) Duplicate or reissued license certificate fee is $20.

5.17(6) Verification of license fee is $20.

5.17(7) Returned check fee is $25.

5.17(8) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 152B and 272C.

645—5.18(147,154E) Sign language interpreters and transliterators license fees. All fees are nonrefundable.

5.18(1) License fee for license to practice interpreting or transliterating is $120.

5.18(2) License fee for temporary license to practice interpreting or transliterating is $120.

5.18(3) Biennial license renewal fee for each biennium is $120.

5.18(4) Late fee for failure to renew before expiration is $60.

5.18(5) Duplicate or reissued license certificate fee is $20.

5.18(6) Verification of license fee is $20.

5.18(7) Returned check fee is $25.

5.18(8) Disciplinary hearing fee is a maximum of $75.

5.18(9) Reactivation fee is $180.

This rule is intended to implement Iowa Code chapters 17A, 147, 154E and 272C.

645—5.19(147,154C) Social work license fees. All fees are nonrefundable.

5.19(1) License fee for license to practice social work is $120.

5.19(2) Biennial license renewal fee for a license at the bachelor's level is $72; at the master's level, $120; and at the independent level, $144.

5.19(3) Late fee for failure to renew before expiration is $60.

5.19(4) Reactivation fee for a license at the bachelor's level is $132; at the master's level, $180; and at the independent level, $204.

5.19(5) Duplicate or reissued license certificate fee is $20.

5.19(6) Verification of license fee is $20.

5.19(7) Returned check fee is $25.

5.19(8) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code section 147.80 and chapters 17A, 154C and 272C.

645—5.20(147) Speech pathology and audiology license fees. All fees are nonrefundable.

5.20(1) License fee for license to practice speech pathology or audiology, temporary clinical license, license by endorsement, or license by reciprocity is $120.

5.20(2) Biennial license renewal fee for each biennium is $96.

5.20(3) Late fee for failure to renew before expiration is $60.

5.20(4) Reactivation fee is $156.

5.20(5) Duplicate or reissued license certificate fee is $20.

5.20(6) Verification of license fee is $20.

5.20(7) Returned check fee is $25.

5.20(8) Disciplinary hearing fee is a maximum of $75.

5.20(9) Temporary clinical license renewal fee is $60.

5.20(10) Temporary permit fee is $30.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

[Filed 6/6/24, effective 7/31/24]
[Published 6/26/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8079C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to complaints and investigations

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 9, "Complaints and Investigations," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 17A.3, 17A.22 and 272C.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 272C and Executive Order 10.

Purpose and Summary

This rulemaking is intended to provide guidance on complaint and investigation procedures. This rulemaking ensures licensees are aware of the investigative process and understand their rights

and responsibilities related to the complaint and investigative process. This rulemaking sets forth information such as the process for submitting a complaint, duties of the licensee in reporting the licensee's own malpractice or disciplinary actions, and duties of the licensee in reporting first-hand knowledge of violations from other licensees. This rulemaking also provides the procedure to issue investigatory subpoenas, initiate the peer review process, and require board appearances by the licensee.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7303C**. Public hearings were held on February 13 and 14, 2024, at 9 a.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the following boards on the dates stated:

- Board of Hearing Aid Specialists: February 28, 2024.
- Board of Sign Language Interpreters and Transliterators: February 29, 2024.
- Board of Psychology: March 4, 2024.
- Board of Massage Therapy: March 5, 2024.
- Board of Mortuary Science: March 7, 2024.
- Board of Athletic Training: March 12, 2024.
- Board of Behavioral Science: March 14, 2024.
- Board of Dietetics: March 22, 2024.
- Board of Nursing Home Administrators: April 3, 2024.
- Board of Optometry: April 4, 2024.
- Board of Chiropractic: April 10, 2024.
- Board of Physical and Occupational Therapy: April 11, 2024.
- Board of Podiatry: April 12, 2024.
- Board of Physician Assistants: April 24, 2024.
- Board of Speech Pathology and Audiology: May 3, 2024.
- Board of Social Work: May 13, 2024.
- Board of Respiratory Care and Polysomnography: May 16, 2024.
- Board of Barbering and Cosmetology Arts and Sciences: May 20, 2024.

Fiscal Impact

This rulemaking will have no fiscal impact to the State of Iowa. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

Jobs Impact

After analysis and review of this rulemaking, there will be a positive impact on jobs in Iowa since the rulemaking reduces the regulatory burdens on Iowans and allows Iowans to more freely engage in individual and business pursuits.

Waivers

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

Review by Administrative Rules Review Committee

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

or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
COMPLAINTS AND INVESTIGATIONS

645—9.1(272C) Complaints.

9.1(1) Complaints can be submitted online, in writing, or verbally and are to include the name and contact information of the complainant, the name of the licensee, and a concise statement of the allegations against the licensee. A complaint may also be initiated by the board.

9.1(2) A person is not civilly liable for filing a complaint in good faith or for cooperating with a board investigation.

645—9.2(272C) Report of malpractice claims or actions or disciplinary actions. The licensee will submit any judgment or settlement in a malpractice claim or any disciplinary action taken by another licensing authority in another state or jurisdiction to the board within 30 days of the date of occurrence.

645—9.3(272C) Report of acts or omissions. A licensee who has knowledge of rule violations committed by another licensee will file a report to the board. The report will include the name and contact information of the licensee and the date, time, and place of the incident.

645—9.4(272C) Investigation of complaints or reports. Board staff may request additional information, solicit a response from the licensee, subpoena records, conduct interviews, gather evidence, and perform other investigatory duties to sufficiently inform the board.

645—9.5(17A,272C) Issuance of investigatory subpoenas.

9.5(1) The board administrator or designee may, upon the written request of a board investigator or on the administrator's own initiative, subpoena books, papers, records, and other real evidence that is necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

a. The nature of the complaint reasonably justifies the issuance of a subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

9.5(2) Each subpoena will contain:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production, or inspection and copying;

d. The deadline for a motion to quash or modify the subpoena to be filed;

e. The signature, address and telephone number of the board administrator or designee;

f. The date of issuance;

g. A return of service.

9.5(3) A person can challenge the subpoena by filing a motion to quash describing the legal justification for the motion accompanied by a legal brief or factual affidavits, within 14 days after service of the subpoena.

9.5(4) Upon receipt of a timely motion to quash or modify a subpoena, an administrative law judge will issue a decision. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

9.5(5) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board administrator, either in person, via email, or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

9.5(6) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

645—9.6(272C) Peer review.

9.6(1) A complaint may be assigned to a peer reviewer for review and report to the board.

9.6(2) The board determines what complaints or other matters are referred to a peer reviewer.

9.6(3) Peer reviewers are not to be liable for acts, omissions, or decisions made in connection with service made in good faith.

9.6(4) The peer reviewer will observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

645—9.7(17A) Appearance. The board may request that a licensee appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the licensee waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding. By electing to participate in the committee appearance, the licensee further waives any objection to the board administrator assisting the board in the contested case proceeding.

