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.

JACK EWING, Administrative Code Editor Telephone: 515.281.6048 Email: Jack.Ewing@legis.iowa.gov
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
Jan. 3 '24	Jan. 24 '24	Feb. 13 '24	Feb. 28 '24	Mar. 1 '24	Mar. 20 '24	April 24 '24	Jul. 22 '24
Jan. 19	Feb. 7	Feb. 27	Mar. 13	Mar. 15	April 3	May 8	Aug. 5
Feb. 2	Feb. 21	Mar. 12	Mar. 27	Mar. 29	April 17	May 22	Aug. 19
Feb. 16	Mar. 6	Mar. 26	April 10	April 12	May 1	June 5	Sep. 2
Mar. 1	Mar. 20	April 9	April 24	April 26	May 15	June 19	Sep. 16
Mar. 15	April 3	April 23	May 8	**May 8**	May 29	Jul. 3	Sep. 30
Mar. 29	April 17	May 7	May 22	May 24	June 12	Jul. 17	Oct. 14
April 12	May 1	May 21	June 5	June 7	June 26	Jul. 31	Oct. 28
April 26	May 15	June 4	June 19	**June 19**	Jul. 10	Aug. 14	Nov. 11
May 8	May 29	June 18	Jul. 3	Jul. 5	Jul. 24	Aug. 28	Nov. 25
May 24	June 12	Jul. 2	Jul. 17	Jul. 19	Aug. 7	Sep. 11	Dec. 9
June 7	June 26	Jul. 16	Jul. 31	Aug. 2	Aug. 21	Sep. 25	Dec. 23
June 19	Jul. 10	Jul. 30	Aug. 14	**Aug. 14**	Sep. 4	Oct. 9	Jan. 6 '25
Jul. 5	Jul. 24	Aug. 13	Aug. 28	Aug. 30	Sep. 18	Oct. 23	Jan. 20 '25
Jul. 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	April 14 '25
Oct. 11	Oct. 30	Nov. 19	Dec. 4	**Dec. 4**	Dec. 25	Jan. 29 '25	April 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	April 9 '25	Jul. 7 '25
Dec. 20 '23	Jan. 10	Jan. 30	Feb. 14	Feb. 16	Mar. 6	April 10	Jul. 8

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
8	**Friday, September 27, 2024**	**October 16, 2024**
9	**Friday, October 11, 2024**	**October 30, 2024**
10	**Wednesday, October 23, 2024**	**November 13, 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****

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Pesticides, ch 45 IAB 9/18/24 **Regulatory Analysis**	Conference Room 2N Wallace State Office Building Des Moines, Iowa	October 10, 2024 8:30 a.m.
Hemp, rescind ch 96 IAB 9/18/24 **Regulatory Analysis**	Conference Room 2N Wallace State Office Building Des Moines, Iowa	October 10, 2024 9:30 a.m.
Motor fuel and antifreeze tests and standards, 85.20 IAB 9/18/24 **Regulatory Analysis**	Conference Room 2N Wallace State Office Building Des Moines, Iowa	October 10, 2024 11:30 a.m.
Renewable fuel infrastructure program, adopt ch 13, rescind chs 14 to 16 IAB 9/18/24 **Regulatory Analysis**	Conference Room 2N Wallace State Office Building Des Moines, Iowa	October 10, 2024 10:30 a.m.

ALCOHOLIC BEVERAGES DIVISION[185]

Rules on agency procedure, rescind chs 1 to 3, 10, 18, 19 IAB 9/18/24 **Regulatory Analysis**	Via videoconference call meet.google.com/wzj-ksyk-rmg	October 8, 2024 1 to 2 p.m.

ECONOMIC DEVELOPMENT AUTHORITY[261]

Entrepreneur investment awards program, ch 102 IAB 9/18/24 **ARC 8224C**	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	October 8, 2024 9 to 9:15 a.m. October 10, 2024 2 to 2:15 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 9/18/24 **ARC 8221C**	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	October 8, 2024 9:15 to 9:30 a.m. October 10, 2024 2:15 to 2:30 p.m.
Strategic infrastructure program, ch 118 IAB 9/18/24 **ARC 8222C**	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	October 8, 2024 9:30 to 9:45 a.m. October 10, 2024 2:30 to 2:45 p.m.
Manufacturing 4.0 technology investment program, ch 119 IAB 9/18/24 **ARC 8223C**	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	October 8, 2024 9:45 to 10 a.m. October 10, 2024 2:45 to 3 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Effluent and pretreatment standards: other effluent limitations or prohibitions, ch 62; monitoring, analytical and reporting requirements, ch 63; standards for the land application of sewage sludge, ch 67; commercial septic tank cleaners, ch 68; clean water state revolving fund; criteria for ranking projects for the clean water state revolving fund (CWSRF); CWSRF; and nonpoint source pollution control set aside programs, adopt ch 90; rescind chs 91, 92, 93 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meet or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 10 a.m.
Private water well construction permits; nonpublic water wells—permits and construction, rescind ch 38; adopt ch 49; requirements for properly plugging abandoned wells, ch 39; scope of division, definitions, forms, public notice and education, consumer confidence reports, reporting, and record maintenance, adopt ch 40; rescind ch 42; water supplies, ch 41; water supplies—design and operation, ch 43; drinking water state revolving fund, ch 44; scope of title, definitions, wastewater construction permits, and operation permits; wastewater construction and operation permits; and pesticide application to water Iowa, adopt ch 60, rescind chs 64, 66; private sewage disposal systems, ch 69; operator certification: public water supply systems and wastewater treatment systems, ch 81; well contractor certification, ch 82; laboratory certification, ch 83 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meet or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 10 to 11 a.m.
Scope of title—definitions—forms—rules of practice, ch 70; floodplain or floodway development—when approval is required; management of flood plain areas; federal water resource projects, adopt ch 71; rescind chs 75, 76; criteria for approval, ch 72; approval, construction, use, maintenance, removal, inspections, and safety of dams, ch 73 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meet or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Water use, withdrawals, and diversions; water permit or registration; and criteria and conditions for authorizing withdrawal, diversion, and storage of water, adopt ch 50, rescind chs 51, 52; protected water sources, ch 53; water use permit restrictions or compensation by permitted users to nonregulated users due to well interference, ch 54; aquifer storage and recovery, ch 55 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meet or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 1 to 2 p.m.

HUMAN SERVICES DEPARTMENT[441]

Appeals and hearings; public records and fair information practices; notices, chs 7, 9, 16 IAB 9/18/24 Uniform Rules **Regulatory Analysis**	Microsoft Teams Meeting ID: 224 642 900 746 Passcode: AXsYRM	October 8, 2024 12 noon to 12:30 p.m.

IOWA FINANCE AUTHORITY[265]

Rescission of chapters, rescind chs 2, 4, 30, 32, 37, 38 IAB 9/4/24 **Regulatory Analysis**	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review/	September 24, 2024 9 to 9:15 a.m.
State housing trust fund, ch 19 IAB 9/4/24 **Regulatory Analysis**	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review/	September 24, 2024 9:30 to 9:45 a.m.

LABOR SERVICES DIVISION[875]

Description of organization and procedures before the division, rescind ch 1 IAB 9/18/24 **Regulatory Analysis**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 24, 2024 11 to 11:15 a.m.
Elevator safety board—administrative and regulatory authority, waivers, contested cases, ch 65, ch 66, ch 69; administration of the conveyance safety program, ch 71; conveyances installed on or after January 1, 1975, ch 72; conveyances installed prior to January 1, 1975, ch 73 IAB 9/4/24 **Regulatory Analyses**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 1, 2024 9 to 9:30 a.m.

LABOR SERVICES DIVISION[875](cont'd)

Elevator safety board—petitions for rule making, declaratory orders, public records and fair information practices, rescind chs 67, 68, 70; boiler and pressure vessel board—administrative and regulatory authority, waivers, petitions for rule making, declaratory orders, contested cases, public records and fair information practices, adopt chs 80, 81, 84; rescind chs 82, 83, 85 IAB 9/18/24 **Regulatory Analyses**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 22, 2024 8:30 to 9 a.m.
Administration of the boiler and pressure vessel program, ch 90; general requirements for all objects, ch 91; power boilers, ch 92; miniature power boilers installed prior to September 20, 2006, ch 93; steam heating boilers, hot water heating boilers, and hot water supply boilers, ch 94; unfired steam pressure vessels, ch 96 IAB 9/18/24 **Regulatory Analyses**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 22, 2024 9 to 9:30 a.m.
Operations of advisory board, rescind ch 170 IAB 9/18/24 **Regulatory Analysis**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 24, 2024 10:30 to 11 a.m.

LOTTERY AUTHORITY, IOWA[531]

Agency reorganization, rescind chs 1, 2, 11 to 14, 18 to 21 IAB 9/18/24 **Regulatory Analysis**	Via virtual/videoconference: meet.google.com/nun-pwxd-szf	October 8, 2024 2 to 3 p.m.
Rules on agency procedure, rescind chs 3 to 6 IAB 9/18/24 **Regulatory Analysis**	Via virtual/videoconference: meet.google.com/wzj-ksyk-rmg	October 8, 2024 1 to 2 p.m.

NATURAL RESOURCE COMMISSION[571]

Green valley lake special water activity; boating safety equipment; boat registration and numbering; passenger capacity; boating speed and distance zoning; navigation aids; boating accident reports; motorboat noise; boat motors, rescind chs 36, 38, 39, 40, 41, 42, 43, 45, adopt ch 37; special events and fireworks displays, ch 44; permanently moored vessels, ch 48; motor vehicles in meandered streams, navigable streams and trout streams, ch 49; nonpermanent structures, ch 55 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meets or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 9 a.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

All-terrain vehicles, off-road motorcycles, and off-road utility vehicles, ch 46; wild turkey hunting, adopt ch 98; rescind ch 99 IAB 9/4/24 **Regulatory Analyses**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 24, 2024 12 noon to 1 p.m.
Restrictions on removal of plant life, ch 54 IAB 9/4/24 **Regulatory Analysis**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 24, 2024 1 p.m.
Game management areas, ch 51; wildlife refuges, ch 52; shooting sports program grants, ch 56; migratory game bird hunting, adopt ch 91; rescind chs 92, 97, 102; small game hunting, adopt ch 96; rescind chs 100, 107; falconry regulations, ch 101; deer population management zones, ch 105; wild furbearer trapping and hunting, adopt ch 108; rescind chs 109, 110; nuisance wildlife control, ch 114 IAB 9/4/24 **Regulatory Analyses**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 24, 2024 1 to 2 p.m.
Snowmobiles, ch 47; regulated vehicle, snowmobile and vessel bonding, ch 50; state parks, recreation areas, and state forest camping; keg beer rules, amend ch 61; rescind ch 63; metal detector use in state areas, ch 64; Saylorville multiuse trail, ch 66; development and management of recreation trails on state forests, parks, preserves and recreation areas, ch 67 IAB 9/4/24 **Regulatory Analyses**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 25, 2024 12 noon to 1 p.m.
Timber buyers, ch 72; forest and fruit-tree reservations, ch 73; forest land enhancement program (FLEP), ch 74 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meets or Zoom) A meeting registration link will be provided prior to the hearing	September 25, 2024 1 p.m.

NATURAL RESOURCES DEPARTMENT[561]

Special nonresident deer and turkey licenses, ch 12 IAB 9/4/24 **Regulatory Analysis**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 24, 2024 12 noon to 1 p.m.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

Description of organization, submission of information and complaints, procedure for rulemaking, petitions for rule making, declaratory orders, rescind chs 1, 3 to 6; public records and fair information practices, ch 2; contested cases, ch 7; waivers from rules, ch 10; Iowa nature store, ch 11; concessions, ch 14; revocation, suspension, and nonrenewal of license for failure to pay state liabilities, ch 15 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting A meeting registration link will be provided prior to the hearing	September 24, 2024 1 p.m.
Oil, gas, and metallic minerals, ch 17 IAB 9/4/24 **Regulatory Analysis**	Backbone Conference Room 6200 Park Avenue, Suite 200 Via video/conference call: meet.google.com/xaw-nknt-rss Or dial: 219.370.6900 PIN: 493 836 892#	September 24, 2024 1 p.m.
Contracts for services and public improvements, ch 8 IAB 9/4/24 **Regulatory Analysis**	Virtual Meeting A meeting registration link will be provided prior to the hearing	September 24, 2024 2 p.m.
State lands volunteer program, ch 13 IAB 9/4/24 **Regulatory Analysis**	Yellow River Conference Room 6200 Park Avenue, Suite 200 Des Moines, Iowa Via video/conference call	September 25, 2024 12 noon to 1 p.m.
State park and recreation area fees, ch 16 IAB 9/4/24 **Regulatory Analysis**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 25, 2024 12 noon to 1 p.m.
Groundwater hazard documentation, ch 9 IAB 9/4/24 **Regulatory Analysis**	Virtual Meeting A meeting registration link will be provided prior to the hearing	September 25, 2024 1 p.m.

PAROLE BOARD[205]

Organization and general administration, ch 1; fair information practices, ch 5; public communications and records, ch 6; parole and work release considerations, ch 8 IAB 9/18/24 **ARC 8209C**, **ARC 8210C**, **ARC 8211C**, **ARC 8212C**	Virtual Hearing Room 2 meet.google.com/vyg-jtks-ccr?hs=122&authuser=0	October 8, 2024 3:30 to 4 p.m. October 15, 2024 3:30 to 4 p.m.

PUBLIC HEALTH DEPARTMENT[641]

Smokefree air, ch 153 IAB 9/18/24 **ARC 8215C**	Microsoft Teams Meeting ID: 224 642 900 746 Passcode: AXsYRM	October 8, 2024 12 noon to 12:30 p.m.
	Microsoft Teams Meeting ID: 228 740 757 44 Passcode: pKepAb	October 9, 2024 2 to 2:30 p.m.

PUBLIC SAFETY DEPARTMENT[661]

Regulations applicable to carriers, ch 22 IAB 9/18/24 **Regulatory Analysis**	Conference Room 125 Oran Pape State Office Building Des Moines, Iowa	October 8, 2024 8:30 to 9 a.m.
Safety requirements for movement of implements of husbandry on roadways, ch 24 IAB 9/18/24 **Regulatory Analysis**	Conference Room 125 Oran Pape State Office Building Des Moines, Iowa	October 8, 2024 8 to 8:30 a.m.

REVENUE DEPARTMENT[701]

Rules on agency procedure, adopt chs 1 to 7, amend ch 201; forms and communications, ch 8; interest, penalty, and exceptions to penalty, ch 10; tax administration, adopt ch 11, amend ch 202; nonlocal business entity bond forfeitures, ch 28 IAB 9/18/24 **Regulatory Analyses**	Via videoconference call	October 8, 2024 1 to 2 p.m.
Determination of aggregate actual values, 102.12 IAB 9/4/24 **Regulatory Analysis**	Via videoconference call	September 24, 2024 2 to 3 p.m.
Miscellaneous operational rules of the lottery, ch 1100; prizes, ch 1101; licensing, ch 1102; responsibilities of retailers, ch 1103; scratch ticket and instaplay ticket general rules, ch 1104; pull-tab ticket general rules, ch 1105; computerized games—general rules, ch 1106; drawings and contests, ch 1107 IAB 9/18/24 **Regulatory Analyses**	Via videoconference call	October 8, 2024 2 to 3 p.m.

STATE PUBLIC DEFENDER[493]

Claims for other professional services, 13.2 IAB 9/4/24 **Regulatory Analysis**	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa	September 25, 2024 1:30 p.m.

STATE PUBLIC DEFENDER[493](cont'd)

Claims for attorney fees in 600A terminations, ch 14 IAB 9/4/24 **Regulatory Analysis**	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa	September 25, 2024 3 p.m.
Travel time, 12.5 IAB 9/4/24 **Regulatory Analysis**	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa	September 25, 2024 3:30 p.m.

TRANSPORTATION DEPARTMENT[761]

Procurement of equipment, materials, supplies and services, ch 20 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 626 184 752	October 11, 2024 10 to 10:30 a.m.
Competition with private enterprise, ch 25 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 562 451 240	October 11, 2024 11 to 11:30 a.m.
Farm-to-market review board, ch 101 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 255 936 075	September 26, 2024 9 to 9:30 a.m.
Signing on primary highways, ch 131 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 498 055 690	October 11, 2024 9 to 9:30 a.m.
RISE program, ch 163 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 385 044 72	October 2, 2024 11 to 11:30 a.m.
Recreational trails program, ch 165 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 460 336 395	October 2, 2024 1 to 1:30 p.m.
Project cost reporting requirements for cities and counties, ch 178 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 669 636 465	September 30, 2024 1 to 1:30 p.m.
Quotation process for governmental entities for public improvement for vertical infrastructure, ch 180 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 572 562 717	October 11, 2024 1 to 1:30 p.m.
Driver's privacy protection—motor vehicle records, ch 301 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 785 942 699	October 11, 2024 1 to 1:30 p.m.