These rules are intended to implement Iowa Code chapters 17A and 272C.

[Filed 6/6/24, effective 7/31/24]
[Published 6/26/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8080C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to contested cases and informal settlement

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 11, "Contested Cases," and adopts a new Chapter 11, "Contested Cases and Informal Settlement," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 17A.3 and 272C.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 272C and Executive Order 10.

Purpose and Summary

Chapter 11 provides regulations on contested case hearings, including time requirements for taking action on a contested case, direction on the service of the statement of charges and notice of hearing as well as the required contents of the statement of charges and notice of hearing, the discovery process including issuance of subpoenas, the handling of pretrial motions and conferences and procedures for the hearings. The purpose of the chapter is to provide a licensee an outline of how a contested case proceeding is initiated and the rights and responsibilities of the licensee during that process. This chapter ensures the licensee is aware of how a contested case begins, how the licensee can gather information to prepare for the hearing and the potential result of the hearing.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7299C**. Public hearings were held on February 13 and 14, 2024, at 9 a.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received. Nonsubstantive changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the following boards on the dates stated:

- Board of Hearing Aid Specialists: February 28, 2024.
- Board of Sign Language Interpreters and Transliterators: February 29, 2024.
- Board of Psychology: March 4, 2024.
- Board of Massage Therapy: March 5, 2024.
- Board of Mortuary Science: March 7, 2024.
- Board of Athletic Training: March 12, 2024.
- Board of Behavioral Science: March 14, 2024.
- Board of Dietetics: March 22, 2024.
- Board of Nursing Home Administrators: April 3, 2024.
- Board of Optometry: April 4, 2024.
- Board of Chiropractic: April 10, 2024.
- Board of Physical and Occupational Therapy: April 11, 2024.
- Board of Podiatry: April 12, 2024.
- Board of Physician Assistants: April 24, 2024.
- Board of Speech Pathology and Audiology: May 3, 2024.
- Board of Social Work: May 13, 2024.
- Board of Respiratory Care and Polysomnography: May 16, 2024.
- Board of Barbering and Cosmetology Arts and Sciences: May 20, 2024.

Fiscal Impact

This rulemaking will have no fiscal impact to the State of Iowa. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

Jobs Impact

After analysis and review of this rulemaking, there will be a positive impact on jobs in Iowa since the rulemaking reduces the regulatory burdens on Iowans and allows Iowans to more freely engage in individual and business pursuits.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
CONTESTED CASES AND INFORMAL SETTLEMENT

645—11.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the board of _____ examiners.

645—11.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means the state of Iowa as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent, or an intervenor.

"Presiding officer" means the board of _____ examiners.

645—11.3(17A) Time requirements.

11.3(1) Time will be computed as provided in Iowa Code section 4.1(34).

11.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer will afford all parties an opportunity to be heard or to file written arguments.

645—11.4(17A) Probable cause. If the board finds there is probable cause for taking disciplinary action against a licensee following investigation, the board will order that a contested case hearing be commenced by the filing of a statement of charges and notice of hearing.

645—11.5(17A) Statement of charges and notice of hearing.

11.5(1) *Legal review.* Every statement of charges and notice of hearing prepared by the board will be reviewed by the office of the attorney general prior to filing.

11.5(2) *Delivery.* Delivery of the statement of charges and notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Restricted certified mail, return receipt requested; or

c. Publication, as provided in the Iowa Rules of Civil Procedure.

11.5(3) *Contents.* The statement of charges and notice of hearing will contain the following information:

a. A statement by the board showing that there is probable cause to file the statement of charges;

b. A statement of the time, place, and nature of the hearing;

c. A statement of the legal authority and jurisdiction under which the hearing is to be held;

d. A reference to the particular sections of the statutes and rules involved;

e. A short and plain statement of the matters asserted containing sufficient detail to give the respondent fair notice of the allegations so that the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;

f. Identification of all parties including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the parties' counsel, if known;

g. Reference to the procedural rules governing conduct of the contested case proceeding;

h. Reference to the procedural rules governing informal settlement;

i. Identification of the board as the presiding officer; and

j. Notification of the time period in which a party may request, when applicable, and pursuant to Iowa Code section 17A.11 and rules 645—11.8(17A,272C) and 645—11.9(17A,272C), that the presiding officer be an administrative law judge.

645—11.6(17A,272C) Legal representation. Following the filing of the statement of charges and notice of hearing, the office of the attorney general will be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board will not represent the board in that case but will represent the public interest. All other parties to a proceeding before the board will be entitled to have counsel at their own expense.

645—11.7(17A,272C) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case will be the board. The board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 645—11.24(17A). An administrative law judge may assist and advise the board at the contested case hearing.

645—11.8 Reserved.

645—11.9(17A) Presiding officer in a nondisciplinary contested case.

11.9(1) Any party in a nondisciplinary contested case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 20 days after service of a notice of hearing that identifies or describes the presiding officer as the board.

11.9(2) The board may deny the request only upon a finding that one or more of the following apply:

a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

b. An administrative law judge with the qualifications identified in subrule 11.9(4) is unavailable to hear the case within a reasonable time.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

11.9(3) The board will issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability

of an administrative law judge with the qualifications identified in subrule 11.9(4), the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

11.9(4) An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall have a J.D. degree unless waived by the agency.

11.9(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek appeal to the board in order to exhaust adequate administrative remedies. Such appeals must be filed within ten days of the date of the issuance of the challenged ruling, but no later than the time for compliance with the order or the date of hearing, whichever is first.

11.9(6) Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon appeal, the board will have the powers of and will comply with the provisions of this chapter which apply to presiding officers.

645—11.10(17A) Disqualification.

11.10(1) A presiding officer or other person will withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

11.10(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include:

a. General direction and supervision of assigned investigators;

b. Unsolicited receipt of information that is relayed to assigned investigators;

c. Review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

d. Exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case.

11.10(3) Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case will be disclosed if required by Iowa Code section 17A.17(3) and subrules 11.10(3) and 11.22(9).

11.10(4) In a situation where a presiding officer or other person knows of information that might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person will submit the relevant information for the record by affidavit including a statement of the reasons for the determination that withdrawal is unnecessary.

11.10(5) If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.10(1), the party will file a motion supported by an affidavit pursuant to Iowa Code section

17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The board will determine the matter as part of the record in the case.

645—11.11(17A) Consolidation—severance.

11.11(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

11.11(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

645—11.12(17A) Pleadings.

11.12(1) *Pleadings.* Pleadings may be required by rule, by the statement of charges, or by order of the presiding officer.

11.12(2) *Answer.* An answer will be filed within 20 days of service of the statement of charges and notice of hearing.

a. An answer will:

(1) Identify on whose behalf it is filed;

(2) Set forth the name, address and telephone number of the person filing the answer, the person on whose behalf it is filed, and the attorney, if any, representing that person;

(3) Specifically admit, deny, or otherwise answer all material allegations of the statement of charges; and

(4) Set forth any facts deemed necessary to show an affirmative defense and contain as many additional defenses as the respondent may claim.

b. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

11.12(3) *Amendments.* Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Otherwise, a party may amend a pleading only with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

645—11.13(17A) Service and filing.