TRANSPORTATION DEPARTMENT[761](cont'd)

Motor vehicles operated by an automated driving system, ch 380 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 398 016 157	September 27, 2024 10:30 to 11 a.m.
Salvage and other title designations, ch 405 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 256 985 764	September 27, 2024 2 to 2:30 p.m.
Persons with disabilities parking permits, ch 411 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 665 260 986	September 30, 2024 9 to 9:30 a.m.
Equipment and inspection requirements for certain motor vehicles, ch 450 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 683 911 093	October 10, 2024 9 to 9:30 a.m.
Towing wrecked or disabled vehicles, ch 454 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 821 597 958	October 9, 2024 1 to 1:30 p.m.
Abandoned vehicles, ch 480 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 292 792 560	September 30, 2024 10 to 10:30 a.m.
Sanctions, ch 615 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 788 489 754	October 10, 2024 1 to 1:30 p.m.
OWI and implied consent, ch 620 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 527 660 638	October 10, 2024 3 to 3:30 p.m.
Motorcycle rider education (MRE), ch 635 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 425 744 072	October 10, 2024 2 to 2:30 p.m.
Motorized bicycle rider education, ch 636 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 460 336 395	September 30, 2024 1 to 1:30 p.m.

TRANSPORTATION DEPARTMENT[761](cont'd)

Aeronautics administration; airport improvement program; air service development program; commercial service vertical infrastructure program; general aviation vertical infrastructure program, adopt ch 700; rescind chs 710, 715, 716, 717 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 442 802 945	September 24, 2024 9 to 9:30 a.m.
Iowa airport registration, ch 720 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 577 170 7	September 24, 2024 10 to 10:30 a.m.
Aircraft registration, ch 750 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 449 766 788	September 24, 2024 11 to 11:30 a.m.

UTILITIES COMMISSION[199]

Restoration of agricultural lands during and after pipeline construction, ch 9 IAB 9/18/24 **ARC 8219C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	October 17, 2024 2 to 4 p.m. October 31, 2024 9 to 11 a.m.
Iowa electrical safety code, ch 25 IAB 8/21/24 **ARC 8200C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	October 1, 2024 2 to 4 p.m. October 15, 2024 9 to 11 a.m.
Ratemaking principles proceeding, ch 41 IAB 9/18/24 **ARC 8213C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	October 29, 2024 2 to 4 p.m. November 12, 2024 2 to 4 p.m.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Organization and procedures; county commissions of veteran affairs fund and training program, amend ch 1; adopt ch 7 IAB 9/18/24 **Regulatory Analysis**	Google Meeting meet.google.com/dcn-jwdo-zkq Or dial: 402.282.0092 Conference ID: 733 538 987#	October 8, 2024 10:30 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Employer records and reports, ch 11 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 262 021 762 472 Passcode: ZF4Pn4 Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 772 679 764#	September 24, 2024 11 to 11:30 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Forms and informational matters, ch 12 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 286 694 738 87 Passcode: DN6QGY Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 632 284 65#	September 24, 2024 11:30 a.m. to 12 noon
Unemployment insurance services division, ch 21 IAB 9/18/24 **ARC 8216C**	Lobby Conference Room 1000 East Grand Avenue Des Moines, Iowa	October 8, 2024 8 to 8:30 a.m.
	Microsoft Teams Meeting ID: 238 220 939 885 Passcode: FZr5ym Dial in by phone:+1 469.998.6043 Find a local number Phone conference ID: 247 375 18#	October 8, 2024 1 to 1:30 p.m.
Employer records and reports, ch 22 IAB 9/18/24 **ARC 8218C**	Lobby Conference Room 1000 East Grand Avenue Des Moines, Iowa	October 8, 2024 8:30 to 9:30 a.m.
	Microsoft Teams Meeting ID: 294 534 025 083 Passcode: sYXZ8C Dial in by phone:+1 469.998.6043 Find a local number Phone conference ID: 410 461 869#	October 8, 2024 1:30 to 2:30 p.m.
Benefit payment control, ch 25 IAB 9/18/24 **ARC 8217C**	Lobby Conference Room 1000 East Grand Avenue Des Moines, Iowa	October 8, 2024 9:30 a.m.
	Microsoft Teams Meeting ID: 214 735 809 322 Passcode: QcWckb Dial in by phone:+1 469.998.6043 Find a local number Phone conference ID: 599 810 078#	October 8, 2024 2:30 p.m.
Claims and benefits, ch 24 IAB 9/18/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 256 714 403 006 Passcode: d4U26J Dial in by phone: +1 469.998.6043 Find a local number Phone conference ID: 422 880 375#	October 8, 2024 11 a.m. to 12 noon
Contested case proceedings, ch 26 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 262 021 762 472 Passcode: ZF4Pn4 Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 772 679 764#	September 26, 2024 10:30 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Request for waiver of administrative rule, ch 41 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 294 646 210 897 Passcode: UBmwFZ Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 451 996 139#	September 24, 2024 8:30 to 9 a.m.
Public records and fair information practices, ch 42 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 226 075 875 966 Passcode: HP7XHC Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 367 660 289#	September 24, 2024 9 to 9:30 a.m.
Petitions for rulemaking, ch 43 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 278 082 236 697 Passcode: gvqDfq Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 449 351 964#	September 24, 2024 9:30 to 10 a.m.
Declaratory orders, ch 44 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 289 208 802 199 Passcode: G9k8zc Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 525 008 60#	September 24, 2024 10 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.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
  Soil Conservation and Water Quality Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
OMBUDSMAN[141]
CIVIL RIGHTS COMMISSION[161]
INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]
  Alcoholic Beverages Division[185]
  Banking Division[187]
  Credit Union Division[189]
  Insurance Division[191]
  Professional Licensing and Regulation Bureau[193]
    Accountancy Examining Board[193A]
    Architectural Examining Board[193B]
    Engineering and Land Surveying Examining Board[193C]
    Landscape Architectural Examining Board[193D]
    Real Estate Commission[193E]
    Real Estate Appraiser Examining Board[193F]
    Interior Design Examining Board[193G]
UTILITIES COMMISSION[199]
CORRECTIONS DEPARTMENT[201]
  Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
  Historical Division[223]
ECONOMIC DEVELOPMENT AUTHORITY[261]
  City Development Board[263]
IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
  Educational Examiners Board[282]
  College Student Aid Commission[283]
  Higher Education Loan Authority[284]
  Libraries and Information Services Division[286]
  Public Broadcasting Division[288]
  School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
  Employment Appeal Board[486]
  Child Advocacy Board[489]
  Racing and Gaming Commission[491]
  State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

IOWA PUBLIC INFORMATION BOARD[497]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
  Appeal Board, State[543]
  City Finance Committee[545]
  County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
  Environmental Protection Commission[567]
  Natural Resource Commission[571]
  Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
  Professional Licensure Division[645]
  Dental Board[650]
  Medicine Board[653]
  Nursing Board[655]
  Pharmacy Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
  Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
  Labor Services Division[875]
  Workers' Compensation Division[876]
  Workforce Development Board and Workforce Development Center Administration Division[877]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 21—Chapters 13, 14, 15 and 16 "Renewable Fuel Infrastructure Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 159.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 159A

Public Hearing

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

October 10, 2024 10:30 a.m.	Conference Room 2N Wallace State Office Building 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 Department of Agriculture and Land Stewardship no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.281.7808
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

This proposed rulemaking updates the Renewable Fuel Infrastructure Program to comply with revisions made to the program in the 2024 Legislative Session.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

None.

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

Fuel retailers who are accessing cost-share funding to upgrade fuel infrastructure to offer higher blends of biofuels will benefit. Consumers will also benefit from greater access to higher-blend biofuels.

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:

None.

- Qualitative description of impact:

None.

3. Costs to the State:

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

None.

- Anticipated effect on state revenues:

None.

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

None. This is a grant program.

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

None. This is a grant program.

6. Alternative methods considered by the agency:

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

None.

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

Not applicable.

Small Business Impact

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

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

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

Pursuant to the Iowa Code, smaller retailers are given priority to access cost-share funds.

Text of Proposed Rulemaking

ITEM 1. Rescind 21—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
RENEWABLE FUEL INFRASTRUCTURE PROGRAM

DIVISION I
DEFINITIONS

21—13.1(159A) Definitions. As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 159A.11 apply to this chapter. The following definitions also apply:

"Agreement" means the cost-share agreement executed by the department after approval of the grant by the board.

"Applicant" means a person, as defined in this rule, who owns or operates a site.

"Biodiesel," for the purpose of this rule, must be at least B99.

"Biodiesel blended fuel," means the same as defined in Iowa Code section 214A.1. For the purpose of these rules, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 5 percent at a retail site.

"Biofuel" means ethanol or biodiesel as defined in Iowa Code section 214A.1.

"Blender pump" means the same as defined in Iowa Code section 214.1.

"Board" means the renewable fuel infrastructure board established by Iowa Code section 159A.13.

"Checklist" or *"IDNR checklist"* means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

"Grant" or *"cost-share grant"* means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by Iowa Code chapter 159A to help pay for a project.

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

"Project" means the installation of equipment for motor fuel storage, dispensing and distribution of E-15 or higher gasoline, biodiesel or biodiesel blended fuel classified as B-5 or higher.

"Rack" means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

"Renewable fuel" means the same as defined in Iowa Code section 214A.1.

"Retail" means offered for sale to the public for final consumption.

"Retail motor fuel site" means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis.

"Special status" means a retail motor fuel site that does not comply with the E-15 access standard under Iowa Code section 214A.32 and is ineligible to be issued an E-15 incompatible infrastructure Class 2 waiver order.

"Tier I site" means a retail motor fuel site as described in Iowa Code section 159A.14(6)*"b."*

"Tier II site" means a retail motor fuel site as described in Iowa Code section 159A.14(6)*"c."*

"Tier III site" means a retail motor fuel site as described in Iowa Code section 159A.14(6)*"d."*

This rule is intended to implement Iowa Code chapter 159A.

DIVISION II
RENEWABLE FUEL INFRASTRUCTURE BOARD

21—13.2(159A) Renewable fuel infrastructure board.

13.2(1) *Duties.* The board exists to make awards for renewable fuel infrastructure programs and perform other functions as necessary.

13.2(2) *Staff.* Staff assistance is provided through the department. The department will market the renewable fuel infrastructure program throughout the state.

13.2(3) *Meetings.* Board meetings will generally be held at the department's offices, electronically, or by telephone. All meetings are to comply with Iowa Code chapter 21.

This rule is intended to implement Iowa Code section 159A.13.

21—13.3 to **13.9** Reserved.

DIVISION III
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR RETAIL MOTOR FUEL SITES

21—13.10(159A) Purpose. The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail motor fuel site.

21—13.11(159A) Eligible applicants. To be eligible to receive a retail motor fuel site infrastructure grant, an applicant shall:

13.11(1) Be an owner or operator of a retail motor fuel site.

13.11(2) Submit an application to the department in form and content acceptable to the department and the board.

13.11(3) Meet the following eligibility requirements established by the board:

a. The fuel storage and dispensing infrastructure may include either an aboveground or belowground storage tank and ancillary equipment.

b. The storage tank must, however, be used exclusively for retail delivery to the final consumer.

c. If a tank has multiple compartments, at least one of the compartments must be used exclusively for the storage and dispensing of ethanol blended gasoline classified as E-15 or higher, biodiesel or biodiesel blended fuel classified as B-5 or higher at retail. The compartment used exclusively for the storage of ethanol blended gasoline at E-15 or higher, biodiesel or biodiesel blended fuel is considered the tank for purposes of this program.

d. The tank and ancillary equipment must be in compliance with Iowa Code sections 455G.32 and 455G.33, as evidenced by the most recent IDNR checklist.

e. The dispenser and dispenser components must be listed by an independent testing laboratory, approved by the manufacturer or approved by the department of inspections, appeals, and licensing as compatible with ethanol blended gasoline in accordance with Iowa Code section 455G.32. An Iowa-licensed installer has been identified to perform the installation.

f. Conversion kits. If a UL-listed E-85 dispenser conversion kit is used, it must be approved by the department of inspections, appeals, and licensing.

These rules are intended to implement Iowa Code section 159A.14.

21—13.12 to **13.14** Reserved.

DIVISION IV
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR BIODIESEL TERMINALS

21—13.15(159A) Purpose. The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers.

21—13.16(159A) Eligible applicants. To be eligible to receive a biodiesel terminal grant, an applicant shall:

13.16(1) Be an owner or operator of a biodiesel terminal.

13.16(2) Submit an application to the department in form and content acceptable to the department and the board.

13.16(3) Meet the following eligibility requirements established by the board:

a. The terminal must not be a retail motor fuel site.

b. The terminal must not be a facility at which fuel or blend stocks are used in the manufacture of products other than motor fuel and from which no fuel is removed.

c. The terminal must have at least one storage tank of at least a 10,000-gallon capacity, used exclusively for or dedicated exclusively to the storage of biodiesel fuel. The terminal may also have storage for one or more biodiesel blends. The terminal must have facilities for the dispensing of either biodiesel, biodiesel blends, or both.

d. The dispensing of motor fuel at the terminal must be done at a rack in excess of 100 gpm pumping capacity.

These rules are intended to implement Iowa Code section 159A.15.

21—13.17 to **13.19** Reserved.

DIVISION V
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

21—13.20(159A) Form of award available; award amount.

13.20(1) *Form of award.* Eligible applicants may apply for financial incentives on a cost-share basis. Funding is available in the form of a grant.

13.20(2) *Timing of application.* A grant may be awarded for an eligible project not yet commenced. However, a grant for an initial application may not be submitted more than one year after the project is put in service.

13.20(3) *Amount of award.*

a. Retail site award.

(1) Cost-share agreements are subject to the terms specified in Iowa Code section 159A.14, including the duration of the financing agreement and the award amount.

(2) Supplemental award for additional infrastructure. A person may request a supplemental financial incentive for motor fuel storage and dispensing infrastructure as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional motor fuel storage and dispensing infrastructure at an additional retail motor fuel site after an initial grant award is provided. Supplemental award amounts are subject to the limitations set forth in Iowa Code section 159A.14(8) *"b."*

b. Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.

(1) Biodiesel fuel B2 through B98. Cost-share agreements are subject to the terms specified in Iowa Code section 159A.15, including the duration of the financing agreement and the award amount.

(2) Biodiesel fuel B99/B100 for year-round distribution. Cost-share agreements are subject to the terms and limitations specified in Iowa Code section 159A.15, including the duration of the financing agreement and the award amount.

13.20(4) *Time of payment.* The grant will be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.

a. The applicant must deliver to the board prior to payment a certificate of completion on the board's form.

b. The certificate of completion must include the IDNR checklist completed and signed by an Iowa-certified installer showing review and approval of the completed project.

c. The certificate of completion must be accompanied by proof of financial responsibility as necessary to meet federal requirements for underground storage tank installation.

13.20(5) *Deadline for completion.* The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.

13.20(6) *Multiple awards for multiple fuel types.*

a. At a single fuel site. A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a

single fuel site. The board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.

b. At multiple fuel sites. A person may receive multiple grants as described in paragraph 13.20(6)*"a"* for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the board will make awards fairly and properly among applicants and geographic areas.

13.20(7) *Exhaustion of funds.* In the event funding is exhausted, the board may approve remaining applications based on criteria implemented by the board.

21—13.21(159A) Application process.

13.21(1) *Application procedures.*

a. Applications may be submitted at any time, but will be reviewed on a first-come, first-served basis as established by the date stamp on the filed application.

b. Applications are to be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Agriculture and Land Stewardship, 502 East Ninth Street, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

13.21(2) *Contents of application.*

a. Statutory requirements. An application must include the information required in Iowa Code chapter 159A.

b. Other information required by the board:

(1) Assurance that the project will be for the purpose of installing, replacing, or converting equipment for the storage or dispensing of the renewable fuel under consideration.

(2) Assurance that all equipment funded by the grant will be used to store or dispense E-15 or higher gasoline, biodiesel or biodiesel blended fuel classified as B-5 or higher, respectively, for the period specified in the agreement.

(3) An IDNR checklist indicating the current status of the site.

(4) Assurance of compliance with any and all federal requirements for financial responsibility.

(5) Assurance of compliance with any and all state and federal laws and regulations.

(6) A cost proposal from an Iowa-licensed underground storage tank installer (for underground storage projects) and a qualified aboveground storage tank installer (for aboveground storage projects).

21—13.22(159A) Review process.

13.22(1) The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board will determine the amount of financial incentives to be awarded to an applicant.

13.22(2) Completed applications, including supporting documentation of meeting eligibility requirements, will be reviewed on a first-come, first-served basis. The board will rank applications in accordance with Iowa Code section 159A.14(6)*"e."*

13.22(3) If the amount of funding requests exceeds available funds, the board will evaluate applications based upon criteria that include but are not limited to, in no particular order, the following:

a. Submittal of a completed application, including supporting documentation.

b. Priority status.

c. Location factors such as demographics, proximity to major transportation corridors, and proximity to existing renewable fuel retail and storage facilities.

d. Projected annual sales volume.

e. Other sources of funding.

f. Previous grants awarded.

21—13.23(159A) Contract administration.

13.23(1) *Notice of award.* The department will notify approved applicants in writing of the board's award of grants, including any conditions and terms of the approval.

13.23(2) *Contract required.* The board will direct the department to prepare a cost-share agreement that includes the terms and conditions of the grant established by the board. The agreement shall:

a. Describe the project in sufficient detail to demonstrate the eligibility of the project.

b. State the total cost of the project expressed in a project budget that contains sufficient detail to meet the requirements of the infrastructure board.

c. State the project completion deadline.

d. State the project completion requirements which are preconditions for payment of the grant by the board.

e. Recite the penalty for the storage or dispensing of motor fuel other than the type of renewable fuel for which the grant was awarded.

(1) Awards for projects under construction or not yet started. The five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.

(2) Awards for projects already completed. The five-year obligation to continue dispensing renewable fuel begins on the date the department issues the first disbursement of grant funds, not on the date of project completion.

f. Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

13.23(3) *Disbursement of funds.* Beginning January 1, 2023, the department shall only reimburse an applicant for qualifying expenditures that comply with Iowa Code sections 455G.32 and 455G.33 unless a grant was awarded to the applicant with moneys appropriated in the 2022 fiscal year budget or prior.

13.23(4) *Repayment penalty for nonexclusive renewable fuel use.* In the absence of a waiver from the board, the department may impose a 25 percent penalty due to a grant recipient's use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

13.23(5) *Repayment or board waiver.* A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded including a 25 percent penalty.

13.23(6) *Waiver criteria.* The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

a. Permanent waiver.

(1) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

(2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include

documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-15 or E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds shall be repaid at 100 percent for months one through ten of a cost-share agreement or 2 percent of the grant amount for each month remaining on the cost-share agreement after month ten.

b. Temporary waiver (temporary suspension of repayment and 25 percent penalty). A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board's satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient's request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient's obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of five years. If the board approves a temporary waiver, the duration of the cost-share agreement will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board's action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the five-year duration of the cost-share agreement will not be extended by the length of the temporary waiver.

These rules are intended to implement Iowa Code sections 159A.11 to 159A.16.

ITEM 2. Rescind and reserve **21—Chapter 14**.

ITEM 3. Rescind and reserve **21—Chapter 15**.

ITEM 4. Rescind and reserve **21—Chapter 16**.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 21—Chapter 45
"Pesticides"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 206

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 206 and the federal Insecticide, Rodenticide and Fungicide Act (7 U.S.C. §136), sections 26 and 27

Public Hearing

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

October 10, 2024 8:30 a.m.	Conference Room 2N Wallace State Office Building 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 Department of Agriculture and Land Stewardship no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.281.7808
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Proposed Chapter 45 regulates the sale and safe usage of pesticides in the state of Iowa. Much of the chapter implements Iowa's Pesticide State Plan with the Environmental Protection Agency (EPA) to incorporate federal rules and regulations in order to maintain the State Pesticide Program. The chapter also does the following:

- Implements Iowa's Groundwater Protection Act (1987).
- Meets procedures under the federal Insecticide, Rodenticide and Fungicide Act (7 U.S.C. §136), sections 26 and 27, which grants Iowa primary enforcement responsibility for pesticide use/misuse violations (40 CFR Part 171).
- Demonstrates that Iowa:
  - Adopted adequate use laws;
  - Adopted adequate procedures for implementing those laws; and
  - Agreed to keep such records and make such reports as the EPA Administrator may require by regulation.
- Provides compliance support with the 1990 Farm Bill and private pesticide applicator recordkeeping requirements.
- Implements programmatic compliance support and inspection of federal worker protection standards and farmworker protection rules (40 CFR Part 170).

- Implements programmatic compliance support of endangered species risk mitigation (16 U.S.C. §35).
- Meets requirements under the federal Pesticide Container and Containment rules (40 CFR Parts 152, 156, and 165, amended 2009).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Commercial applicators are the primary entity that may experience additional costs under the proposed rulemaking due to the updated supervision requirements where additional applicators may need to be present.

Additionally, civil penalties may be assessed on all applicators who are in violation of the Iowa Code or these rules, whereas previously, this was limited to only commercial applicators.

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

The citizens of the state of Iowa will benefit from the safe and effective usage of pesticides.

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

- Quantitative description of impact:

The Iowa certification program allows flexibility to meet Iowa applicator needs while maintaining protocols and standards that ensure safe usage and sale of pesticides. Iowa currently leads the region (which includes Iowa, Kansas, Missouri, and Nebraska) in the number of certified applicators (31 percent are based in Iowa). This equates to a higher count of individual applicators certified in Iowa compared to other states in the region (+7,000). Figures are based on EPA 2021 reports. Iowa's applicator counts as of December 31, 2022, included 14,988 certified commercial applicators and 17,328 certified private applicators.

The Iowa enforcement program implements procedures to report and investigate a pesticide accident, incident, or loss. Department staff gather information by providing notification of inspection, conducting interviews, obtaining statements, reviewing application records and pesticide labels, taking photographs, and making on-site assessments. The information gathered helps document whether a violation of state or federal pesticide law, or both, occurred. Upon the completion of an investigation, the enforcement program follows procedures for reviewing case files for violations of Iowa Code chapter 206 and assessing and collecting civil penalties. The pesticide use/misuse enforcement program conducted 548 total investigations/inspections in SFY 2022. These included routine and for-cause activities such as use/misuse investigations, pesticide establishment inspections, marketplace inspections, certified applicator recordkeeping inspections, and restricted use pesticide dealer inspections. There were a total of 87 advisory notices/advisory warning letters issued, 25 civil penalties initiated, 1 license/certification suspended, 2 licenses/certifications conditioned or modified, 166 letters of warning issued, 7 cases forwarded to the EPA, and 124 other actions taken.

- Qualitative description of impact:

The EPA approved the Department's State Plan on July 27, 2023, which puts forth primary enforcement responsibility for pesticide use/misuse violations and ensures that the certification of pesticide applicators in Iowa meets federal requirements for sale and use of restricted use pesticides. The EPA provides funding to the Department through a partnership grant to support pesticide enforcement, certification, worker protection, endangered species, and water quality programs. The public benefits include 1) an Iowa-specific certification program that allows applicators to meet federal standards for restricted use pesticide sale and distribution, 2) an Iowa pesticide use/misuse enforcement response program for ensuring environmental health and public safety, and 3) consumer protection for labeling and sale/distribution of registered pesticide products.

3. Costs to the State:

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

For applicator testing, there would be a cost of $30,000 to $50,000 per manual for development; however, there are no plans for development at this time. The Department currently relies on the free national manual.

For applicator training, there would be a cost of $15,000 to $20,000 per category for development; however, there are no plans to make updates at this time.

The EPA provides annual funding through a partnership grant to Iowa. This covers approximately 40 to 45 percent of funding for the program.

The State of Iowa General Fund covers remaining costs, including a portion from pesticide fee collection.

- Anticipated effect on state revenues:

None.

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

If there is inaction by the Department, pesticide applicators in Iowa would need to seek certification from the EPA to legally apply restricted use pesticides. The EPA has indicated that it does not have the staffing or program capacity to certify state pesticide applicators. Costs of inaction would include a time delay of applicator certification and the loss of the pesticide applicator workforce in agriculture and the turf/ornamental industry, professional pest management services, and other industries utilizing pesticide applicators (30,000+ workers in Iowa). The volume/cost of enforcement efforts would increase due to applicator failure to meet pesticide use compliance requirements and an increase in civil penalties.

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

None. Under the federal Insecticide, Rodenticide and Fungicide Act, the EPA would either administer the program or grant primary enforcement responsibility to the state.

6. Alternative methods considered by the agency:

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

Inaction and returning the enforcement responsibility for the program to the EPA was considered.

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

The method was rejected due to the costs of applicator failure to meet pesticide use compliance requirements and the issuance of civil penalties due to the lack of certification and meeting educational requirements.

Stakeholders were in support of the Department maintaining the pesticide applicator certification program, as opposed to returning to the EPA.

The EPA has indicated to the Department that it does not have the staffing or program capacity to certify state pesticide applicators.

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 Department continues to offer free pesticide applicator testing across the state as staffing will allow. These free exams provide an opportunity for individuals, including those in small business, to hold no additional costs for taking updated pesticide applicator exams.

Text of Proposed Rulemaking

ITEM 1. Rescind 21—Chapter 45 and adopt the following **new** chapter in lieu thereof:

CHAPTER 45
PESTICIDES

DIVISION I

21—45.1(206) Definitions and standards.

45.1(1) The following definitions are hereby adopted.

"Aerial applicator" means a licensed commercial applicator, certified in category #11, Aerial Application, who applies pesticides by using aircraft in compliance with Federal Aviation Administration regulations under Title 14 CFR Part 137 (1-1-08 Edition).

"Aerial applicator consultant" means a person who is a resident of Iowa and holds a valid applicator certification in category #11, Aerial Application, and either an Iowa commercial applicator license or pesticide dealer license, who coordinates the commercial application of pesticides by aerial applicators.

"Certified handler" means a person employed by a licensed commercial applicator, noncommercial applicator, public applicator, or pesticide dealer who handles pesticides in other than unopened containers for the purposes of preparing, mixing or loading pesticides for application by another person, repackaging bulk pesticides or disposing of pesticide-related wastes from these activities.

"Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from the plant with or without causing abscission.

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"Fungi" means all nonchlorophyll-bearing thallophytes, that is, all noncholorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts and bacteria except those on or in living man or other animals.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed or undesirable plant.

"Immediate family member" means a spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. "First cousin" means the child of a parent's sibling, i.e., the child of an aunt or uncle.

"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects and related forms that may be present in any environment whatsoever.

"Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes or subterranean pests.

"Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or saclike bodies covered with cuticle and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

"Noncertified applicator" means a person who is not certified in accordance with this chapter to use restricted use pesticides in the category appropriate to the type of application being conducted, but who is using restricted use pesticides under the direct supervision of a person certified as a commercial, noncommercial, public, or private applicator, within the first 21 days of initial employment.

"Nonchemical pest control device" means any instrument or contrivance, other than a firearm or trap, intended or purported to be a primary pest control device or a pest control aid for repelling insects or rodents without the use of chemicals through utilization of electromagnetic, sound, ultrasonic, subsonic, cosmic, geotechnical or other similar wave technology.

"Noncommercial applicator" means any person who applies restricted use pesticides on lands or property owned, rented or leased by the applicator or the applicator's employer. This definition shall not apply to private applicators using restricted use pesticides in the production of agricultural commodities.

"Resident of Iowa," for purposes of subrule 45.22(14), means a person who meets the following qualifications:

1. The person is an owner or employee of a corporation, association, partnership, company, or firm that maintains a physical place of business located within Iowa.
2. Agricultural aircraft owned and operated by the person are registered with the Iowa department of transportation.

"Rodent" means any animal of the order Rodentia, including, but not limited to, rats, mice, rabbits, gophers, prairie dogs and squirrels.

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animal that the secretary shall designate to be a pest.

"Sensitive crop registry" means the sensitive crop registry designated by the department, which may include but is not limited to the FieldWatch™, Inc. program.

"Use of a pesticide contrary to its labeling" means to use any registered pesticide in a manner not permitted by the labeling provided that the phrase shall not include:

1. Applying a pesticide for agricultural or horticultural purposes only at any dosage, concentration or frequency less than that specified on the labeling.
2. Applying a pesticide for agricultural or horticultural purposes only against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling.
3. Employing any method of application not prohibited by the labeling for agricultural or horticultural purposes only.
4. Mixing pesticides or mixing pesticide with a fertilizer when such mixture is not prohibited by the labeling for agricultural or horticultural purposes only.

"Weed" means any plant that grows where not wanted.

"Wood-destroying insect" means subterranean termites, carpenter ants, and powder-post beetles.

45.1(2) Additional definitions and standards that are consistent and applicable to the Iowa pesticide Act shall be those established by the Association of American Pesticide Control Officials.

This rule is intended to implement Iowa Code sections 206.5 and 206.6.

21—45.2(206) Methods of analysis. The current methods of analysis of the Association of Official Analytical Chemists of North America shall be adopted as the official methods insofar as they are applicable, and such other methods shall be used as may be necessary to determine whether the product complies with the law.

21—45.3(206) Registration required. No person shall distribute, give, sell or offer to sell any pesticide that has not been registered with the department of agriculture and land stewardship.

45.3(1) *Registration fees.* All pesticides distributed for sale in the state of Iowa shall be registered pursuant to Iowa Code section 206.12. The registration period shall be January 1 through December 31 of each year. A registration fee shall be paid for each brand and grade of pesticide. Each registrant shall submit an application for registration on forms approved by the secretary of agriculture. The registration fee for each product shall be submitted with the application for registration. Application for new or initial registrations of pesticide products shall be accompanied by the minimum registration fee.

45.3(2) *Exemption from minimum fee.* A manufacturer or registrant of a pesticide product may file a request for an exemption to the minimum product registration fee and the secretary may grant an exemption to the minimum registration fee for a period not to exceed one year provided that at least one of the following conditions is met:

a. The application is for pesticide product renewal registration; and the total annual sales in Iowa are less than $20,000; and no similar pesticides are registered in the state. A similar pesticide shall be of similar composition and labeled for a similar use pattern provided that the applicant submits a signed affidavit reflecting gross annual sales in Iowa of the pesticide produced for the previous year.

b. The pesticide product is formulated or comprised of naturally occurring substances, including but not limited to plant or animal derivatives or microorganisms, and has an oral LD50 toxicity of 5000 milligrams per kilogram or greater.

c. Pesticides registered under the authority of Section 18 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) for emergency, crisis or public health quarantine situations, when the secretary of agriculture initiates the application.

d. Pesticides registered under the authority of Section 24(c) of FIFRA when the secretary of agriculture initiates the application.

45.3(3) *Penalty for nonregistered pesticides.*

a. Any pesticide distributed in Iowa that is not registered in the state shall be subject to Stop Sale, Use or Removal Order. A penalty shall be assessed the registrant equal to 25 percent of the registration fee due to the department. Upon receipt of the required registration fee due and the required penalty, the pesticide product may be released for sale in Iowa for the effective registration period.

b. A manufacturer or registrant shall not be subject to penalties for nonregistered discontinued pesticide products if adequate proof can be provided to the department indicating that all distributors and retailers handling a discontinued pesticide product were properly notified.

45.3(4) *Discontinued pesticides.* Discontinued pesticide product registrations shall be renewed for a minimum of two years after the product is discontinued; and the pesticide product registration renewal application shall identify discontinued products. Any registrant that discontinues registration of a pesticide product shall accept the return of any product in its original unbroken container that remains in the channels of trade after the registration expires. This subrule shall not apply to registered custom blended pesticide products.

45.3(5) *Registration renewal grace period.* The registration period shall be January 1 through December 31 of each year. However, a registrant shall be granted a grace period of three months ending on the last day of March of each year for registration renewal. A registrant shall be assessed a late fee equaling 25 percent of the registration fees due by the registrant for a registration renewal

received on or after the first day of April of each year. Application for registration renewal shall be made on forms prescribed by the secretary and certified by the registrant.

This rule is intended to implement Iowa Code section 206.12.

21—45.4(206) Registration of products. One exact copy of the labeling of each proposed product shall be submitted with the application. Also, there shall be submitted an ingredient statement, which shall comply with the provisions of 21—45.13(206) herein, the proposed directions for use of the product, and a list of the specific pests that the product to be sold is intended to control, if such information is not contained in the labeling. Other pertinent information concerning ingredients and physical properties of the product shall also be included on request by the secretary.

21—45.5(206) Registration, general application of. A registration of a pesticide is held to apply to the product even though manufactured at or shipped from other than the registered address. When a product has been registered by a manufacturer or jobber, no registration shall be required of other sellers of the product so registered, provided shipments or deliveries thereof are in the manufacturer's or registrant's original unopened and properly labeled container.

21—45.6(206) Revocation, suspension or denial of registration.

45.6(1) Any of the following causes is sufficient to justify revocation or suspension of registration or denial of application of renewal of an expired/expiring registration of a pesticide:

a. If the labeling bears any statement, design or graphic representation relative thereto, or to its ingredients, that is false or misleading in any particular;

b. If the product is found to be an imitation of, or illegally offered for sale under the name of another pesticide;

c. If the labeling bears reference to Iowa registration number;

d. If the labeling accompanying the pesticide does not contain directions for use that are necessary and, if complied with, adequate for the protection of the public;

e. If the label does not contain a warning or caution statement that may be necessary and, if complied with, adequate to prevent injury to humans and other vertebrate animals;

f. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read under customary conditions of purchase. Provided, however, the secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package that is displayed;

g. If any word, statement or other information required to appear on the label or labeling is omitted or not prominently placed thereon and in such terms as to render it likely to be read and understood under customary conditions of purchase and use;

h. If an insecticide, nematocide, antibiotic, bactericide, fungicide or herbicide is found to be injurious to humans or other useful vertebrate animals or to vegetation (except weeds), to which it is applied or to the person applying such pesticide when used as directed or in accordance with commonly recognized safe practice; or if a plant regulator, defoliant or desiccant when used as directed is found to be injurious to humans or other vertebrate animals or vegetation to which it is applied, or to the person applying such pesticide; provided, however, that physical or physiological effect on plants or parts thereof shall not be deemed to be injurious, when this is the purpose for which the plant regulator, defoliant or desiccant was applied in accordance with label claims and recommendations;

i. If the pesticide is misbranded; or

j. If the registrant has been guilty of fraudulent and deceptive practices in the evasion or attempted evasion of the Iowa pesticide Act or any rules promulgated thereunder; provided, however,

that no registration shall be revoked until the registrant shall have been given an opportunity for a hearing by the secretary.

45.6(2) Special local need registrations and permits.

a. State registration of pesticides pursuant to Section 24(c) of FIFRA as amended by Public Law 92-516 October 21, 1972, Public Law 94-140 November 28, 1975, and Public Law 95-396 September 30, 1978, or any special use permit issued pursuant to revisions of FIFRA as amended by Public Law 92-516 October 21, 1972, Public Law 94-140 November 28, 1975, and Public Law 95-396 September 30, 1978, or the Pesticide Control Act, Iowa Code chapter 206, may be denied, amended or revoked when the secretary has made a determination as follows: that such action is necessary to prevent unreasonable adverse effects to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide; or that special local need that necessitated the registration or permit no longer exists. Expiration of 24(c) registrations and all special use permits shall be governed by Iowa Code section 206.12.

b. "Special local need" means a pest problem (existing or likely to occur within a state) that cannot be effectively controlled because:

(1) There is no pesticide product registered by EPA for such use; or

(2) There is no EPA-registered pesticide product that, under the conditions of use within the state, would be as safe or as efficacious for such use within the terms and conditions of EPA registration; or

(3) An appropriate EPA-registered pesticide product is not available.