11.13(1) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding will be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with its filing. Except for the original statement of charges and notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

11.13(2) *Service—how made.* Service upon a party represented by an attorney will be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

11.13(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding will be filed with the board. All documents that are required to be served upon a party will be filed simultaneously with the board.

11.13(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Board of _____ Examiners, Board Administrator, Lucas State Office Building, Des Moines, Iowa 50319; delivered to an established courier service for immediate delivery to that office; or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

11.13(5) *Proof of mailing.* Proof of mailing includes:

a. A legible United States Postal Service postmark on the envelope, or

b. A certificate of service, or

c. A notarized affidavit, or

d. A certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the _____ Board, and to the names and addresses of the parties listed below by depositing the same in (a United States Post Office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

645—11.14(17A) Discovery.

11.14(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules, by order of the presiding officer, or by agreement of the parties, time periods for compliance with discovery will be as provided in the Iowa Rules of Civil Procedure.

11.14(2) Any motion relating to discovery will allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery will be ruled upon by the presiding officer. Opposing parties will be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 11.14(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

11.14(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

645—11.15(17A,272C) Subpoenas in a contested case.

11.15(1) Subpoenas issued in a contested case may compel the attendance of witnesses at a deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at a deposition or hearing, or may be issued separately. Subpoenas shall be issued by the board administrator or designee upon written request. A request for a subpoena of mental health records must confirm the conditions described in 645—subrule 9.5(1) prior to the issuance of the subpoena.

11.15(2) A request for a subpoena will include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time, and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other real evidence requested;

f. The date, time and location for production, or inspection and copying; and

g. In the case of a subpoena request for mental health records, confirmation that the conditions described in 645—subrule 9.5(1) have been satisfied.

11.15(3) Each subpoena will contain, as applicable:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time, and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other real evidence the person is commanded to produce;

g. The date, time and location for production, or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the board administrator or designee;

j. The date of issuance; and

k. A return of service.

11.15(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the board administrator or designee will mail the subpoena to the requesting party, with a copy to the opposing party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

11.15(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena describing the legal reasons why the subpoena should be quashed or modified, and the motion may be accompanied by legal briefs or factual affidavits.

11.15(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

11.15(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board administrator, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

11.15(8) If the person contesting the subpoena is not a party to the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

645—11.16(17A) Motions.

11.16(1) Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.16(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

11.16(3) The presiding officer may schedule oral argument on any motion.

11.16(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

645—11.17(17A) Prehearing conferences.

11.17(1) Any party may request a prehearing conference. Prehearing conferences will be conducted by the board administrator, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the board administrator's own motion will be filed prior to the contested case hearing, but no later than 20 days prior to the hearing date. Written notice of the prehearing conference will be given by the board administrator to all parties. For good cause the board administrator may permit variances from this rule.

11.17(2) The parties at a prehearing conference will be prepared to discuss the following subjects, and the board administrator or administrative law judge may issue appropriate orders concerning:

a. The possibility of settlement.

b. The entry of a scheduling order to include deadlines for completion of discovery.

c. Stipulations of law or fact.

d. Stipulations on the admissibility of exhibits.

e. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the board administrator or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

f. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the board administrator or administrative law judge at the prehearing conference. Exhibits other than rebuttal exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

g. Stipulations for waiver of any provision of law.

h. Identification of matters that the parties intend to request be officially noticed.

i. Consideration of any additional matters that will expedite the hearing.

11.17(3) Prehearing conferences may be conducted by telephone unless otherwise ordered.

645—11.18(17A) Continuances.

11.18(1) Applications for continuances will be filed with the board. If the application for continuance is not contested, the board administrator will issue the appropriate order. If the application for continuance is contested, the matter will be heard by the board or may be delegated by the board to an administrative law judge.

11.18(2) A written application for a continuance will:

a. Be made at the earliest possible time and no less than five working days before the hearing. Within five working days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating, or emergency circumstances;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

11.18(3) The presiding officer may require documentation of any grounds for continuance. In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The public interest;

d. The likelihood of informal settlement;

e. The existence of an emergency;

f. Any objection;

g. Any applicable time requirements;

h. The existence of a conflict in the schedules of counsel, parties, or witnesses;

i. The timeliness of the request; and

j. Other relevant factors.

645—11.19(17A,272C) Hearing procedures.

11.19(1) The presiding officer will have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. The presiding officer may request that an administrative law judge perform any of these functions and may be assisted and advised by an administrative law judge.

11.19(2) All objections will be timely made and stated on the record.

11.19(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

11.19(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

11.19(5) The presiding officer will maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

11.19(6) Witnesses may be sequestered during the hearing.

11.19(7) The presiding officer will have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

11.19(8) The presiding officer will conduct the hearing in the following manner:

a. The presiding officer will give an opening statement briefly describing the nature of the proceedings;

b. The parties will be given an opportunity to present opening statements;

c. The parties will present their cases in the sequence determined by the presiding officer;

d. Each witness will be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

11.19(9) The board members and the administrative law judge have the right to question a witness. Examination of witnesses is subject to properly raised objections.

11.19(10) The hearing will be open to the public unless the licensee requests that the hearing be closed.

645—11.20(17A) Evidence.

11.20(1) The presiding officer will rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

11.20(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.20(3) Evidence in the proceeding will be confined to the issues as to which the parties received notice prior to the hearing unless a party waives the party's right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

11.20(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence will be appropriately marked and be made part of the record.

11.20(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection will be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

11.20(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it will be marked as part of an offer of proof and inserted in the record.

11.20(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence that may or would be inadmissible in a jury trial.

645—11.21(17A) Default.

11.21(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

11.21(2) Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

11.21(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated. A motion to vacate must state all facts relied upon by the moving party that establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

11.21(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

11.21(5) Properly substantiated and timely filed motions to vacate will be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties will have ten days to respond to a motion to vacate. Adverse parties will be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

11.21(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure.

11.21(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 645—11.24(17A).

11.21(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer will issue another notice of hearing and the contested case will proceed accordingly.

11.21(9) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 645—11.26(17A).

645—11.22(17A) Ex parte communication.

11.22(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the statement of charges and notice of hearing, there will be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

11.22(2) Prohibitions on ex parte communications commence with the issuance of the statement of charges and notice of hearing in a contested case and continue for as long as the case is pending before the board.

11.22(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

11.22(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications will be provided in compliance with rule 645—11.6(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

11.22(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

11.22(6) The board administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a final decision under any provision of law and they comply with this rule.

11.22(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and will notify other parties when seeking to continue hearings or other deadlines.

11.22(8) A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication will be submitted for inclusion in the record under seal by protective order.

b. If the presiding officer determines that disqualification is not warranted, such documents will be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

11.22(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

11.22(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by board personnel will be reported to the board and its board administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

645—11.23(17A) Recording costs. Upon request, the board will provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record will be paid by the requesting party.