This rule is intended to implement Iowa Code sections 206.9, 206.11, and 206.12, along with the cooperative enforcement program entered into between the state of Iowa and EPA pursuant to Sec. 24(c) of FIFRA, amended as of September 30, 1978.

21—45.7(206) Changes in labeling or ingredient statement. Changes in the labeling or ingredient statement in registered pesticides shall be submitted in advance to the secretary for approval. The registrant must describe the exact change desired and proposed effective date and such other pertinent information that justify such changes. After the effective date of a change in labeling or ingredient statement the product shall be marketed only under the new claims or ingredient statement, except that a reasonable time may be allowed by the secretary for disposal of properly labeled stocks of the old product. Changes in the composition shall not be allowed if such changes would result in a lowering of the product's value as a pesticide.

21—45.8(206) Label requirements. Each package of pesticide sold separately shall bear a complete label. The label shall contain the name, brand or trademark of the product; name and address of the manufacturer, registrant or person for whom manufactured; directions for use that are necessary and if complied with, adequate for protection of the public; statement of net content in terms of weight or measure in general use; and an ingredient statement. The label of every pesticide, if necessary to prevent injury to humans, other animals and useful vegetation, must contain a warning or caution statement, in nontechnical language based on the hazard involved in the use of the pesticide. In addition, any pesticide highly toxic to humans shall be labeled with a skull and crossbones and with the word "poison" prominently in red on a background of distinctly contrasting color; the first-aid antidote for the poison shall be given and instructions for safe disposal of containers.

NOTE: Products subject to deterioration may bear on their label a statement such as "not to be sold or used after....date...." The use of such a statement, however, in no way relieves the manufacturer of the responsibility for label claims.

21—45.9(206) Directions for use—when necessary. Directions for use are required whenever they are necessary for the protection of the public. The public includes not only users of pesticides but also those who handle them or may be affected by their use, handling, or storage. Directions for use are considered necessary in the case of most small retail containers that go into the hands of users, and in the case of larger containers with the following exception: directions may be omitted if the pesticide is

to be used by manufacturers in their regular manufacturing processes, provided the label clearly shows that the product is intended for use only in manufacturing processes and bears an ingredient statement giving the name and percentage of each of the active ingredients.

21—45.10(206) Other claims. No claim shall be made for products in any written, printed or graphic matter accompanying the product at any time that differ in substance from written representations made in connection with registration.

21—45.11(206) Name of product. The name of the product shall appear on the labeling so as not to emphasize any one ingredient or otherwise be misleading. It shall not be arranged on the label in such a manner as to be confused with other terms, trade names or legends.

21—45.12(206) Brand names, duplication of, or infringement on. A brand name is distinctive with reference to the material to which it applies and the registration of a pesticide under the same brand name by two or more manufacturers or shippers should be denied or refused. This principle applies also to the registration of brand names so similar in character as to be likely to be confused by the purchaser. In the event the same name or a closely similar one is offered by another manufacturer, the secretary may decline the said name a second time, for registration unless required to do so by an order of court.

21—45.13(206) Ingredient statement.

45.13(1) *Location of ingredient statement.* The ingredient statement must appear on that part of the label displayed under customary conditions of purchase except in cases where the secretary determines that, due to the size or form of the container, a statement on that portion of the label is impractical, and permits such statement to appear on another side or panel of the label. When so permitted, the ingredient statement must be in larger type and more prominent than would otherwise be possible. The ingredient statement must run parallel with other printed matter on the panel of the label on which it appears and must be on a clear contrasting background not obscured or crowded.

45.13(2) *Names of ingredients.* The well-known common name of the ingredient must be given or, if the ingredient has no common name, the correct chemical name. If there is no common name and the chemical composition is unknown or complex, the secretary may permit the use of a new or coined name that the secretary finds to be appropriate for the information and protection of the user. If the use of a new or coined name is permitted, the secretary may prescribe the terms under which it may be used. A trademark or trade name cannot be used as the name of an ingredient except when it has become a common name.

45.13(3) *Percentages of ingredients.* Percentages of ingredients shall be determined by weight and the sum of the percentages of the ingredients shall be one hundred. Sliding scale forms of ingredient statements shall not be used.

45.13(4) *Designation of ingredients.*

a. Active ingredients and inert ingredients shall be so designated, and the term "inert ingredient" shall appear in the same size type and be equally as prominent as the term "active ingredients."

b. If the name but not the percentage of each active ingredient is given, the names of the active and inert ingredients shall respectively be shown in the descending order of the percentage of each present in each classification and the name of each ingredient shall be given equal prominence.

45.13(5) *Active ingredient content.* As long as a pesticide is subject to the Act the percentages of active ingredients declared in the ingredient statement shall be the percentages of such ingredients in the pesticide.

21—45.14(206) Net contents. Each package of pesticide shall show the net weight or measure of content, either stenciled or printed on the package or container, or on a tag attached thereto. Indefinite statements of content such as ". . . . oz. when packed" shall not be used. Statements of liquid measure, or of specific gravity or density of liquid preparations, or expression of composition in terms of

pounds per gallon shall be made on the basis of 68°F (20°C) except when other basis has been established through trade custom.

21—45.15(206) Coloration of highly toxic materials. The white powder pesticides hereinafter named shall be colored or discolored in accordance with this rule. Provided, however, that any such white powder pesticide that is intended solely for use by a textile manufacturer or commercial laundry, cleaner or dyer as a moth-proofing agent, that would not be suitable for such use if colored and that will not come into the hands of the public except when incorporated into a fabric, shall not be required to be so colored or discolored in accordance with this rule. The hues, values and chromas specified are those contained in the Munsell Book of Color, Munsell Color Company, 10 East Franklin Street, Baltimore, Maryland.

45.15(1) The coloring agent must produce a uniformly colored product not subject to change in color beyond the minimum requirements during ordinary conditions of marketing and storage and must not cause the product to become less effective or cause damage when used as directed or in accordance with commonly recognized safe practice.

45.15(2) Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite and barium fluosilicate shall be colored any hue, except the yellow-reds and yellows, having a value of not more than eight or a chroma of not less than four or shall be discolored to a neutral lightness value not over seven.

45.15(3) Sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than eight and a chroma of not less than four or shall be discolored to a neutral lightness value not over seven.

45.15(4) Other white powder pesticides may be required to be colored or discolored after investigation and public hearing.

45.15(5) The secretary may permit other hues to be used for any particular purpose if the prescribed hues are not feasible for such purposes, and if such action will not be injurious to the public.

45.15(6) The coloration requirements above shall apply to the materials named therein and not to nonhighly toxic mixtures consisting of other ingredients with highly toxic materials.

This rule is intended to implement Iowa Code section 206.11.

21—45.16(206) Illegal acts. All pesticides, whether registered or not, sold or offered for sale shall comply with the provisions of section 206.11(1) of the Iowa pesticide Act.

The secretary shall examine pesticides from time to time, and if it appears at any time that a pesticide fails to comply with any provision of the Iowa pesticide Act, notice may be given to the manufacturer or seller thereof and an opportunity to present views either orally or in writing about the alleged violation. If it then appears that the provisions of this Act have been violated, a statement of the facts may be sent to the county attorney in the county in which the violation occurred for the purpose of instituting criminal proceedings.

21—45.17(206) Guarantee of pesticide.

45.17(1) Any manufacturer or distributor or other person residing in the United States may furnish to any person to whom it sells a pesticide a guarantee that the pesticide was lawfully registered at the time of sale and delivery to such person, and that the pesticide complies with all the requirements of the Act and rules herein.

45.17(2) No reference to or suggestion that a guarantee of registration has been given shall be made in the labeling of any pesticide.

21—45.18(206) Shipments for experimental use. A pesticide shipped or delivered for experimental use shall not be considered a violation of section 206.11(1) of the Iowa pesticide Act.

45.18(1) When the pesticide is shipped or delivered for experimental use under the supervision of any federal or state agency authorized by law to conduct research.

45.18(2) By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For Experimental Use Only—Not To Be Sold".

45.18(3) Or provided that a written permit has been obtained from the secretary either specific or general subject to such restrictions or conditions as may be set forth in the permit. The application for such a permit shall contain such information as may be required by the secretary; and in addition the proposed labeling thereon shall bear (1) the prominent statement "For Experimental Use Only" on the container label; (2) a caution or warning statement that may be necessary and if complied with adequate for the protection of those who may handle or be exposed to the experimental products; (3) the name and address of the applicant; (4) the name or designation of the formulation; (5) if the pesticide is to be sold, the statement of the names and percentages of the principal active ingredients in the product.

45.18(4) A pesticide intended for experimental use shall not be offered for general sale by a retailer or others, or advertised for general sale.

21—45.19(206) Enforcement.

45.19(1) Collection of samples. Samples of pesticides and devices shall be collected by an official investigator or by any employee of the state who has been duly designated by the secretary, by entry into any place during reasonable business hours.

45.19(2) Nonchemical pest control devices. Manufacturers or their representatives intending to sell or lease a nonchemical pest control device in the state shall submit efficacy and safety data to the department of agriculture and land stewardship prior to the sale or lease. This requirement may include the furnishing of specimen devices or samples. The department or the department's designee shall examine or test the device as may be necessary to ascertain the reliability, efficacy and safety data of the device and actual or potential adverse effects of the device upon human health and safety. The costs of conducting the examination or test shall be borne by the manufacturer or the manufacturer's representative.

45.19(3) Notice of apparent violation. If from an examination or analysis a pesticide appears to be in noncompliance with the Iowa pesticide Act, a written stop sale, use or removal notice will be initiated by the secretary or the secretary's duly appointed authority. The notice shall state the manner in which the product fails to meet the requirements of the Act and the regulations and that the recipient shall be given an opportunity to offer such written explanation as the recipient may desire.

45.19(4) Any person may obtain an opportunity to present relevant arguments or comments by submitting a written request within 20 days from the date of mailing of the notice.

45.19(5) The secretary may suspend an applicator's license, permit or certification pending inquiry and, after opportunity for a hearing, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under the Act, upon receipt of information from the environmental protection agency that the applicator has been convicted under the criminal provision of Section 14(b) of FIFRA or has been assessed a civil penalty under Section 14(a) of FIFRA.

21—45.20(206) Hazardous rodenticides. Before the rodenticides sodium fluoracetate (1080), thallium sulfate, and phosphorous pastes are to be used by any federal, state, county, municipal, or public officers, or their deputies, employees, or agents, in their official duties in pest control; or licensed pest control operators for use in their service work; the applicator shall notify the department of agriculture and land stewardship prior to use, of (1) the location or site where the rodenticide is to be used; (2) the date the application is to be made; and (3) the amount of hazardous rodenticide to be used. At the time of notification the licensee must give assurance that the certified applicator understands the hazards of the product, the standard operating procedures as provided by the manufacturer, and, assure the department that the certified applicator will comply with all label precautions. Failure to comply with this rule may result in the suspension or revocation of the applicator's license.

21—45.21(206) Highly toxic. A pesticide that falls within any of the following categories when tested on laboratory animals (mice, rats and rabbits) is highly toxic to humans within the meaning of these principles:

45.21(1) *Oral toxicity.* Those that produce death within 14 days in half or more than half the animals of any species at a dosage of 50 milligrams at a single dose, or less, per kilogram of body weight when administered orally to ten or more such animals of each species.

45.21(2) *Toxicity on inhalation.* Those that produce death within 14 days in half or more than half of the animals of any species at a dosage of 200 parts or less by volume of the gas or vapor per million parts by volume of air when administered by continuous inhalation for one hour or less to ten or more animals of each species, provided such concentration is likely to be encountered by humans when the pesticide is used in any reasonably foreseeable manner.

45.21(3) *Toxicity by skin absorption.* Those that produce death within 14 days in half or more than half of the animals (rabbits only) tested at a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less to ten or more animals.

45.21(4) *Designation as highly toxic.* Provided, however, that the secretary may exempt any pesticide that meets the above standard but that is not in fact highly toxic to humans, from these principles with respect to pesticides highly toxic to humans, and may after a hearing designate as highly toxic to humans any pesticide which experience has shown to be so in fact.

45.21(5) *Human data.* If the secretary finds, after opportunity for hearing that available data on human experience with any pesticide indicates a toxicity greater than that indicated from the above described tests on animals, the human data shall take precedence and if that protection of the public health so requires, the secretary shall declare such pesticide to be highly toxic to humans for the purposes of this Act and the regulations thereunder.

21—45.22(206) License and certification standards for pesticide applicators. No person shall engage in the business of applying pesticides to the land or property of another at any time without being licensed and certified by the secretary. No person shall apply any restricted use pesticide without first complying with certification standards or unless the application is made under the direct supervision of a certified applicator as specified in this chapter.

45.22(1) *License for commercial, noncommercial and public applicators.* Before a license is issued, each commercial, noncommercial and public applicator shall demonstrate competence by qualifying for a commercial, noncommercial and public applicator's license by successfully completing the appropriate certification examinations administered by the secretary to demonstrate knowledge regarding the potential for pesticides contaminating groundwater aquifers and proper pesticide handling practices that will aid in preventing the contamination of groundwater aquifers, calibration, integrated pest management, recognition of common pests to be controlled, timing and methods of application, interpretation of label and labeling information, safety precautions and preharvest or reentry restrictions, specific procedures to be used in disposing of pesticides and containers, and related legal responsibility under the classifications for which such applicant is to be licensed.

a. Examination scores for individuals not completing certification requirements or paying the required fees shall be maintained on file as valid test scores for a maximum of one year following the date each examination was successfully completed.

b. Certification categories that are added to an individual's current certification shall expire on the same date the individual's current certification card expires.

45.22(2) *Certification of commercial, noncommercial and public applicators.*

a. Initial certification. To be initially certified as a commercial, noncommercial or public applicator, a person shall demonstrate a fundamental knowledge of the minimum state and federal standards of competency for commercial applicators by passing an examination administered by the department. The examination must cover subjects relating to the safe handling, application and storage

of pesticides; the correct calibration of equipment used for the application of pesticides; the effects of pesticides upon groundwater; and subjects related to the minimum standards of competency for commercial applicators outlined in 40 CFR 171.101 and 171.103 as revised March 3, 2017.

b. A person who employs noncommercial applicators shall apply for a noncommercial applicator's license; and all noncommercial applicators shall be certified by successfully completing the appropriate examinations for the type of restricted use pesticide applications being made and shall be required to pay the certification fee of $75 for a three-year certification for each employee certified. Noncommercial applicators shall be subject to the $25 annual license fee. The provisions of Iowa Code section 206.13 relating to licenses and requirements for their insurance shall not apply to a noncommercial applicator, providing that the noncommercial applicator:

(1) Is a full-time employee of a privately held entity.

(2) Shall not publicly claim to be a commercial pesticide applicator nor engage in the business of applying pesticides other than as an employee of a company on company property.

c. Separate examinations shall be taken and passed for each category or subcategory in which the commercial, noncommercial or public applicator intends to become certified. A person must demonstrate practical knowledge and meet the competency standards outlined to be certified in each category or subcategory. The category descriptions and competency standards include:

(1) Agricultural pest control. Includes persons who use or supervise the use of pesticides to control pests in crops grown where the ultimate uses of the many commodities may be food or feed products, or both, and include other industrial or manufacturing uses, or both, of agricultural commodities. Persons who use or supervise the use of pesticides directly on animals or areas or places on or in which animals are confined are included. Agricultural pest control is comprised of five subcategories:

1. Agricultural weed control. Includes persons using or supervising the use of pesticides to control plant pests in the production of agricultural crops, including but not limited to feed, small grains, or both; corn; soybeans; forage; grasslands; and pasture.

2. Agricultural insect control. Includes persons using or supervising the use of pesticides to control insect pests in the production of agricultural crops, including but not limited to feed, small grains, or both; corn; soybeans; forage; grasslands; and pasture.

3. Agricultural crop disease control. Includes persons using or supervising the use of pesticides to control plant diseases in the production of agricultural crops, including but not limited to feed, small grains, or both corn; soybeans; forage; grasslands; and pasture.

4. Agricultural fruit and vegetable control. Includes persons using or supervising the use of pesticides to control plant, insect, or disease pests in the production of food for human consumption, including but not limited to vegetables, small fruits, tree fruits, and nuts.

5. Animal pest control. Includes persons using or supervising use of pesticides directly on animals in the production of an agricultural commodity including but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, or any other livestock, or areas or places on or in which animals are confined.

(2) Forest pest control. Includes persons using or supervising the use of pesticides in forests, forest nurseries, and forest seed production areas. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(2).

(3) Ornamental and turf pest control. Includes persons who use or supervise the use of pesticides to control pests in the maintenance and production of ornamental plants and turf grass, including in and around structures. Ornamental and turf pest control is comprised of four subcategories:

1. Ornamental and turf pest control. Includes persons using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf grass, including in and around structures (except greenhouses), plant nurseries, golf courses, athletic fields, public or private grounds, turf farms, or similar areas.