645—11.24(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the board administrator or an administrative law judge. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first. In determining whether to review an interlocutory order, the board will consider:

1. The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and
2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

645—11.25(17A) Applications for rehearing.

11.25(1) *Who may file.* Any party to a contested case proceeding may file an application for rehearing from a final order. The filing of an application for rehearing is not necessary to exhaust administrative remedies for purposes of judicial review.

11.25(2) *Content of application.* The application for rehearing will state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether

the applicant desires reconsideration of all or part of the agency decision on the existing record and whether the applicant requests an opportunity to submit additional evidence.

11.25(3) *Additional evidence.* A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceedings, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding. A written request to present additional evidence must be filed with the application for rehearing or by a nonappealing party within 14 days of service of the notice of appeal.

11.25(4) *Filing deadline.* The application will be filed with the board within 20 days after issuance of the final decision.

11.25(5) *Notice to other parties.* A copy of the application will be timely mailed by the applicant to all parties of record not joining therein.

11.25(6) *Disposition.* Any application for a rehearing will be deemed denied unless the agency grants the application within 20 days after its filing.

11.25(7) *Only remedy.* Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

11.25(8) *Proceedings.* If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

645—11.26(17A) Stays of agency actions.

11.26(1) *When available.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy.

11.26(2) *When granted.* In determining whether to grant a stay, the board will consider the factors listed in Iowa Code section 17A.19(5)*"c."*

11.26(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

645—11.27(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

645—11.28(17A) Emergency adjudicative proceedings.

11.28(1) *Emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order.

11.28(2) Before issuing an emergency adjudicative order, the board will consider factors including but not limited to the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances that pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

11.28(3) *Issuance of order.*

a. An emergency adjudicative order will contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action. The order is a public record.

b. The written emergency adjudicative order will be immediately delivered to the person who is required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency;

(3) Certified mail to the last address on file with the agency; or

(4) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the board will select the procedure for providing written notice that best ensures prompt, reliable delivery.

11.28(4) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order is issued, the board will make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

11.28(5) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

a. Issuance of a written emergency adjudicative order will include notification of the date on which board proceedings are scheduled for completion.

b. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the person who is required to comply with the order is the party requesting the continuance.

645—11.29(17A) Appeal. Any appeal to district court from a decision in a contested case will be taken within 30 days from the date of issuance of the decision by the board pursuant to Iowa Code section 17A.19.

645—11.30(272C) Publication of decisions. Final decisions of the board in a contested case will be transmitted to the appropriate association, the news media, and the employer.

645—11.31(272C) Reinstatement.

11.31(1) Any person whose license to practice has been revoked or suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the license is permanently revoked.

11.31(2) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

11.31(3) All proceedings for reinstatement will be initiated by the respondent, who will file with the board an application for reinstatement of the license. Such application will be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement will be subject to the same rules of procedure as other cases before the board.

11.31(4) An application for reinstatement will allege facts that, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts is on the respondent.

11.31(5) An order of reinstatement will be based upon a decision that incorporates findings of facts and conclusions of law. The order will be published as provided for in this chapter.

645—11.32(17A,272C) License denial.

11.32(1) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing will specifically delineate the facts to be contested at the hearing.

11.32(2) All hearings held pursuant to this rule will be held pursuant to the process outlined in this chapter.

645—11.33(17A,272C) Informal settlement.

11.33(1) *Informal settlement—parties.* A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by an assistant attorney general, the respondent, or the board. The board shall designate a board member with authority to negotiate on behalf of the board. The full board will not be involved in negotiations until the presentation of a final, written, signed informal settlement to the full board for approval.

11.33(2) *Informal settlement—waiver of notice and opportunity to be heard.* Consent to negotiation by a respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code chapter 17A during informal settlement negotiation, and the assistant attorney general is thereafter authorized to discuss informal settlement with the board's designee until that consent is expressly withdrawn.

11.33(3) *Informal settlement—board approval.* All informal settlements are subject to approval of a majority of the board. No informal settlement will be presented to the board for approval except in final, written form executed by the respondent. If the board fails to approve the informal settlement, it will be of no force or effect to either party.

11.33(4) *Informal settlement—disqualification of designee.* A board member who is designated to act in negotiation of settlement is not disqualified from participating in the contested case should the case proceed to hearing.

11.33(5) *Voluntary surrender.* The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted in connection with a disciplinary proceeding, has the same force and effect as an order of revocation.

These rules are intended to implement Iowa Code chapters 17A and 272C.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8081C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to discipline

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 13, "Discipline," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 21.7 and chapter 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 21.7 and chapter 272C and Executive Order 10.

Purpose and Summary

This rulemaking provides protection to Iowans by publicly defining required professional standards for the 18 boards represented in this chapter. This includes the following boards: Hearing Aid Specialist Board, Speech Pathology and Audiology Board, Nursing Home Administrators Board, Optometry Board, Sign Language Interpreters and Transliterators Board, Barbering and Cosmetology Arts and Sciences Board, Physical and Occupational Therapy Board, Athletic Training Board, Mortuary Science Board, Physician Assistants Board, Chiropractic Board, Behavioral Science Board, Psychology Board, Social Work Board, Podiatry Board, Massage Therapy Board, Dietetics Board, and Respiratory Care and Polysomnography Board. This is important to both the public and the licensee because the rulemaking creates a shared understanding of what is and is not appropriate for certain types of licensed individuals. When professional standards are not met, it can subject a licensee to discipline against a licensee's license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7305C**. Public hearings were held on February 13 and 14, 2024, at 9 a.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received.

A change from the Notice has been made to update subrule 13.2(29) to reflect changes to the name of the Iowa Professional Health Program. Clerical changes have also been made from the Notice and a change has been made to update "the department of public health" to be "the department of inspections, appeals, and licensing" in paragraph 13.2(1)"b."

Adoption of Rulemaking

This rulemaking was adopted by the following boards on the dates stated:

- Board of Hearing Aid Specialists: February 28, 2024.
- Board of Sign Language Interpreters and Transliterators: February 29, 2024.
- Board of Psychology: March 4, 2024.
- Board of Massage Therapy: March 5, 2024.
- Board of Mortuary Science: March 7, 2024.
- Board of Athletic Training: March 12, 2024.
- Board of Behavioral Science: March 14, 2024.
- Board of Dietetics: March 22, 2024.
- Board of Nursing Home Administrators: April 3, 2024.
- Board of Optometry: April 4, 2024.
- Board of Chiropractic: April 10, 2024.
- Board of Physical and Occupational Therapy: April 11, 2024.
- Board of Podiatry: April 12, 2024.
- Board of Physician Assistants: April 24, 2024.
- Board of Speech Pathology and Audiology: May 3, 2024.
- Board of Social Work: May 13, 2024.
- Board of Respiratory Care and Polysomnography: May 16, 2024.
- Board of Barbering and Cosmetology Arts and Sciences: May 20, 2024.