2. Turf pest control. Includes persons using or supervising the use of pesticides to control pests only in the maintenance and production of turf grasses, including in and around structures (except

greenhouses or other enclosed, climate-controlled environments), plant nurseries, golf courses, athletic fields, public or private grounds, turf farms, or similar areas.

3. Ornamental pest control. Includes persons using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and other ornamental plants, except turf, in areas other than a greenhouse or other enclosed, climate-controlled environment.

4. Greenhouse pest control. Includes persons using or supervising the use of pesticides in the production and maintenance of ornamental trees, shrubs, or any other plants in a greenhouse setting and also in any other indoor, controlled environment.

(4) Seed treatment. Includes persons using or supervising the use of pesticides to seeds. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(4).

(5) Aquatic pest control. Includes persons using or supervising the use of pesticides to standing or running water to control aquatic pests, excluding applicators engaged in public health-related activities. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(5).

(6) Right-of-way pest control. Includes persons using or supervising the use of pesticides in the maintenance of public roads, electric power lines, pipelines, railroad rights-of-way, industrial site weed control, fence lines, structural perimeters, or other similar areas to control unwanted vegetation. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(6).

(7) Industrial, institutional, and structural pest control. Includes persons who use or supervise the use of pesticides in, on, or around the following: food handling establishments, packing houses, food processing facilities, human dwellings, institutions, industrial establishments, and any other structures and adjacent areas, public or private, for the protection of stored, processed, or manufactured products. Industrial, institutional, and structural pest control is comprised of six subcategories:

1. General and household pest control. Includes persons using or supervising the use of pesticides, except fumigants, for general and household pest control in human dwellings, including indoor areas normally frequented or inhabited by humans, such as but not limited to schools, hospitals, institutions, dining facilities, food dispensing and food handling establishments, food manufacturers and processors, industrial establishments, warehouses, and any other structures and adjacent areas, public or private. This subcategory also covers the protection of stored, processed, or manufactured products from insects and similar organisms, pest birds, or vertebrate pests.

2. Termite control. Includes persons conducting wood-destroying insect inspections for the purpose of issuing a wood-destroying insect report for real estate transactions and real estate refinance transactions or for treatment or supervision of treatment for control or prevention of wood-destroying insect infestations.

3. Non-soil fumigation. Includes persons using or supervising use of pesticides in a gaseous form that are classified as fumigants to control pests in anything other than soil. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(14).

4. Community insect control. Includes persons using or supervising the use of pesticides to control flies or mosquitoes in a community or public health program. Public applicators as defined by Iowa Code section 206.2(23) who apply or supervise the use of pesticides to control pests in a public health program are required to be certified in the public health pest control category.

5. Wood preservatives. Includes persons using or supervising the use of wood-preserving pesticides to control or protect against wood-destroying organisms.

6. Antifouling paints. Includes persons using or supervising use of tributyltin (TBT) paints for the purpose of inhibiting the growth of aquatic plant and animal organisms on submerged marine structures and on the hulls of boats and ships.

(8) Public health pest control. Includes persons using or supervising the use of pesticides in any designated public health program for the management and control of pests, vertebrate or invertebrate, that may have medical or public health importance or both. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(8).

(9) Regulatory pest control. Includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of pests as part of official regulatory responsibilities. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(9).

(10) Demonstration and research pest control. Includes persons who demonstrate to the public the proper use and techniques of application or persons who research the use of pesticides and in doing so use or supervise the use of pesticides. Individuals certified in demonstration and research pest control are also required to be certified in another category that is specific to the particular type of pesticide being employed for the particular project. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(10).

(11) Aerial application. Includes persons who use any aircraft to apply pesticides to control plant, insects or similar organisms; plant diseases in the production of agricultural commodities; food for human consumption, including but not limited to vegetables, small fruits, tree fruits and nuts, feed or small grains, corn, soybeans, forage, grasslands, and pasture; or a combination thereof.

(12) Soil fumigation. Includes persons using or supervising the use of gaseous pesticides in soil. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(13).

d. Commercial applicator minimum age. A commercial applicator must be at least 18 years old.

45.22(3) *Certification of private applicators.*

a. Initial certification. To be initially certified as a private applicator, a person shall demonstrate a fundamental knowledge of the minimum state and federal standards of competency for private applicators by passing an examination administered by the department and submitting a $15 certification fee. The examination shall cover subjects related to the minimum standards of competency for private applicators outlined in 40 CFR 171.105 as revised March 6, 2017. A private applicator shall pay a certification fee of $15 for a period not to exceed three years.

b. Renewal of private applicator certification. A private applicator's certification shall be renewed upon evidence that the applicator has paid the required certification fee and has successfully completed an instructional course consisting of either an examination or continuing instructional courses as prescribed by the department. A private applicator shall pass an examination each third year following initial certification or may elect to attend two hours of approved continuing instructional courses each year during the renewal period. A private applicator failing to complete the required two hours of approved instruction for each year during the renewal period following initial certification or recertification shall be required to pass an examination prior to recertification.

c. A private applicator who purchases or applies a soil or non-soil fumigant that is classified as a restricted use pesticide shall pass an examination prescribed by the department for initial certification in the private fumigation category in addition to the examination required for initial private certification. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.105(d) and 40 CFR 171.105(e). Upon successfully completing the required private fumigation examination the private applicator's certification credentials shall be so designated. The fumigation category designation shall remain valid until the private applicator's certification expires. To renew the fumigation category certification a private applicator may elect to complete an instructional course consisting of either an examination or instructional course as prescribed by the department in addition to the examination or instruction required for private certification.

d. A private applicator must be at least 18 years old.

45.22(4) *Renewal of license classification and certification.*

a. Each commercial, noncommercial and public applicator's license classification shall expire annually on December 31 and shall be renewed upon payment of the required license fee provided that all of the applicant's personnel who apply pesticides are certified commercial, noncommercial or public applicators and are certified in the appropriate classifications covering their pesticide application activities.

b. Each commercial, noncommercial and public applicator's certification shall expire December 31 of the third year of the three-year certification and shall be renewed by the department upon receipt of evidence that the applicator has paid the required certification fee and has completed an instructional course consisting of either an examination or continuing instructional courses as prescribed by the department. A commercial, noncommercial or public applicator shall pass an examination each third year following initial certification or may elect to attend two hours of approved continuing instructional courses each year during the renewal period. A commercial, noncommercial or public applicator seeking recertification by attending continuing instructional courses shall attend courses approved for each certification category in which the person is seeking recertification. A two-hour continuing instructional course may be approved for more than one certification category. A commercial, noncommercial or public applicator failing to complete the required two hours of approved instruction for each year during the renewal period shall be required to pass an examination prior to recertification.

c. Any person who attempts to misrepresent anyone or attempts to use unauthorized assistance in passing any examination shall be denied the privilege of taking any examination for the period of one year.

d. The secretary may revise certification periods for pesticide applicators with certification fees adjusted to reflect an equivalent certification fee based on fees currently established in order to provide a more uniform distribution of pesticide applicator certification renewal dates.

45.22(5) *Certification renewal periods for commercial, noncommercial, public and private applicators.*

a. Renewal periods for commercial, noncommercial, and public applicators. The renewal period is the time within which the commercial, noncommercial, public and private applicators have to renew their certification by either completing the required certification examination or instructional courses and pay the required certification fee. Except as provided in paragraph 45.22(5)*"c,"* the renewal period for commercial, noncommercial and public applicators shall begin on the date a person has completed the required certification examination or instructional courses and paid the required certification fee. The renewal period shall end on December 31 of the third calendar year of the certification cycle.

b. The renewal period for private applicators. The renewal period for a private applicator shall begin on the date a person has completed the required certification examination or instructional courses and paid the required certification fee. The renewal period shall end on April 15 of the calendar year following the certification expiration date.

c. The renewal period for a person completing initial certification requirements on October 1 or any time thereafter during a calendar year shall begin on January 1 of the following calendar year.

d. Except as provided in paragraphs 45.22(5)*"a," "b,"* and *"c,"* continuing instruction credits from a previous year in a certification renewal period shall not be accepted nor shall credits accumulated be accepted for use in a future year in a certification renewal period.

45.22(6) *Report of licensee.*

a. A commercial, noncommercial or public applicator applying for recertification without retesting shall file a report on a form provided by the department certifying that the required continuing instructional courses have been completed.

b. The licensee shall maintain a file of the certificates of completion required under subrule 45.52(4) for each employee recertifying by attending continuing instruction courses. The file shall contain the certificates of completion for the period covering the previous certification period and current certification period for each employee receiving continuing instruction courses.

c. An employee who transfers to a new employer shall, upon request, be provided copies of the certificates of completion on file with the previous employer for filing with a new employer.

d. Files containing certificates of completion shall be open for inspection upon request by the department.

45.22(7) *Direct supervision of noncertified applicators.* Certified applicators whose activities indicate a supervisory role in the use of restricted use pesticides by noncertified applicators must demonstrate a practical knowledge of federal and state supervisory requirements, including any requirements on the product label and labeling, regarding the use of restricted use pesticides.

a. A noncertified applicator must be at least 18 years old to apply a restricted use pesticide.

b. A noncertified applicator may use restricted use pesticides to property owned or rented by a private applicator that is an immediate family member if the uncertified applicator works under the direct supervision and instruction and control of a certified private applicator.

c. A noncertified applicator cannot use a restricted use pesticide as a fumigant or through aerial application.

d. A noncertified applicator cannot use a restricted use pesticide that contains sodium cyanide or sodium fluoroacetate.

e. The noncertified applicator must have been instructed within the last 12 months in the safe operation of any equipment for use in mixing, loading, transferring, or applying pesticides.

f. The noncertified applicator must meet qualification requirements under 40 CFR 171.201(c).

g. The supervising certified applicator must be certified in each category applicable to the supervised pesticide use.

45.22(8) *Certified handler.*

a. Each person employed by a licensed commercial applicator, noncommercial applicator, public applicator, or pesticide dealer who handles pesticides in other than unopened containers for the purposes of preparing, mixing or loading pesticides for application by another person, repackaging bulk pesticides or disposing of pesticide-related wastes from these activities shall become certified by taking and passing an examination as prescribed by the secretary.

b. A certified handler shall demonstrate a fundamental knowledge of the potential for pesticides contaminating groundwater aquifers or surface waters and proper handling practices that will aid in preventing the contamination of groundwater aquifers or surface waters, adverse effects on the environment and any other personal or public hazards associated with the use of pesticides by passing a fundamental examination administered by the secretary covering interpretation of label and labeling information, mixing and application of pesticides in accordance with label instructions including proper concentration of pesticides to be used and local environmental situations that shall be considered during handling of pesticides to avoid contamination, specific procedures to be used in disposing of pesticides and containers, recognition of poisoning symptoms, procedures to follow in case of a pesticide accident, safe handling of pesticides and the effects on groundwater and surface water, the proper use of personal safety equipment and related legal responsibilities.

c. A certified handler's certification shall expire December 31 of the third year of the three-year certification and shall be renewed by the secretary upon receipt of evidence that the applicator has passed a written examination similar and equal to that required to obtain initial certification and has paid the required certification fee. A 21-day grace period from the day of initial employment shall be allowed to meet the certification requirements.

d. A certified handler employed by a licensed applicator shall work under the direct supervision of a certified commercial, noncommercial or public applicator employed by the same firm or agency. "Under direct supervision" shall not require the physical presence of the supervising certified applicator in reference to agricultural crop general use pesticide applications if the supervisor is immediately available if and when needed.

e. A certified handler may apply restricted use pesticides as a noncertified applicator if the requirements for direct supervision of noncertified applicators in subrule 45.22(7) are met.

f. A certified handler shall not act in the capacity of a supervisor of other certified handlers or certified applicators.

45.22(9) *Temporary exemption from certification.* A commercial, noncommercial, public or private applicator need not be certified to apply general use pesticides for a period of 21 days from the date of initial employment if the commercial, noncommercial, public or private applicator is under the direct supervision of a certified applicator. "Under the direct supervision of" means the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is physically present by being in sight or hearing distance of the supervised person.

a. Temporary exemption for certification for agricultural applicators. A commercial applicator who applies pesticides to agricultural land may elect to be exempt from the certification requirements for a commercial applicator for a period of 21 days from the date of initial employment if the applicator meets the requirements of a private applicator. A private applicator who applies restricted use pesticides to agricultural land and elects to take advantage of the exemption as provided for in Iowa Code section 206.5 shall work under the direct supervision of a certified commercial applicator and meet the requirements for direct supervision of noncertified applicators in subrule 45.22(7).

b. Employees of food processing and distribution establishments. An employee of a food processing and distribution establishment is exempt from the certification requirements of Iowa Code section 206.5, provided the following conditions are met:

(1) The employer has at least one person holding a supervisory position who is a certified applicator.

(2) The employer provides a program approved by the department for training, testing and certification of personnel who apply, as an incidental part of their duties, any restricted use pesticide on property owned or rented by the employer.

(3) The exempt employee does not apply restricted use pesticides.

(4) The exempt employee applies general use pesticides under the direct supervision of a certified applicator. "Under direct supervision" shall not require the physical presence of the supervising certified applicator if the supervising applicator is immediately available if and when needed.

(5) The supervising certified applicator must be certified in each category applicable to the supervised pesticide use.

45.22(10) *License application—contents.* Each license application submitted pursuant to Iowa Code section 206.6 shall include a complete list of all employees who may apply pesticides. Any changes regarding the status of the employees named on the application or new employees shall be reported immediately to the pesticide section of the department of agriculture and land stewardship.

45.22(11) *Exemption from certification.* An employee of a public agency who applies pesticides that are classified for general use and that are in ready-to-use formulations shall be exempt from the certification requirements of Iowa Code chapter 206 provided that the application of pesticides is an incidental part of the person's duties.

45.22(12) *Pesticide use on private golf courses.* Employees of private golf courses who apply pesticides shall comply with the same requirements for employees applying pesticides for public golf courses including, but not limited to, certification and notification requirements.

45.22(13) *Transition to recertification by instruction.* Recertification may be accomplished by successful completion of the required written examination every third year or completion of an approved two-hour instructional course each year of the renewal period.

a. Private applicator recertification. A private applicator may apply for recertification by providing evidence of completion of an approved two-hour instructional course for each year during the preceding three-year renewal period. A private applicator failing to meet the required annual two-hour instruction requirement for recertification during the three-year certification renewal period shall apply for recertification by providing evidence of satisfactorily completing an examination. Applications for recertification shall be submitted with a $15 certification fee.

b. Commercial, noncommercial, and public applicator recertification. A commercial, noncommercial or public applicator may apply for recertification by providing evidence of completion of an approved two-hour instructional course in each of the three calendar years preceding the expiration date. Applications for recertification shall be submitted with the appropriate certification fee.

45.22(14) *Requirements for commercial aerial applicator and aerial applicator consultant.*

a. Commercial aerial applicator license. The licensed aerial applicator applying pesticides to agricultural land shall operate in Iowa in consultation with an aerial applicator consultant. The application form for a commercial aerial applicator license shall be provided by the pesticide bureau. The completed application form, together with supporting documentation, will verify compliance with Iowa Code chapter 206 and the rules of this chapter. An aerial applicator license may be issued when the applicant has provided the name and license number of the aerial applicator consultant and other required information on the application form, passed the required certification examinations, and paid the commercial applicator license and certification fees in compliance with Iowa Code sections 206.5 and 206.6.

b. Aerial applicator consultant duties. An aerial applicator consultant shall:

(1) Complete requirements for category #11 aerial applicator certification and either a commercial pesticide applicator license or pesticide dealer license.

(2) Register with the pesticide bureau on forms provided by the pesticide bureau.

(3) Meet with each aerial applicator under the consultant's consultation prior to application of pesticides and verify compliance with Iowa's pesticide rules, the requirements of the Federal Aviation Administration, and the requirements of the Iowa department of transportation using a checklist provided by the pesticide bureau. A copy of the completed checklist shall be maintained on file for three years with the aerial applicator consultant.

(4) Provide detailed aerial maps for the intended application location that clearly depict field boundaries, roads, dwellings, adjacent fields, water bodies, and other pertinent information, as well as county, township and section and latitude/longitude if available.

(5) Maintain daily communication with the aerial applicator when pesticide applications are performed with a minimum of one meeting in person each day to emphasize safe pesticide application and handling procedures.

(6) Maintain daily oversight of pesticide handlers who supply or mix pesticides for the aerial applicator under the consultant's consultation to ensure required personal protection equipment is utilized.

(7) Provide information to the aerial applicator regarding sensitive areas listed on the department's sensitive crop registry and arrange for proper protection of registered apiaries. The aerial applicator consultant shall identify nearby sensitive areas including the location of endangered species as identified by the U.S. Environmental Protection Agency (EPA) and listed on the pesticide bureau's website, water bodies in or adjoining the field of application, roads adjoining the field of application, and places adjoining the field of application that may be occupied by people, including farmworkers.

(8) Provide instructions for proper emergency response procedures for the aerial applicator and pesticide handlers in the case of a pesticide spill or accident. Require that while in the air all pilots have an electronic communication device capable of communicating with a consultant.

(9) Provide information immediately upon request to regulatory officials regarding the identification of a pesticide applied to an area of concern and the name and license number of the applicator working under the consultant's consultation.

(10) Notify the aerial applicator in person and in writing upon termination of consultation services. The aerial applicator shall notify the pesticide bureau when the aerial applicator begins working with a new aerial applicator consultant.

c. Procedures for aerial application. The aerial applicator consultant shall provide the licensed aerial applicator the following:

(1) Name and telephone number where the consultant may be reached during hours of operation.