Fiscal Impact

This rulemaking will have no fiscal impact to the State of Iowa. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

Jobs Impact

After analysis and review of this rulemaking, there will be a positive impact on jobs in Iowa since the rulemaking reduces the regulatory burdens on Iowans and allows Iowans to more freely engage in individual and business pursuits.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
DISCIPLINE

645—13.1(272C) Definitions.

"Board" means a professional licensing board established pursuant to Iowa Code chapter 147.

"Licensee" means a person licensed under Iowa Code chapter 147.

"Licensee discipline" means the same as defined in Iowa Code section 272C.1.

645—13.2(147,272C) Grounds for discipline. A board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in Iowa Code section 147.55:

13.2(1) Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

b. Attempting to file or filing with the board or the department of inspections, appeals, and licensing any false or forged diploma, certificate, affidavit, identification or qualification in making an application for a license in this state.

13.2(2) Professional incompetence. Professional incompetence includes but is not limited to:

a. A substantial lack of knowledge or ability to perform professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other licensees in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care that is ordinarily exercised by the average licensee acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensee in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

13.2(3) Practice outside the scope of the profession.

13.2(4) Habitual intoxication or addiction to the use of drugs, including:

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs that may impair a licensee's ability to practice with reasonable skill or safety.

13.2(5) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

13.2(6) Falsification, alteration or destruction of client or patient records with the intent to deceive.

13.2(7) Acceptance of any fee by fraud or misrepresentation.

13.2(8) Negligence by the licensee in the practice of the profession, which includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions that impair the ability to safely and skillfully practice the profession.

13.2(9) Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and nolo contendere pleas, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.

13.2(10) Violation of a regulation, rule, or law of this state, another state, or the United States that relates to the practice of the profession.

13.2(11) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state or another state, territory or country; or failure of the licensee to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

13.2(12) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice in another state, district, territory or country.

13.2(13) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

13.2(14) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

13.2(15) Engaging in any conduct that subverts or attempts to subvert a board investigation.

13.2(16) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

13.2(17) Failure to respond within 30 days of receipt of communication from the board that was sent by registered or certified mail.

13.2(18) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

13.2(19) Failure to pay costs assessed in any disciplinary action.

13.2(20) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

13.2(21) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

13.2(22) Knowingly aiding, assisting, or advising a person to unlawfully practice the profession.

13.2(23) Failure to report a change of name or address within 30 days after it occurs.

13.2(24) Representing oneself as a licensee when one's license has been suspended or revoked, or when one's license is on inactive status.

13.2(25) Permitting another person to use the licensee's license for any purpose.

13.2(26) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license to practice the profession.

13.2(27) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) that constitutes unethical conduct may include but is not limited to the following:

a. Verbally or physically abusing a patient or client.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

13.2(28) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

13.2(29) Violation of the terms of an initial agreement with the Iowa professional health committee or violation of the terms of an impaired practitioner recovery contract with the Iowa professional health committee.

645—13.3(272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions as defined in Iowa Code section 272C.3 and as follows:

1. Order a physical or mental evaluation or order alcohol and drug screening within a time specified by the board.
2. Such other sanctions allowed by law.

645—13.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating facts or other countervailing considerations.
4. The number of prior violations or complaints.
5. The seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code sections 21.7, 272C.4, 272C.5, and 272C.6.

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[Published 6/26/24]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8082C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to use of criminal convictions in eligibility determinations and initial licensing decisions

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 14, "Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 272C and Executive Order 10.

Purpose and Summary

This rulemaking clarifies the pathway to potential licensure for individuals with criminal convictions. The requirements set out in this rulemaking ensure a streamlined pathway while protecting the public through criteria that allow a board to review the complete criminal record, evidence of rehabilitation, and other information when making a determination on eligibility for licensure. This rulemaking implements 2020 Iowa Acts, House File 2627.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7311C**. Public hearings were held on February 13 and 14, 2024, at 9 a.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the following boards on the dates stated:

- Board of Hearing Aid Specialists: February 28, 2024.
- Board of Sign Language Interpreters and Transliterators: February 29, 2024.
- Board of Psychology: March 4, 2024.
- Board of Massage Therapy: March 5, 2024.
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- Board of Social Work: May 13, 2024.
- Board of Respiratory Care and Polysomnography: May 16, 2024.
- Board of Barbering and Cosmetology Arts and Sciences: May 20, 2024.

Fiscal Impact

This rulemaking will have no fiscal impact to the State of Iowa. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

Jobs Impact

After analysis and review of this rulemaking, there will be a positive impact on jobs in Iowa since the rulemaking reduces the regulatory burdens on Iowans and allows Iowans to more freely engage in individual and business pursuits.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14
USE OF CRIMINAL CONVICTIONS IN ELIGIBILITY DETERMINATIONS AND INITIAL LICENSING DECISIONS

645—14.1(272C) Definitions.

"Complete criminal record" includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

"Conviction" means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. "Conviction" includes Alford pleas and pleas of nolo contendere.

"Disqualifying offense" means a conviction directly related to the duties and responsibilities of the profession pursuant to Iowa Code section 272C.1(8).

"License" means any license, registration, or permit issued by the board.

645—14.2(272C) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to rule 645—14.3(272C), the applicant's convictions will be reviewed when the board receives a completed license application.

14.2(1) An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

14.2(2) An applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

14.2(3) An applicant must submit all evidence of rehabilitation that the applicant wishes to be considered by the board.

14.2(4) The board may deny a license if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

14.2(5) An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

14.2(6) Any application fees paid will not be refunded if the license is denied.

645—14.3(272C) Eligibility determination.

14.3(1) An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual's convictions are disqualifying offenses that would render the individual ineligible for licensure.

14.3(2) To petition the board for an eligibility determination of whether one or more of the petitioner's convictions are disqualifying offenses, a petitioner shall submit all of the following:

a. A completed petition for eligibility determination form;

b. The complete criminal record for each of the petitioner's convictions;

c. A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should find the petitioner rehabilitated;

d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and

e. Payment of a nonrefundable fee of $25.

645—14.4(272C) Appeal. A petitioner deemed ineligible or an applicant denied a license due to a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board's rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board's written decision will become a final order.

14.4(1) An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

14.4(2) The contested case hearing shall be closed to the public, and the board's review of a proposed decision shall occur in closed session.

14.4(3) The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

14.4(4) A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

645—14.5(272C) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

These rules are intended to implement Iowa Code chapter 272C.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

ARC 8083C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to licensure by verification and of applicants with work experience

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 19, "Licensure by Verification and of Applicants with Work Experience," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 272C; 2020 Iowa Acts, House File 2627; and Executive Order 10.

Purpose and Summary

This chapter provides an alternative pathway to licensure. This alternative option streamlines the process for individuals who are licensed in another state to be licensed in Iowa. The requirements set out in this chapter ensure licensees have proper skills to practice. The chapter provides for certain criteria to be assessed, including prior discipline, proof of residency and work experience, in order to protect the public.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7310C**. Public hearings were held on February 13 and 14, 2024, at 9 a.m. at 6200 Park Avenue, Des Moines, Iowa, and virtually. No one attended the public hearings. No public comments were received.