(2) Name and address or location of the property where the pesticide will be applied including detailed maps of fields that clearly depict the field boundaries, roads, dwellings, adjacent fields, water bodies, and other pertinent information, as well as county, township and section and latitude/longitude if available.

(3) Name of the pesticide(s) to be applied and copies of each label along with instructions necessary to comply with Iowa's pesticide rules. The aerial applicator consultant shall verify that the aerial applicator has read and understands the label instructions.

(4) Maps of the intended location for each pesticide application reviewed and approved by the aerial applicator consultant. The aerial applicator consultant shall provide information to the aerial applicator regarding sensitive areas listed on the department's sensitive crop registry and shall arrange for proper safety precautions to protect registered apiaries.

(5) The identification of nearby sensitive areas including the location of endangered species as identified by EPA and listed on the pesticide bureau's website, water bodies in or adjoining the field of application, roads adjoining the field of application, and places adjoining the field of application that may be occupied by people, including farmworkers.

d. Responsibility. The aerial applicator is responsible for applying pesticides in compliance with label directions and Iowa's pesticide rules. The aerial applicator consultant supplying a pesticide for application by the aerial applicator is responsible for handling and mixing the pesticides according to label directions and Iowa's pesticide rules.

e. Aerial applicator certification and continuing instruction. An aerial applicator and aerial applicator consultant shall pass an examination for initial certification. An aerial applicator from a state with an approved reciprocal certification agreement will be eligible for reciprocal certification. Each certified aerial applicator and aerial applicator consultant shall participate in a program of continuing instruction that shall consist of either an examination or educational program approved by the department. The continuing instruction program shall include information regarding the safe application and handling of pesticides and responsible operation of aircraft spray equipment.

45.22(15) *Recordkeeping requirements for supervisions of noncertified applicators by certified commercial applicators.* Commercial applicators shall maintain records of noncertified applicator qualifications for two years from the date of the restricted use pesticide application and shall furnish copies to the secretary upon request in writing. Records of each transaction shall include the following information:

a. Name of the noncertified applicator and signature.

b. The certified applicator's certification number on the document evidencing that person's certification, the state or other governmental unit that issued the document, and the expiration date of the certification.

This rule is intended to implement Iowa Code sections 206.2, 206.4, 206.5, 206.6, 206.7, and 206.31.

21—45.23(206) Sale or possession of thallium. No person shall sell or possess any thallium or thallium compound except federal, state, county, municipal officers or their deputies for use in their official duties in pest control; research or chemical laboratories in their respective fields; regularly licensed pest control operators for use in their own service work; properly registered ant, mole and rodent poisons containing thallium expressed as metallic not more than one percent; wholesalers or jobbers of pesticides for sale to the aforementioned persons; or for export.

21—45.24(206) Warning, caution and antidote statements. In order to promote uniformity between the requirements of the Iowa pesticide Act and requirements of the several states and the federal government, Iowa Code section 206.21 of the Iowa pesticide Act provides for the adoption of rules and regulations in conformity with those prescribed by the United States department of agriculture. Warning, caution and antidote statements required to appear on labels of pesticides under the Iowa pesticide Act shall conform to the warning, caution and antidote statements required under

interpretation 18 and revisions thereof of the regulations for the enforcement of FIFRA, which interpretation 18 and revisions thereof are hereby incorporated into this rule by this reference and made a part hereof.

21—45.25(206) Declaration of pests. The secretary declares the following to be pests:

1. Any insect, rodent, nematode, fungus, weed, or
2. Any form of plant and animal life, virus, or other microorganism, except viruses or other microorganisms on or in living man or other living animals, that exists under circumstances that make it unduly injurious to plants, man, domestic animals, other useful vertebrates, useful invertebrates, or other articles or substances.

21—45.26(206) Recordkeeping requirements. Commercial applicators and retail dealers shall maintain records with respect to application of pesticides for a period of three years from the date of application of the pesticides to which the records refer and shall furnish copies to the secretary upon request in writing.

45.26(1) *Retail dealers—sales to certified applicators.* Each restricted use pesticide retail dealer shall maintain at each individual dealership records of each transaction where a restricted use pesticide is made available for use by that dealership to a certified applicator. Record of each transaction shall include the following information:

a. Name and address of the residence or principal place of business of each person to whom the pesticide was made available for use.

b. The certification number on the document evidencing that person's certification, the state (or other governmental unit) that issued the document, the expiration date of the certification and the categories in which the applicator is certified, if appropriate.

c. The product name, EPA registration number granted under Section 24(c) of FIFRA (if any) on the label of the pesticide.

d. The quantity of the pesticide made available for use in the transaction.

e. The date of the transaction.

45.26(2) *Sales to uncertified persons.* No dealership may make a restricted use pesticide available to an uncertified person unless the dealer or dealership can document that the restricted use pesticide will be used by a certified applicator and the dealer or dealership maintains the records required in this subrule. Each restricted use pesticide retail dealer shall maintain records at each individual dealership of each transaction where a restricted use pesticide was made available to an uncertified person for use by a certified applicator. Records of each transaction shall be maintained for a period of 36 months after the date of the transaction and shall include the following information:

a. The name and address of the residence or principal place of business of the uncertified person to whom the restricted use pesticide is made available for use by a certified applicator.

b. The name and address of the residence or principal place of business of the certified applicator who will use the restricted use pesticide.

c. The certified applicator's certification number, the state (or other governmental unit) that issued the certification document, the expiration date of the certification and the categories in which the applicator is certified, if appropriate.

d. The product name, EPA registration number and the state special local need registration number granted under Section 24(c) of FIFRA (if any) on the label of the pesticide.

e. The quantity of the pesticide made available for use in the transaction.

f. The date of the transaction.

45.26(3) *Commercial applicators.* Every commercial applicator shall make, or cause to have made, office records of all application activities on each pesticide applied. Records for application activities involving more than one licensed commercial applicator or billed through a licensed pesticide dealer shall be maintained by each licensee. Each set of records shall include the following:

a. The name and license number of the licensee.

b. The name and address of the landowner or customer.

c. Address of the place of application of restricted use pesticide.

d. Date of pesticide application.

e. Trade name and EPA registration number of the pesticide product used.

f. The quantity of pesticide product used, the concentration or rate of application, and the size of the treatment area.

g. If applicable, the temperature and the direction and estimated velocity of wind at time of application to any outdoor area.

h. Use of "restricted use" pesticide to include the crop, commodity, stored product or site to which the pesticide was applied.

i. Time pesticide application begins and ends.

j. The name and certification number of the certified applicator who made or supervised the application.

k. If applicable, the name of any noncertified applicator(s) who made the application under direct supervision as required under subrule 45.22(15).

This rule is intended to implement Iowa Code sections 206.11(3) and 206.15.

21—45.27(206) Use of high volatile esters. The use of high volatile esters formulations of 2,4-D and 2,4,5-T, the alcohol fraction of which contains five or fewer carbons, shall be prohibited in the counties of Harrison, Mills, Lee, Muscatine and that part of Pottawattamie county west of Range 41 West of the 5th P.M. to become effective upon filing.

21—45.28(206) Emergency single purchase of restricted use pesticide. The department shall issue a temporary certificate to private applicators for a single purchase of restricted use pesticides in situations declared to be an emergency by the department, upon receipt of the following completed and signed affidavit. No person shall use a restricted use pesticide without first complying with the requirements for applicator certification outlined in subrule 45.22(7).

21—45.28(206) EMERGENCY SALE OF A RESTRICTED USE PESTICIDE BY A PRIVATE APPLICATOR

Emergency Single Purchase of Restricted Use Pesticide—Affidavit.

The Label which I have read, indicates:

Brand name of pesticide: _____

Federal Registration Number: _____

Name of Active Ingredient(s): _____

Percentage of Active Ingredient(s): _____

If the pesticide product is to be mixed with a carrier, show the amount of pesticide product per gallon of tank mix:

_____

Application rate per acre: _____

Name pest to be controlled: _____

At what stage of development is the pest most easily controlled:

_____

State degree of hazard (signal word): _____

Describe safety equipment required: _____

What is the recommended antidote for this product: _____

List environmental precaution shown on label: _____

Length of time until re-entry, if given: _____

Preharvest interval days required: _____

Describe method of container disposal: _____

I wish to make purchase of this pesticide on (date)_____

and I hereby swear under penalty of perjury that I understand the above label information and warnings.

_____
(name of private applicator)

This rule is intended to implement Iowa Code sections 206.4 and 206.5.

21—45.29(206) Application of general use pesticide by nonlicensed commercial applicator. A person may apply a general use pesticide without satisfying the licensing requirements of Iowa Code chapter 206, upon presenting evidence to the secretary of applying the pesticide under the direct supervision of a licensed commercial applicator or a public applicator.

21—45.30(206) Restricted use pesticides classified. Pesticide products containing active ingredients classified as restricted use are limited to use by or under the direct supervision of a certified applicator. In addition to any pesticide product containing active ingredients classified as restricted use by the department, a pesticide product containing active ingredients classified as restricted use shall include any pesticide product classified as restricted use by the EPA under the FIFRA, 3 U.S.C. section 136a(d), as amended to October 9, 2007, or 40 C.F.R. §152.164(c), as amended to June 19, 1995.

This rule is intended to implement Iowa Code section 206.20.

21—45.31(206) Application of pesticides toxic to bees.

45.31(1) Owners of apiaries, in order to protect their bees from pesticide applications, shall register the location of their apiaries with the state apiarist. Registration shall be on forms provided by the department. The registration expires December 31 each year and may be renewed the following year.

45.31(2) Between 8 a.m. and 6 p.m., a commercial applicator shall not apply to blooming crops pesticides labeled as toxic to bees when the commercial applicator is located within one mile of a registered apiary. A commercial applicator shall be responsible for maintaining the one-mile distance from apiaries that are registered and listed on the sensitive crop registry on the first day of each month.

This rule is intended to implement Iowa Code sections 206.6(5)*"a"*(3) and 206.19(2).

21—45.32(206) Use of DDT and DDD. Pesticides containing dichloro diphenyl trichloroethane (DDT) or dichloro diphenyl dichloroethane (DDD) shall not be distributed, sold or used except for control of pests of public health importance and pests subject to state or federal quarantines where applications of pesticides are made under the direct supervision of public health officials or state or federal quarantine officials.

21—45.33(206) Use of inorganic arsenic.

45.33(1) *Home use.* Formulations of inorganic arsenic containing more than one percent arsenic (expressed as elemental arsenic) shall not be distributed or sold for use as a pesticide in or around the home for the purpose of preventing, destroying or repelling any weed, rodent, insect or other pests.

45.33(2) *Other uses.* Formulations of inorganic arsenic shall not be distributed or sold for use as a pesticide for the purpose of preventing, destroying or repelling any weed, rodent, insect or other pests, unless there are no acceptable alternative methods of control available, as determined by the department. Where no acceptable alternative methods of control are available, and an inorganic arsenic formulation is approved for use by the department, such approval shall include specific conditions designed to protect the applicator, as well as the public health and welfare; and a permit must be secured by the user from the department prior to the application or use of the product.

This rule is intended to implement Iowa Code sections 206.19, 206.20 and 206.23.

21—45.34(206) Use of heptachlor. Pesticides containing heptachlor shall not be distributed, sold or used for the purposes of preventing, destroying or repelling mosquitoes or flies.

This rule is intended to implement Iowa Code sections 206.19, 206.20 and 206.23.

21—45.35(206) Use of lindane. Formulations of pesticides containing lindane or crystalline lindane shall not be distributed, sold or used when the lindane is prepared, identified, packaged or advertised to be vaporized through the use of thermal vaporizing devices.

This rule is intended to implement Iowa Code sections 206.19, 206.20 and 206.23.

21—45.36(206) Reports of livestock poisoning. Any person practicing veterinary medicine under the provisions of Iowa Code chapter 169 encountering a case of poisoning, or suspected poisoning, of domestic livestock through injury from contact with, exposure to, or ingestion of any biological or chemical agent or compound, shall immediately report by telephone or telegraph such poisoning to the head of the veterinary diagnostic laboratory of Iowa state university of science and technology, who shall immediately notify the state veterinarian of any such reports. Reports made pursuant to this rule shall be confirmed in writing as provided in subrule 45.36(2).

45.36(1) *Verbal report.* The verbal report of a case of such poisoning shall provide information on as many of the items listed in subrule 45.36(2) as available data allows.

45.36(2) *Written report.* The written report of a case of such poisoning shall be submitted within 48 hours, with one copy to the department and one copy to the veterinary diagnostic laboratory, and shall contain the following information on forms provided by the veterinary diagnostic laboratory or the department:

a. Location of incident.
b. Time and date of incident.
c. Number and type of livestock affected.
d. Poison agent, known or suspected.
e. Location of source of poisoning.
f. Type and degree of poisoning.
g. Name, mailing address and telephone number of livestock owner.
h. Whether release of poisoning agent is continuing.
i. Whether poisoning agent is on land or in water.
j. Any other information that may assist in evaluation of the incident.
k. Name and address of reporting veterinarian.

45.36(3) *Subsequent findings.* All subsequent findings and diagnostic results shall be submitted as soon as they become available.

This rule is intended to implement Iowa Code sections 206.19, 206.20 and 206.23.

21—45.37(206) Approval of use of inorganic arsenic formulation. There are two stages in obtaining approval for the use of an inorganic arsenic formulation pursuant to rule 21—45.33(206). First, the advisory committee must approve the use of the formulation in the state for a particular pest. Then, each individual desiring to use the approved formulation must secure a permit from the department. The required procedure is set out in this rule.

45.37(1) *Who may apply.* Any person may apply for approval for the use of an inorganic arsenic formulation to control a specific pest or pests pursuant to rule 21–45.33(206).

45.37(2) *Form of application.* All such applications shall be made in writing, signed by the applicant, and shall specify:

a. Common name or scientific name of pest or pests to be controlled with the formulation,
b. Crops that the pest or pests endanger,
c. Chemical name of inorganic arsenic formulation for which approval is requested,
d. Why there are no acceptable alternative methods of controlling the pests available,
e. Rate of application needed for control,
f. Number of applications needed annually for control,
g. Name, address and telephone number of the applicant.

45.37(3) *Hearings, when held.*

a. Applications for approval shall be considered at public hearings by the advisory committee.

b. The committee shall grant, modify, or deny the request for approval within 72 hours of the conclusion of the hearing.

45.37(4) *Conditions of approval.* Approvals shall be valid until revoked by the department.

a. In its approval, the committee shall specify:

(1) The inorganic arsenic formulation to be used.

(2) The pests for which it may be used.

(3) The crops on which it may be used.

(4) The maximum number of applications to be made annually, and

(5) Information to be submitted to the department following use of the formulation.

b. The committee shall also specify the conditions designed to protect the public health and welfare as conditions for the issuance of a permit by the department. Such conditions shall include, but not be limited to:

(1) That the permit applicant has sustained or will likely sustain damage from the pest for which control is approved,

(2) Topographical requirements to ensure minimal runoff into waters of the state,

(3) Minimum separation distance of area to be treated from waters of the state,

(4) Minimum distance of area to be treated from property not under control of applicant,

(5) Grass or other plant cover to prevent erosion on slopes to which the formulation is applied.

45.37(5) *Permits.* After an application for approval is granted, any person may use the formulation approved, provided that a permit is obtained from the department. The department and the committee shall review at least annually its approvals of uses of inorganic arsenic formulations and shall revoke an approval whenever it finds an acceptable alternative method of control is available.

This rule is intended to implement Iowa Code sections 206.19, 206.20 and 206.23.

21—45.38 to **45.44** Reserved.

21—45.45(206) Ethylene dibromide (EDB) residue levels in food. The following is the maximum allowable residue levels of Ethylene dibromide (EDB) for each of the three primary tiers of grain products:

45.45(1) For raw grain, the level should not exceed 900 parts per billion.

45.45(2) Intermediate level products—flour, various mixes for preparing baked goods, soft cereals and other products that would normally require cooking or baking before eating—the level should not exceed 150 parts per billion.

45.45(3) For ready-to-eat products—cold cereals, snack foods, bread and all baked goods—the level should not exceed 30 parts per billion.

45.45(4) For baby food, zero (0) tolerance—no acceptable level of EDB is permissible.

45.45(5) For fruit, the level should not exceed 250 parts per billion tolerance for the total fruit and should not exceed 30 parts per billion in the edible portion of the fruit.

This rule is intended to implement Iowa Code sections 189.17, 190.2 and 206.21.

21—45.46(206) Use of pesticide Command 6EC. The pesticide Command 6EC Herbicide EPA Reg. No. 279-3054 (active ingredient: 2-(2-Chlorophenyl) methyl-4, 4-dimethyl-3-isoxazolidinone . . . 64.3%) or any identically formulated compound shall be soil incorporated immediately following application. The method of application shall be limited to ground equipment.

21—45.47(206) Reporting of pesticide sales. Commercial pesticide applicators, pesticide dealers, pesticide manufacturers and pesticide distributors with the exception of manufacturers or distributors that distribute pesticides for resale purposes only shall submit annual reports to the Iowa department of agriculture and land stewardship by October 1 of each year on forms approved by the secretary of agriculture except that pesticide manufacturers or pesticide distributors that distribute pesticides only for resale purposes shall not be required to submit a report. The reports shall include information related to the gross dollar amount for all pesticides sold at retail for use in this state. The reports shall

also list the individual label name, EPA registration number and the gross dollar amount of each pesticide sold at retail for which gross retail sales are $3,000 or more.

This rule is intended to implement Iowa Code sections 206.6, 206.8 and 206.12.

21—45.48(206) Dealer license fees. A dealer license fee for a dealer with less than $100,000 in gross retail pesticide sales shall be $10 if the annual gross retail sales are less than $10,000; $25 if the annual gross retail sales are $10,000 or more but less than $25,000; $50 if the annual gross retail sales are $25,000 or more but less than $50,000; $75 if the annual gross retail sales are $50,000 or more but less than $75,000; and $100 if the annual gross retail sales are $75,000 or more but less than $100,000. The annual dealer license fee for a dealer with $100,000 or more in gross retail pesticide sales shall be based on one-tenth of one percent of the gross annual sales of all pesticides sold the previous fiscal year. The fiscal year shall begin July 1 and end June 30 of the following year.

45.48(1) A pesticide dealer license expires on June 30 of each year. However, a three-month grace period shall be allowed for renewal of pesticide dealer licenses. A late fee of $25 is imposed on a dealer with less than $100,000 in gross retail pesticide sales, and a late fee of 5 percent of the license fee due based on the gross pesticide retail sales shall be imposed upon the licensure of a pesticide dealer with $100,000 or more in gross retail pesticide sales. The application for renewal shall be considered complete once the required fees and reports have been submitted to the department.

45.48(2) The annual license fee for manufacturers or distributors distributing pesticides for resale purposes only shall be $25. License fees required by this rule shall be due July 1 of each year.

This rule is intended to implement Iowa Code sections 206.6, 206.8 and 206.12.

21—45.49(206) Pesticide use recommendations. Persons making pesticide use recommendations shall be familiar with the safe and proper use of each pesticide for which recommendations are made and shall not make any recommendations that are contrary to label instructions. The employer or licensee shall be responsible for all pesticide use recommendations made by their employees that are contrary to label instructions.

This rule is intended to implement Iowa Code sections 206.2, 206.4, 206.5, 206.6, 206.7 and 206.31.

21—45.50(206) Notification requirements for urban pesticide applications. All commercial or public applicators who apply pesticides within urban areas in municipalities shall post or affix notification signs at the start of the application and for at least 24 hours following the application or longer if required by the reentry directions on the pesticide label(s). The requirements of this rule shall not apply to the application of pesticides within a structure or within six feet of the outside perimeter of a structure and to pesticide applications made by the homeowner or tenant to their property.

For purposes of enforcement of this rule the term "municipality" shall include any city or developed residential area in the state. The term "urban" shall mean any area within or belonging to a city or developed residential area.

45.50(1) *Residential lawns.*

a. Notification signs shall project at least 12 inches above the top of the grass line or 18 inches to the top of the signs.

b. The notification sign shall be posted on a lawn or yard between two feet and five feet from the sidewalk or street. Residences that have unfenced or open backyards shall be posted within two feet to five feet from the back lot line.

c. When landscaping or other obstructions prohibit compliance with the minimum distances specified, the notification signs shall be posted in a manner that is reasonably within the intent of this subrule.

45.50(2) *Golf courses.* Signs including posters or placards shall be posted in a conspicuous manner near the first tee of each nine-hole course. The sign shall be constructed of a weather-resistant material and be a minimum size of 8½ inches by 11 inches. The lettering shall not be less than ½ inch.

The sign shall read "Pesticides are periodically applied to the golf course. If desired, you may contact your golf course superintendent or person in charge for further information." The sign shall be displayed prior to the application of any pesticide on the golf course and left in place for at least 24 hours following any pesticide application. Where pesticide labeling requires specific notification or reentry restrictions, the applicator shall comply with the label instructions.

45.50(3) *Parks, playgrounds and athletic fields.* For parks, athletic fields, playgrounds or other similar recreational property, the notification signs shall be posted immediately adjacent to areas within the property where pesticides have been applied and at or near the entrances to the property where pesticides have been applied. The notification signs shall be placed in a conspicuous manner to provide a reasonable notification to the public.

45.50(4) *Public rights-of-way.*

a. Notice of the application of pesticides to public rights-of-way of highways, roads, streets, alleys, sidewalks and recreational trails within the corporate limits of municipalities shall be posted in a manner that provides reasonable notice to the occupants of properties immediately adjacent to the area being treated. A minimum of two signs shall be posted to denote the beginning and the end of the area being treated. Within developed residential zones, at least one sign shall be posted at the beginning and one at the end of each block. Signs shall be placed in a manner to be readable from the adjacent property.

b. Public rights-of-way bordered by a chain link fence, noise wall or other structures or enclosures that bar pedestrian access shall be exempt from the posting requirement.

c. The licensed pesticide applicator performing the application shall make pesticide application schedules and other community right-to-know information available to the public upon request at the applicator's place of business during regular business hours.

d. The notification signs used for posting public rights-of-way shall consist of a weather-resistant poster or placard measuring at least 10 inches by 12 inches with lettering measuring a minimum of 1 inch. Notification signs shall project at least 2 feet above the top of the grass line or 3 feet to the top of the signs. The words "This area chemically treated. Keep off" shall be used for posting public rights-of-way.

45.50(5) *Public pest control programs.* Pesticides applied for or by any municipality for the control or abatement of pests related to public health programs such as mosquitoes or other pest control programs shall be exempt from posting requirements provided that the intended dates, time and locations are announced to the public in a conspicuous manner at least 24 hours prior to the application. The announcement shall be made on a major radio station, TV station, newspaper or any other means of mass communication that would normally reach the residents of that city or developed residential area.

45.50(6) *Notification signs.*

a. The notification signs shall be of a material that is rain-resistant for at least a 24-hour period and shall not be removed by the applicator for at least 24 hours from the time pesticides are applied or longer if required by the label of the pesticide applied. Each property owner, tenant, agent or person in charge of the property shall be provided with instructions that the notification sign is required to remain in place for a minimum of 24 hours following the pesticide application. When the labeling of the pesticide(s) applied requires a reentry restriction more than 24 hours, the sign shall be left in place for the specified period restricting reentry. After the required posting period has elapsed, all notification signs should be removed by either a representative of the business, organization, entity or person making said application or the owner, agent, person in charge of the property, or their representative, to which the pesticide was applied.

b. As a minimum, unless otherwise specified, the following information shall be printed on the notification sign in contrasting colors and block letters:

(1) The name and telephone number of the business, organization, entity or person applying the pesticide; and

(2) The words: "This area chemically treated. Keep off. Do not remove sign for twenty-four hours." As an alternative, a universally accepted symbol and text approved by the secretary that is recognized as having the same meaning or intent as specified in this paragraph may be used. When the labeling of the pesticide(s) applied requires a longer reentry restriction it shall be so stated on the notification sign.

The lettering for notification signs used for posting residential, commercial or public lawns or gardens or other similar areas shall measure at least three-eighths inch. The lettering for notification signs used for right-of-way areas required to be posted shall measure at least one inch.

c. The notification sign used for posting residential, commercial or public lawns or gardens or other similar areas shall consist of a sign or placard measuring at least four inches by five inches with letters measuring a minimum of three-eighths inch.

d. The label and other information normally associated with the use of the pesticide(s) being applied to any urban area that is required to be posted shall be provided to any individual upon request.

e. A commercial or public applicator who applies a pesticide with labeling that requires further maintenance after application shall provide the homeowner or agent in charge of property with a copy of the complete label of the pesticide(s) applied if requested and instructions on proper maintenance procedures.

f. Officials of the municipalities affected by this rule shall cooperate with the department in enforcing the requirements of this rule and shall report any infractions to the department.

45.50(7) *Prenotification registry.* In lieu of the requirement for public notification as specified in subrule 45.50(5), a municipality may maintain a registry of persons requesting to receive notification prior to pesticide applications and provide notification to those individuals at least 24 hours prior to a pesticide application made adjacent to their property.

a. A municipality may also choose to make arrangements with those persons upon request to refrain from applying pesticides to adjacent properties in lieu of prenotification.

b. The registry shall be updated annually and contain at least the name, address, and telephone number where occupant may be reached during normal business hours. The registry shall be made available upon request to licensed commercial and public pesticide applicators.

45.50(8) *Prior notification of pesticide application to lawns, parks, playgrounds and athletic fields located in urban areas.*

a. An occupant of a property adjoining property where pesticides are applied by a commercial or public applicator may receive prior notification of a pesticide application by personally contacting the applicator in writing in a timely manner and providing the following information:

(1) Name and address of occupant.

(2) A telephone number of a location where occupant may be contacted during normal business hours and evening hours.

(3) Address of each property that adjoins occupant's property.

b. The applicator receiving a written request for prior notification shall provide notice at least the calendar day before a scheduled application to property adjoining the occupant's property. The notice may be made in writing, in person or by telephone and shall disclose the date and approximate time of day for the scheduled application. If the notice to the occupant is in a form other than writing the applicator shall document that notice was given and maintain a record of that notice at its place of business.

c. When an applicator is not successful in contacting an occupant of an adjoining property as provided in paragraph 45.50(8)*"b,"* the applicator shall, at least the calendar day before a scheduled application, leave a written notice at the residence of the person requesting prior notification indicating the date and approximate time of day for the scheduled application.

d. A request for prior notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier.

45.50(9) *Prior notification of pesticide application to golf courses.*

a. An occupant of a property adjoining a golf course may receive prior notice of an application by contacting the golf course superintendent or other responsible person in a timely manner and providing the following information:

(1) Name and address of occupant.

(2) Telephone number of a location where the occupant may be contacted during normal business hours and evening hours.

b. A golf course representative receiving a request for prior notification shall provide notice at least the day before the scheduled application. The notice may be made in writing, in person or by telephone and shall disclose the date and approximate time of day for the scheduled application.

c. When a golf course representative is not successful in contacting an occupant of an adjoining property the day before a scheduled application, the representative shall leave a written notice at the residence of the person requesting prior notification that shall disclose the date and approximate time of day for the scheduled application.

d. A request for prior notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier.

This rule is intended to implement Iowa Code section 206.19 and 1995 Iowa Acts, Senate File 256.

21—45.51(206) Restrictions on the distribution and use of pesticides containing the active ingredient atrazine or any combination of active ingredients including atrazine.

45.51(1) Atrazine is the common name for the pesticide chemical 2-chloro-4-ethylamino-6-isopropylamino-1,3,5 triazine.

45.51(2) All pesticides containing the active ingredient atrazine or any combination of active ingredients including atrazine distributed for sale or use in Iowa shall be classified as restricted use pesticides. All pesticides containing the active ingredient atrazine shall be restricted for retail sale to and use by certified pesticide applicators only.

45.51(3) A pesticide dealer selling a pesticide containing the active ingredient atrazine shall file an annual report listing the full trade name of the pesticide product, EPA registration number and total volume in gallons or pounds of product sold. This report shall be included with the annual report required under rule 21—45.47(206).

45.51(4) Atrazine use limitations.

a. The application rate for the actual active ingredient atrazine shall be limited to three pounds or less actual active ingredient per acre per calendar year with the exception where further restrictions on the maximum allowable application rates of the active ingredient atrazine apply.

b. Pesticides or any other substance containing the active ingredient atrazine shall not be applied within 50 feet of a sinkhole (outer edge of slope), well, cistern, lake, water impoundment or other similar areas. This includes, but is not limited to, abandoned wells, agricultural drainage wells and drainage well surface inlets and drinking water wells.

c. Pesticides, or any other substance containing the active ingredient atrazine unless handled in the original unopened container shall not be mixed, loaded or repackaged within 100 feet of any well, cistern, sinkhole (outer edge of slope), streambed, lake, water impoundment or other similar areas. This includes, but is not limited to, any well, whether in use or abandoned, including agricultural drainage wells and drainage well inlets. This paragraph shall not apply where pesticides are handled in compliance with the secondary containment of pesticide mixing and loading sites as specified in 21—Chapter 44.

d. Atrazine mixing, loading, and equipment cleanout shall be carried out in a manner that meets the secondary containment requirements in 21—Chapter 44 or in the field of application provided all other restrictions are followed regarding the application of atrazine or rinsates containing atrazine to labeled use areas. Equipment and container wash waters shall be applied to labeled use areas or used as part of dilution makeup water and applied to labeled use areas in accordance with the label instructions and any other restrictions that may apply.

e. The following areas shall be designated as pesticide management areas regarding the application of pesticides containing the active ingredient atrazine. The application of atrazine shall be limited to no more than one and one-half pounds of the actual active ingredient atrazine per acre per calendar year in the following designated areas:

(1) All of Allamakee, Clayton, Dubuque, Floyd, Humboldt, Jackson and Winneshiek counties.

(2) All areas within the townships of the following counties:

COUNTIES	**TOWNSHIPS**
Black Hawk	Poyner
Bremer	Douglas, Fredericka, Jackson, Jefferson, Lafayette, Polk, Washington
Butler	Bennezette, Butler, Coldwater, Dayton, Fremont, Pittsford
Cerro Gordo	Owen, Portland
Chickasaw	Bradford, Chickasaw, Deerfield
Clinton	Elk River, Hampshire
Delaware	Bremen, Colony, Delhi, Elk, Milo, North Fork, Oneida, South Fork, Union
Fayette	Auburn, Clermont, Dover, Eden, Fairfield, Illyria, Pleasant Valley, Union, Westfield, Windsor
Howard	Albion, Chester, Forest City, New Oregon, Vernon Springs
Jones	Castle Grove, Clay, Hale, Lovell, Oxford, Richland, Washington and Wyoming
Kossuth	Sherman
Linn	Marion
Mitchell	Burr Oak, Cedar, Liberty, Mitchell, Newberg, Osage, Otranto, Rock, Saint Ansgar, Union, West Lincoln
Pocahontas	Garfield
Worth	Barton, Kensett
Wright	Grant, Lincoln, Wall Lake

f. Persons conducting research with atrazine shall be exempt from the use limitations described in this rule provided that such research is under the supervision of a federal or state agency or educational institution authorized to conduct research and are properly certified.

45.51(5) Best management practices. The department of agriculture and land stewardship and the Iowa State University extension service shall jointly develop and implement a set of best management practices (BMPs) and a targeted education program aimed at preventing further contamination of groundwater with atrazine. The pesticide applicator certification training and testing programs shall include information related to the atrazine BMPs.

45.51(6) As new information becomes available, changes in atrazine use or management shall be reevaluated periodically.

This rule is intended to implement Iowa Code sections 206.19, 206.20, and 206.21.

21—45.52(206) Continuing instructional courses for pesticide applicator recertification. A certified private, commercial, noncommercial or public applicator may elect to renew the pesticide applicator certification by attending two hours of approved continuing instructional courses each year during the renewal period as specified in subrule 45.22(5) in lieu of passing an examination.

45.52(1) *Requirements for continuing instructional courses.*

a. An approved continuing instruction course for pesticide applicator recertification shall include, as a minimum, information on safe handling, application and storage of pesticides; the correct calibration of equipment used for the application of pesticides; effects of pesticides upon groundwater; and the federal standards for pesticide applicator certification outlined in 40 CFR 171.105 as revised

March 6, 2017, for private applicators or 40 CFR 171.101 and 40 CFR 171.103 revised as of March 6, 2017, for commercial applicators.

b. Instructional courses and materials for recertification shall be developed or approved by the department in cooperation with the Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology. The instructional course content shall be selected to cover the minimum standards outlined in paragraph 45.52(1)*"a"* and presented in two-hour blocks in three consecutive calendar years.

c. The instructional courses may be conducted by the department, Iowa state university cooperative extension service, or other persons interested in the application of pesticides as qualified under paragraph 45.52(2)*"b."*

d. An instructional course offered by a college, university, industry association or other organization may be approved for continuing instruction credit provided the instructional course meets the minimum standards for certification specified in paragraph 45.52(1)*"a."*

e. Courses for approved continuing instruction are not intended for the sale of products or services.

f. An approved instructional course shall designate the certification categories that are eligible for continuing instruction credit. A two-hour program may qualify for more than one certification category. No credit shall be approved for persons not certified in the corresponding categories.

45.52(2) *Provider approval.* Provider means the person, industry association or other organization providing continuing instructional courses for pesticide applicator recertification. No course for continuing instruction credit shall be approved unless the provider has first registered with the department.

a. Provider shall register with the department by providing the following information on forms as provided by the department:

(1) Name and address of provider or sponsoring organization.

(2) Name and telephone number of the contact person.

(3) Names and qualifications of instructors.

(4) Verification that provider has acquired adequate audiovisual or other necessary equipment and facilities conducive to a learning environment.

(5) Verification that all instructors are qualified as provided in these rules.

(6) Verification that a current authorized representative of the provider has completed a "train the trainer" course sponsored by the department in cooperation with Iowa state university cooperative extension service.

b. Instructor qualifications. A qualified instructor shall meet the following minimum requirements:

(1) Be current, knowledgeable and skillful in the subject matter.

(2) As a minimum the equivalent of a four-year degree or experience in teaching in the specialized area within three years preceding the offering or one year of work experience in the specialized area within three years preceding the offering.

(3) Be knowledgeable of the current state and federal pesticide laws and regulations.

(4) Upon receipt of the required information and satisfactory verification that the provider and instructors have met the requirements as outlined in paragraphs 45.52(2)*"a"* and *"b,"* the department shall assign the provider a registration approval number for each qualified instructor.

c. A person who is the instructor of an approved continuing instructional course is entitled to the same credit as a participant completing the subject but may receive such credit only once in a calendar year, regardless of the number of times the person instructs the instructional course.