Nonsubstantive changes from the Notice have been made, and the chapter implementation sentence has been updated to reference the Iowa Code chapter instead of the House File since the legislation has been codified.

Adoption of Rulemaking

This rulemaking was adopted by the following boards on the dates stated:

- Board of Hearing Aid Specialists: February 28, 2024.
- Board of Sign Language Interpreters and Transliterators: February 29, 2024.
- Board of Psychology: March 4, 2024.
- Board of Massage Therapy: March 5, 2024.
- Board of Mortuary Science: March 7, 2024.
- Board of Athletic Training: March 12, 2024.
- Board of Behavioral Science: March 14, 2024.
- Board of Dietetics: March 22, 2024.
- Board of Nursing Home Administrators: April 3, 2024.
- Board of Optometry: April 4, 2024.
- Board of Chiropractic: April 10, 2024.
- Board of Physical and Occupational Therapy: April 11, 2024.
- Board of Podiatry: April 12, 2024.
- Board of Physician Assistants: April 24, 2024.
- Board of Speech Pathology and Audiology: May 3, 2024.

- Board of Social Work: May 13, 2024.
- Board of Respiratory Care and Polysomnography: May 16, 2024.
- Board of Barbering and Cosmetology Arts and Sciences: May 20, 2024.

Fiscal Impact

This rulemaking will have no fiscal impact to the State of Iowa. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

Jobs Impact

After analysis and review of this rulemaking, there will be a positive impact on jobs in Iowa since the rulemaking reduces the regulatory burdens on Iowans and allows Iowans to more freely engage in individual and business pursuits.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 19 and adopt the following **new** chapter in lieu thereof:

CHAPTER 19
LICENSURE BY VERIFICATION AND OF APPLICANTS WITH WORK EXPERIENCE

645—19.1(272C) Licensure by verification. Licensure by verification is available in accordance with the following:

19.1(1) *Eligibility.* A person may seek licensure by verification if the person is licensed in at least one other jurisdiction that has a scope of practice substantially similar to that of Iowa.

19.1(2) *Board application.* The applicant must submit the following:

a. A completed application.

b. Payment of the application fee.

c. Completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check, if required for initial licensure by the board.

d. An attestation that the applicant's license in that jurisdiction complies with the requirements of Iowa Code section 272C.12.

e. A copy of the complete criminal record if the applicant has a criminal history.

f. A copy of the relevant disciplinary documents if another jurisdiction has taken disciplinary action against the applicant.

g. A written statement from the applicant detailing the scope of practice in the other state.

h. Copies of relevant laws setting forth the scope of practice in the other state.

19.1(3) *Applicants with prior discipline.* If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person who has had a license revoked, or who has voluntarily surrendered a license, in another jurisdiction is ineligible for licensure by verification.

19.1(4) *Applicants with pending licensing complaints or investigations.* If an applicant is currently the subject of a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

19.1(5) *Compact privileges.* A person who has a privilege to practice in Iowa by virtue of an interstate licensure compact is ineligible for licensure by verification. Licenses issued pursuant to this rule do not grant privileges to practice in any other jurisdiction pursuant to any interstate licensure compact.

645—19.2(272C) Applicants with work experience in jurisdictions without licensure requirements.

19.2(1) *Work experience.* An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a professional license to practice in the profession may be considered to have met any educational and training requirements if the person has at least three years of work experience with a scope of practice substantially similar to that of the profession for which a license in Iowa is sought. The three years of work experience must be within the four years preceding the date of application for initial licensure. The applicant must satisfy all other requirements, including passing any required examinations, to receive a license.

19.2(2) *Required documentation.* An applicant who wishes to substitute work experience in lieu of satisfying applicable education or training requirements shall carry the burden of proving all of the following by submitting relevant documents as part of a completed license application:

a. Proof of Iowa residency.

b. Proof of three or more years of work experience within the four years preceding the application for licensure.

c. Proof that the work experience was in a practice with a scope of practice substantially similar to that for which the license is sought in Iowa.

These rules are intended to implement Iowa Code chapter 272C.

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[Published 6/26/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/26/24.

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER ELEVEN

WHEREAS, Article IV, section 9 of the Constitution of the State of Iowa provides that the Governor shall ensure the laws are faithfully executed; and

WHEREAS, executive orders should be reviewed periodically to determine which executive orders should be amended, continue as necessary, or should be rescinded; and

WHEREAS, some executive orders should be rescinded because they have outlived their original purpose or usefulness because the agencies, councils, and/or task forces have since been disbanded, no longer exist, completed their work, are no longer active, and/or their responsibilities have merged or been subsumed by other agencies, councils and/or task forces; and

WHEREAS, some executive orders should be rescinded because the duties, entities, programs, and/or responsibilities created by the executive orders have been substantially or wholly codified by federal and/or state law; and

WHEREAS, some executive orders should be rescinded because the duties, entities, programs, and/or responsibilities created by the executive orders are no longer desired or are outdated; and

WHEREAS, to ensure an efficient and effective state government, the final disposition of executive orders that are amended, expired, rescinded, or superseded should be clearly ascertainable; and

WHEREAS, all executive orders remain in effect unless they expire on their own terms, are rescinded, or superseded; and

NOW, THEREFORE, I, KIMBERLY K. REYNOLDS, Governor of the State of Iowa, by virtue of the power and authority vested in me by the Constitution and statutes of the State of Iowa, do hereby **ORDER** and **DIRECT** that, unless otherwise already amended or rescinded in accordance herewith, the following Executive Orders be amended or rescinded:

1. Executive Order Number 1, dated May 14, 1964, issued by Governor Harold E. Hughes, shall be rescinded because it has been superseded by state and federal law.

2. Executive Order Number 2, dated October 7, 1964[1], issued by Governor Harold E. Hughes, shall be rescinded because the event occurred.

3. Executive Order Number 3, dated December 17, 1965, issued by Governor Harold E. Hughes, shall be rescinded because the legislature has enacted the Uniform Criminal Extradition Act.

4. Executive Order Number 4, dated June 2, 1966, issued by Governor Harold E. Hughes, shall be rescinded because the event occurred and the legislature has enacted a compact for education in Iowa Code section 272B.1.

[1] The date reflected in the publication maintained by the Legislative Services Agency states September 7, 1964; however the date on the executive order is October 7, 1964.

5. Executive Order Number 5, dated on or about June 30, 1966[2], issued by Governor Harold E. Hughes, shall be rescinded because the event occurred.

6. Executive Order Number 6, dated November 7, 1966, issued by Governor Harold E. Hughes, shall be rescinded because the Office of the State Comptroller no longer exists.

7. Executive Order Number 8, dated August 24, 1967, issued by Governor Harold E. Hughes, shall be rescinded because the Office of Planning and Programming within the Office of the State Comptroller no longer exists.

8. Executive Order Number 10, dated February 19, 1968, issued by Governor Harold E. Hughes, shall be rescinded because the Department of Social Services no longer exists.

9. Executive Order Number 11, dated February 19, 1968[3], issued by Governor Harold E. Hughes, shall be rescinded because the information was submitted and the Office for Planning and Programming no longer exists.

10. Executive Order Number 1, dated August 20, 1969, issued by Governor Robert D. Ray, shall be rescinded because the Governor's Economy Committee submitted its final report and recommendation to the legislature in 1969.

11. Executive Order Number 2, dated November 12, 1970, issued by Governor Robert D. Ray, shall be rescinded because it is no longer needed as federal law now heavily regulates vehicle air pollutants.

12. Executive Order Number 3, dated February 5, 1971, issued by Governor Robert D. Ray, shall be rescinded because the Governor's Program and Council for Rural Community Development no longer exists.

13. Executive Order Number 4, dated February 26, 1971, issued by Governor Robert D. Ray, shall be rescinded because the Drug Abuse Authority no longer exists.

14. Executive Order Number 5, dated March 27, 1971, issued by Governor Robert D. Ray, shall be rescinded because it has been superseded by state and federal law.

15. Executive Order Number 6, dated January 17, 1972, issued by Governor Robert D. Ray, shall be rescinded because it is outdated, and the duties of the State Print Shop are now organized under the Department of Administrative Services in Chapter 8A.341 *et. seq*.

16. Executive Order Number 7, dated March 28, 1972, issued by Governor Robert D. Ray, shall be rescinded because the Drug Abuse Authority no longer exists.

17. Executive Order Number 15, dated April 2, 1973, issued by Governor Robert D. Ray, shall be rescinded because the requirements are now mandated in state and federal law.

18. Executive Order Number 17, dated November 12, 1973, issued by Governor Robert D. Ray, shall be rescinded because it is no longer necessary given advancements in technology related to energy-conservation appliances and equipment, including HVAC systems, subsequent conservation standards established by federal law, and the prohibition on state vehicles from exceeding fifty miles per hour was superseded by Iowa Code chapter 321.

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[2] The date reflected in the publication maintained by the Legislative Services Agency states June 29, 1966; however, the date on the executive order is June 30, 1966.

[3] The date reflected in the publication maintained by the Legislative Services Agency states February 19, 1969; however, the date on the executive order is February 19, 1968.

19. Executive Order Number 19, dated February 28, 1974, issued by Governor Robert D. Ray, shall be rescinded as it is superseded by law and speed limits are set by Iowa Code chapter 321.

20. Executive Order Number 24, dated June 30, 1977, issued by Governor Robert D. Ray, shall be rescinded because following the merger the Department of Substance Abuse no longer exists and the functions are now codified within the Department of Heath and Human Services.

21. Executive Order Number 27, dated September 14, 1977, issued by Governor Robert D. Ray, shall be rescinded because the Task Force on Government Ethics no longer exists, and the legislature has enacted Iowa Code chapter 68B and created in section 68B.32 an independent Ethics and Campaign Disclosure Board to assist government employees and agencies.

22. Executive Order Number 28, dated November 5, 1977, issued by Governor Robert D. Ray, shall be rescinded because the Iowa Paperwork Task Force no longer exists and submitted its final report in 1978.

23. Executive Order Number 30, dated December 20, 1977, issued by Governor Robert D. Ray, shall be rescinded because the implementation of funding procedures occurred.

24. Executive Order Number 42, dated March 24, 1982, issued by Governor Robert D. Ray, shall be rescinded because the Forms Control Committee no longer exists.

25. Executive Order Number 45, dated August 6, 1982, issued by Governor Robert D. Ray, shall be rescinded because it is outdated and Iowa Code section 352.13 outlining the responsibilities for the Interagency Resource Council was later repealed.

26. Executive Order Number 46, dated December 21, 1982, issued by Governor Robert D. Ray, shall be rescinded because it is outdated and superseded by state and federal law.

27. Executive Order Number 47, dated December 29, 1982, issued by Governor Robert D. Ray, shall be rescinded because the State Job Training Coordinating Council filed its last report in 1990 and is no longer active.

28. Executive Order Number 51, dated January 13, 1983, issued by Governor Robert D. Ray, shall be rescinded because the Iowa High Technology Commission submitted its final report in 1983, has completed its work and is no longer active.

29. Executive Order Number 2, dated July 1, 1983, issued by Governor Terry E. Branstad, shall be rescinded because the Committee on Widowed Persons has completed its work and is no longer active.

30. Executive Order Number 3, dated July 1, 1983, issued by Governor Terry E. Branstad, shall be rescinded because the Iowa High Technology Commission is no longer active.

31. Executive Order Number 7, dated December 16, 1983, issued by Governor Terry E. Branstad, shall be rescinded because it is no longer needed as the Vietnam Veterans Memorial was completed on May 28, 1984.

32. Executive Order Number 11, dated March 30, 1984, issued by Governor Terry E. Branstad, shall be rescinded because the requirements are mandated by state and federal law.

33. Executive Order Number 15, dated January 29, 1985, issued by Governor Terry E. Branstad, shall be rescinded because the Iowa Economic Development Coordinating Committee is no longer active.

34. Executive Order Number 17, dated May 16, 1985, issued by Governor Terry E. Branstad, shall be rescinded because it is outdated, and the Iowa Partnership for Economic Progress is inactive and has not met since 2018.

35. Executive Order Number 25, dated November 17, 1986, issued by Governor Terry E. Branstad, shall be rescinded because it is no longer needed as an alternate allocation method was enacted by the legislature in Iowa Code chapters 7C and 16 and the relevant administrative rules.

36. Executive Order Number 27, dated March 3, 1987, issued by Governor Terry E. Branstad, shall be rescinded because the Interagency Council has completed its work and is no longer active.

37. Executive Order Number 32, dated July 7, 1987, issued by Governor Terry E. Branstad, shall be rescinded because the Governor's Alliance on Substance Abuse has been formally codified within the Iowa Department of Public Safety as the Office of Drug Control Policy.

38. Executive Order Number 36, dated February 13, 1989, issued by Governor Terry E. Branstad, shall be rescinded because the specific types of biodegradable products outlined in the order are outdated based on technological advancements and market changes to biodegradable disposable products.

39. Executive Order Number 40, dated November 1, 1991, issued by Governor Terry E. Branstad, shall be rescinded because the Iowa Drug and Violent Crime Policy Board completed its work and has been disbanded.

40. Executive Order Number 48, dated February 14, 1994, issued by Governor Terry E. Branstad, shall be rescinded because the Iowa Commission for National and Community Service is no longer needed as the General Assembly created the Iowa Commission on Volunteer Service (2011 Iowa Acts, chapter 118, HF 590).

41. Executive Order Number 58, dated July 1, 1996, issued by Governor Terry E. Branstad, shall be rescinded because it is outdated and unnecessary as a result of amendments codified in Iowa Code chapter 84A.

42. Executive Order Number 1, dated January 25, 1999, issued by Governor Thomas J. Vilsack, shall be rescinded due to the creation of the State Workforce Development Board in Iowa Code chapter 84A.

43. Executive Order Number 4, dated February 22, 1999, issued by Governor Thomas J. Vilsack, shall be rescinded as it is no longer needed because the 21st Century Workforce Council published its report in 2000.

44. Executive Order Number 8, dated September 14, 1999, issued by Governor Thomas J. Vilsack, shall be rescinded because it is no longer necessary as the mandate was completed and the legislature enacted Iowa Code section 17A.7(2).

45. Executive Order Number 16, dated March 31, 2000, issued by Governor Thomas J. Vilsack, shall be rescinded because it is no longer needed as the Iowa Food Policy Council dissolved after its final report was submitted in 2004.

46. Executive Order Number 22, dated October 3, 2001, issued by Governor Thomas J. Vilsack, shall be rescinded because the National Guard mission

was completed.

47. Executive Order Number 23, dated October 12, 2001, issued by Governor Thomas J. Vilsack, shall be rescinded because the National Guard mission was completed.

48. Executive Order Number 39, dated January 11, 2005, issued by Governor Thomas J. Vilsack, shall be rescinded as it is no longer needed and has been superseded by statute with the program being codified in sections 15.439 and 15.440 of the Iowa Code (formerly sections 303.3C and 303.3D).

49. Executive Order Number 47, dated February 7, 2006, issued by Governor Thomas J. Vilsack, shall be rescinded because the Keep Iowa Clean and Beautiful Task Force submitted its report on June 30, 2006, has been disbanded, and is no longer needed.

50. Executive Order Number 49, dated August 4, 2006, issued by Governor Thomas J. Vilsack, shall be rescinded because the Targeted Small Business Task Force submitted its final report in December of 2006 and is no longer needed.

51. Executive Order Number 51, dated December 8, 2006, issued by Governor Thomas J. Vilsack, shall be rescinded as it is no longer needed, and the Targeted Small Business Advisory Council has not met since 2013.

52. Executive Order Number 8, dated July 16, 2008, issued by Governor Chester J. Culver, shall be rescinded because the Independent Contractor Reform Task Force submitted its final report on December 17, 2008, and is no longer needed.

53. Executive Order Number 13, dated May 26, 2009, issued by Governor Chester J. Culver, shall be rescinded to allow for the Department of Administrative Services to more efficiently process state travel claims and take advantage of technological innovations through upgraded state computer systems in an effort to reduce process times, provide employee reimbursement more expediently, and lower costs.

54. Executive Order Number 16, dated August 20, 2009, issued by Governor Chester J. Culver, shall be rescinded because the Green Jobs Task Force completed its work and submitted their final report on October 1, 2009, and is no longer needed.

55. Executive Order Number 25, dated August 6, 2010, issued by Governor Chester J. Culver, shall be rescinded because the Lake Delhi Task Force has completed its work with the dam being rebuilt and their final report being submitted on December 1, 2010.

56. Executive Order Number 71, dated March 7, 2011, issued by Governor Terry E. Branstad, shall be rescinded because it is no longer needed and has been codified in Iowa Code section 17A.4B.

57. Executive Order Number 72, dated April 4, 2011, issued by Governor Terry E. Branstad, shall be rescinded because the administrative rule was rescinded pursuant to Iowa Code section 17A.4(7) upon issuance of the order.

58. Executive Order Number 75, dated October 24, 2011, issued by Governor Terry E. Branstad, shall be rescinded because the Iowa Partnership for Economic Progress has not met since 2018, and has fulfilled its intended purpose.

59. Executive Order Number 77, dated May 11, 2012, issued by Governor Terry

E. Branstad, shall be rescinded because the administrative rule was rescinded pursuant to Iowa Code section 17A.4(7) upon issuance of the order.

60. Executive Order Number 88, dated August 29, 2016, issued by Governor Terry E. Branstad, shall be rescinded because the Future Ready Iowa Initiate and the Future Ready Iowa Alliance have completed their work.

61. Executive Order Number 1, dated January 29, 2018, issued by Governor Kim K. Reynolds, shall be ***amended*** to reflect that the definition of "work-based learning" means opportunities and experiences that include but are not limited to sustained project-based learning in partnership with an employer, simulated work experiences aligned with industry-recognized credentials, high-quality pre-apprenticeships aligned to an apprenticeship, student learner programs, internships, and apprenticeships. (Iowa Code section 256.125, as amended by 2024 Iowa Acts, Senate File 2411, section 17). The Iowa Clearinghouse for Work-Based Learning will continue to include career awareness and exploration opportunities, including guest speakers, career fairs, job shadow days, and other project-based learning opportunities that are not in partnership with an employer.

Executive Order Number 1 is further ***amended*** to provide that the Iowa Clearinghouse for Work-Based Learning shall operate as a sole venture of the Iowa Department of Education in partnership with area education agencies, local school districts, community colleges, business and industry partners, and other community organizations.

All other provisions of Executive Order Number 1 shall remain in effect.

62. Executive Order Number 6, dated June 18, 2019[4], issued by Governor Kim K. Reynolds, shall be rescinded because the Governor's Economic Recovery Advisory Board has been inactive since it submitted its final report on February 2, 2021.

63. Executive Order Number 9, dated June 22, 2021, issued by Governor Kim K. Reynolds, shall be rescinded as the Carbon Sequestration Task Force has been inactive since submitting its final report in August of 2021.

This executive order shall not be interpreted to reinstate any executive order previously rescinded by any of the above executive orders. The Legislative Services Agency ("LSA") for the Iowa Legislature is requested to update their LSA publications to reflect the amendments and/or rescissions contained herein.



IN TESTIMONY WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND CAUSED THE GREAT SEAL OF THE STATE OF IOWA TO BE AFFIXED AT DES MOINES, IOWA THIS SIXTH DAY OF JUNE IN THE YEAR OF OUR LORD TWO THOUSAND TWENTY- FOUR.

KIMBERLY K. REYNOLDS
GOVERNOR

ATTEST:

PAUL D. PATE
SECRETARY OF STATE

[4] Executive Order Number 9 was signed and issued on June 18, 2020; however, the document contains a typographical error incorrectly indicating that it was signed in 2019 instead of 2020.

TRANSITION OF DOCUMENT PROCESSING SOFTWARE FOR RULE PUBLICATIONS

The Administrative Code Editor provides this informational notice that beginning with the July 10, 2024, issue of the Iowa Administrative Bulletin and the Iowa Administrative Code Supplement, the Legislative Services Agency is transitioning to new document processing software for these publications. Nonsubstantive changes to the style and format of these publications, as well as the Iowa Administrative Code, can be expected as a result of this transition. While the software has been tested extensively, errors resulting from this transition may still occur. To report any errors that may result from this transition, please contact the Publications Editing Office at AdminCode@legis.iowa.gov or 515.281.3355.