45.52(3) *Course approval.*

a. Any person, industry association or other organization intending to provide an instructional course for continuing instruction credit shall submit an application to the department for approval. Requests received later than 30 days prior to the date the instructional course is scheduled shall be disapproved.

b. The following information shall be furnished on the request for approval of a continuing instruction course:

(1) Name and address of provider or sponsoring organization.

(2) Name and telephone number of the contact person for the provider.

(3) Course title.

(4) Whether the course is new, a repeat course, or a revised course.

(5) Course number, if the course is repeat or revised.

(6) Date(s) course shall be offered.

(7) Location(s) where course shall be offered.

(8) For a new or revised course, an outline of the course including a schedule of times when subjects shall be presented. The topics covered in the course shall be listed individually. Under each separate topic, a summary of the instruction given and the material covered must be included.

(9) Names of instructors.

(10) Number of credit hours requested.

(11) Signature of the contact person.

c. Any material changes in the instructional course as submitted to the department on the request form and attachments shall automatically void the approval.

d. A copy of all course materials shall be provided upon request by the department.

e. A provider shall be notified indicating approval or disapproval. Approved courses shall be assigned a course number.

45.52(4) *Certificate of completion.*

a. The department shall adopt a standard certificate of completion form and provide the form to each registered provider. The form shall include the applicator's name, name of employer when applicable, course number, date and location of the course, the category or categories the course has been approved for and the signature of the course instructor.

b. Once a course is approved, the provider shall furnish a certificate of completion to each person who satisfactorily completes such a course. The certificate shall be signed by the course instructor. Providers shall also maintain a list of all persons who attend courses offered by providers for continuing instruction for at least three years from the end of the year in which the courses are offered. The list shall identify each participant by name, address and employer when applicable.

45.52(5) *Provider's responsibility.*

a. A provider of an approved course is responsible for both the attendance of the participants and their attention. During the approved instructional course, if the provider finds that a participant is reading unrelated materials, sleeping, talking excessively with a neighbor or is otherwise disruptive or inattentive, the provider may refuse to grant the participant any credit for attendance.

b. A provider may require participants to preregister for an approved course. In the event a provider cancels an approved course, the provider shall notify each individual registered for the course in a timely manner but not less than three business days prior, except as specified, to the scheduled date of the course.

c. A provider who cancels a course that did not require participants to preregister shall notify prospective participants in a timely manner. Notification for cancellation may be accomplished by a similar means of communication as the original notification of the course availability or any other generally accepted means of reaching the expected target participants.

d. Minimum lead time for participant notification of canceled courses shall be waived when courses are canceled because of emergency conditions such as extreme weather conditions, acts of God, military actions, or any other circumstance that is deemed to be an emergency condition. Providers shall attempt to notify prospective participants by public service announcements via radio or television broadcasts that may provide this service.

e. A provider shall notify the pesticide bureau of the department in a timely manner prior to the cancellation of an approved course. Initial notice of cancellation may be made by telephone; however, cancellations made by telephone shall be followed by written verification.

f. Provider records. The provider shall maintain a list of all persons who attend courses offered by them for continuing instruction credit for at least three years from the end of the year in which the courses are offered. The record system shall provide for secure storage and retrieval of individual attendance and information regarding each instructional course offering. The provider's record of continuing instruction credits granted shall be available within two weeks upon request from individual participants or from the department.

g. If the provider is not the instructor, the provider shall inform the instructor of the instructor's responsibilities as provided in this subrule.

45.52(6) *Enforcement—providers.*

a. The department may, upon finding any one or more of the following, revoke or suspend a provider's registration after an opportunity for hearing:

(1) Advertising that a course is approved, prior to approval;

(2) Presenting material not approved as provided in subrule 45.52(1) during the time of an approved course;

(3) Failing to present a course for the total time period specified in the request form submitted to the department;

(4) Distributing certificates of completion before the course has been completed;

(5) Refusing to issue certificates of completion to any participant who satisfactorily completes an approved course, except when paragraph 45.52(5)*"a"* applies;

(6) Failing to notify course registrants of a cancellation pursuant to paragraphs 45.52(5)*"b"* and *"c"*; or

(7) Utilizing instructors who are not qualified as provided in these rules.

b. The department may suspend or revoke a provider's registration after notice and opportunity for hearing pursuant to 21—Chapter 2.

c. In addition, the department may require any one or more of the following upon a finding of a violation of paragraph 45.52(6)*"a."*

(1) Upon receipt of an application to reregister, provide evidence that all violations have been cured;

(2) Withdraw the possibility of course approvals of courses sponsored by such provider for a set period of time or indefinitely; or

(3) Any other disciplinary action permitted by statute.

This rule is intended to implement Iowa Code section 206.5.

DIVISION II

21—45.53 to **45.99** Reserved.

DIVISION III
CIVIL PENALTIES

This division sets forth the policies and procedures for establishing, accessing, and collecting civil penalties against pesticide applicators for violations of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206. Iowa Code section 206.19(5) authorizes the assessment of civil penalties against applicators for violations of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206.

21—45.100(206) Definitions. Where used in these rules:

"Contested case hearing" means an evidentiary hearing pursuant to Iowa Code chapter 17A.

"Department" means the pesticide bureau of the department of agriculture and land stewardship.

"Informal settlement" means an agreement between representatives of the department and a commercial applicator providing for sanctions for a violation of Iowa Code chapter 206 or the department's rules but does not include a contested case hearing.

21—45.101(206) Civil penalties—establishment, assessment, and collection. Pesticide applicators who violate provisions of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206 may be subject to civil penalties. This rule outlines the criteria and procedures for establishing, assessing, and collecting civil penalties.

45.101(1) *Criteria.* In evaluating a violation to determine which cases may be appropriate for administrative assessment of penalties, and in determining the amount of penalty, or for purposes of assessing civil penalties, the department shall consider all of the following factors:

a. Willfulness or recklessness of the violation.

b. Actual or potential danger of injury to the public health, safety, or damage to the environment caused by the violation.

c. Actual or potential cost of the injury or damage caused by the violation to the public health or safety or to the environment.

d. Actual and potential cost incurred by the department in enforcing the provisions of Iowa Code chapter 206 and rules adopted pursuant to this chapter against the violator.

e. Remedial action taken by the pesticide applicator.

f. Previous history of noncompliance by the pesticide applicator being assessed the civil penalty.

g. Competency standards for commercial and private applicators as in subrules 45.22(2) and 45.22(3).

45.101(2) *Notice and hearing.* The department may seek assessment of a civil penalty by serving a complaint upon the pesticide applicator. The complaint shall include a statement of the time, place and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing will be held, a reference to the statute or rules involved, and a statement of the matters asserted. The complaint may be served on the pesticide applicator by personal service or by certified mail, return receipt requested. A person subject to a civil penalty may submit an appeal to the department. The appeal shall be referred to an administrative law judge for hearing as a contested case pursuant to Iowa Code chapter 17A. This subrule does not apply to a license revocation proceeding. The department's procedures for informal settlement also apply.

45.101(3) *Administrative order.* Upon finding that a pesticide applicator has violated Iowa Code chapter 206 or rules adopted pursuant to this chapter, an administrative order shall be issued assessing the civil penalty. The order shall recite the facts, the legal requirements that have been violated, the rationale for the assessment of the civil penalty and the date of issuance.

45.101(4) *Amount of penalty.* The civil penalty imposed on a pesticide applicator shall not exceed $500 per violation of Iowa Code chapter 206 or to the rules promulgated pursuant to Iowa Code chapter 206. Each day a pesticide applicator is in violation following receipt of written notification of such violation from the department may be considered a separate violation.

45.101(5) *Payment.* The penalty shall be paid within 30 days of the date the order assessing the civil penalty becomes final. Failure to pay the civil penalty within three months of the date the order becomes final shall be grounds for suspension or revocation of the pesticide applicator's license or certification. The department may request that the attorney general institute judicial proceedings to recover an unpaid civil penalty.

45.101(6) *Informal settlement.* These rules do not apply to any settlement reached between the pesticide applicator and the department prior to the initiation of a contested case proceeding. The department shall notify the applicator that it has found a probable violation with a proposed penalty and provide the applicator an opportunity to attend an informal settlement conference. The department and the applicator may attend an informal settlement conference and reach an agreement about the assessment of a civil penalty or other disciplinary action against the applicator.

These rules are intended to implement Iowa Code section 206.23A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code rule 21—85.20(214A,208A) "Motor Fuel and Antifreeze Tests and Standards"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 214A.1A
State or federal law(s) implemented by the rulemaking: Iowa Code section 214A.2

Public Hearing

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

October 10, 2024 11:30 a.m.	Conference Room 2N Wallace State Office Building 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 Department of Agriculture and Land Stewardship no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.281.7808
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

This proposed rulemaking updates the Department's fuel standards and specifications with the latest ASTM International standards, which are adopted by reference.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

None.

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

Fuel producers and consumers 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:

By adopting ASTM International's latest standards, fuel producers are able to more efficiently produce fuel that results in lower costs to consumers.

- Qualitative description of impact:

By adopting ASTM International's latest standards, fuel producers are able to more efficiently produce fuel that results in lower costs to consumers.

3. Costs to the State:

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

None.

- Anticipated effect on state revenues:

None.

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

The intent of ASTM International standards is to provide uniform and consistent standards agreed upon by regulators and industry to maximize efficiency.

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

None.

6. Alternative methods considered by the agency:

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

None.

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

Not applicable.

Small Business Impact

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

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

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

None.

Text of Proposed Rulemaking

ITEM 1. Amend rule 21—85.20(214A,208A) as follows:

21—85.20(214A,208A) Motor fuel and antifreeze tests and standards.

85.20(1) In the interest of uniformity, the tests and standards for motor fuel, including but not limited to renewable fuels such as ethanol blended gasoline, biodiesel, and biodiesel blended fuel, and components such as an oxygenate, raffinate natural gasoline and motor vehicle antifreeze shall be those established by ASTM International in effect on ~~June 30, 2023~~ July 9, 2024, with the following exceptions:

a. and *b.* No change.

85.20(2) and **85.20(3)** No change.

This rule is intended to implement Iowa Code sections 208A.5, 208A.6, 214A.2, and 215.18.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 21—Chapter 96
"Hemp"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 204.3

State or federal law(s) implemented by the rulemaking: Agriculture Improvement Act of 2018 (2018 Farm Bill)

Public Hearing

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

October 10, 2024 9:30 a.m.	Conference Room 2N Wallace State Office Building 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 Department of Agriculture and Land Stewardship no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.281.7808
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Governor Kim Reynolds signed House File 2641 into law on May 17, 2024, removing the requirement for the Department to submit a State Plan for the licensing of hemp production in Iowa, effective December 31, 2024.

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:

Current and future citizens wishing to grow hemp in Iowa 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:

Iowa hemp licensing fees ranging from $505 to $2,600 (sliding scale based on the amount of acres grown) are proposed to be rescinded; growers will switch to the free U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) hemp license.

- Qualitative description of impact:

The Iowa hemp license is proposed to be rescinded, and the USDA AMS will assume the program with no licensing fees. Hemp growers are responsible for hiring certified hemp samplers and sending hemp to an approved testing laboratory, and both of those fees are set by the service provider and borne by the USDA-licensed hemp grower.

3. Costs to the State:

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

None.

- Anticipated effect on state revenues:

There will be a loss of licensing fees intended to cover costs of the program, since those fees are being eliminated.

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

Not applicable. This change is mandated by the Iowa Code.

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

Not applicable. This change is mandated by the Iowa Code.

6. Alternative methods considered by the agency:

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

Not applicable. This change is mandated by the Iowa Code.

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

Not applicable. This change is mandated by the Iowa Code.

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 USDA AMS hemp license is more economical and allows licensees to choose their hemp sampler and testing laboratory.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **21—Chapter 96**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 185—Chapters 1, 2, 3, 10, 18, and 19
"Rules on Agency Procedure"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.9, 123.10, and 421.17
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 8, 2024	Via video/conference call:
1 to 2 p.m.	meet.google.com/wzj-ksyk-rmg

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 Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

The Department, Lottery Authority, and Alcoholic Beverages Division all maintained their own set of rules on agency procedure. As a part of the government reorganization, it is the goal of the Department to consolidate all relevant information under one agency number. Existing agency procedure chapters:

185—Chapters 1, 2, 3, 10, 18, and 19
531—Chapters 3, 4, 5, and 6
701—Chapters 5, 6, and 7

The Department proposes to rescind all existing agency procedure rules that exist under the Lottery Authority, Alcoholic Beverages Division, and the Department and replace them with a new set of rules from the Department under agency number [701]. This consolidation will reduce the number of chapters and rules overall and make applicable practices across subject matters as uniform as possible.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No classes of persons have been identified to bear the costs of the proposed rulemaking.

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

All Iowans will benefit from the consolidation and reorganization of agency procedure rules that existed under the Lottery Authority, Alcoholic Beverages Division, and the Department to be consistently applied across the Department.

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

- Quantitative description of impact:

No economic impact from the proposed rules has been identified.

- Qualitative description of impact:

The Department proposes to rescind all existing agency procedure rules that exist under the Lottery Authority, Alcoholic Beverages Division, and the Department and replace them with a new set of rules from the Department under agency number [701]. This structure will consolidate all relevant information under one agency number, reduce the number of chapters and rules overall, and make applicable practices across subject matters as uniform as possible.

3. Costs to the State:

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

There are no costs to the agency of implementing or enforcing these rules beyond those that would otherwise be required to administer the statute. The outlined procedures for administrative implementation and enforcement are incorporated in the standard agency operations and utilize existing staff.

- Anticipated effect on state revenues:

No anticipated effect on state revenues has been identified.

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

By consolidating and reorganizing the existing rules on agency procedure under the Lottery Authority, Alcoholic Beverages Division, and the Department, Iowans can interact with the Department in an efficient, effective, and consistent manner.

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 have been identified to exist.

6. Alternative methods considered by the agency:

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

None were identified. The Department is adopting and implementing the chapters of rules on agency procedures as required by Iowa Code chapter 17A.

- 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?

The rulemaking does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **185—Chapter 1**.

ITEM 2. Rescind and reserve **185—Chapter 2**.

ITEM 3. Rescind and reserve **185—Chapter 3**.

ITEM 4. Rescind and reserve **185—Chapter 10**.

ITEM 5. Rescind and reserve **185—Chapter 18**.

ITEM 6. Rescind and reserve **185—Chapter 19**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapters 7, 9, and 16
"Appeals and Hearings; Public Records and Fair Information Practices; Notices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 217.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 8, 2024 12 noon to 12:30 p.m.	Microsoft Teams Meeting ID: 224 642 900 746 Passcode: AXsYRM

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 Department of Health and Human Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@hhs.iowa.gov

Purpose and Summary

The proposed chapters are intended to provide further clarity and strengthen the application of these rules in order to comply with the Iowa Code.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

This rulemaking will have no cost to the public.

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

All persons seeking to understand or review the Department's administrative rules will benefit from the additional clarity these changes provide.

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:

Not applicable.

- Qualitative description of impact:

Increased clarity for those seeking to understand the Department's administrative rules.

3. Costs to the State:

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

None identified.

- Anticipated effect on state revenues:

None identified.

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

No difference in cost is found.

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

No alternative methods have been identified.

6. Alternative methods considered by the agency:

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

None.

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

No alternatives were rejected since this rulemaking seeks to only increase clarity of the Department's administrative rules. This does not create any new or additional rules.

Small Business Impact

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

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

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

This rulemaking will not have an impact on small business in the state.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
APPEALS AND HEARINGS

441—7.1(17A) Definitions.

"Adverse benefit determination" means any adverse action taken pursuant to a program administered by the department or on the department's behalf, excluding determinations related to requests for waivers of administrative rules.

"Appellant" means a person, including an authorized representative acting on the person's behalf, seeking to appeal some action pursuant to this chapter.

"Assistance program" means a program administered by the department or on the department's behalf through which qualifying individuals receive benefits or services.

"Authorized representative" means a person lawfully designated by an individual to act on the individual's behalf or who has legal authority to act on behalf of the individual.

"Contested case" refers to an evidentiary hearing mandated by state or federal constitutional or statutory authority whereupon a presiding officer makes a determination pertaining to the relative rights and obligations of parties to an appeal under this chapter.

"DIAL" means the department of inspections, appeals, and licensing.

"Enrollee" means any applicant to or recipient of benefits or services provided by a program administered by the department or on the department's behalf.

"Good cause," for purposes of this rule, has the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

"In-person hearing" means an appeal hearing where the administrative law judge and appellant are physically present in the same location but witnesses are not required to be physically present.

"Intentional program violation" means the same as established in 7 CFR §273.16 as amended to August 1, 2024.

"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.

"Managed care organization" or *"MCO"* has the meaning assigned to it in rule 441—73.1(249A) and includes prepaid ambulatory health plans.

"Medicaid" means Iowa's medical assistance program administered under Iowa Code chapter 249A.

"Party-in-interest" refers to the party, including enrollees, whose rights or obligations are the subject of a contested case hearing under this chapter. Parties-in-interest may or may not be the appellant.

"Presiding officer" means an administrative law judge from DIAL or the director of the department or the members of a multimember board or commission.

"Self-represented" means representing oneself without an attorney.

441—7.2(17A) Governing law and regulations. In the absence of an applicable rule in this chapter, the DIAL rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIAL rules, the program-specific federal or state law shall control.

DIVISION I
GENERAL APPEALS PROCESS

441—7.3(17A) When a contested case hearing will be granted.

7.3(1) *Requirements.* A person will be granted a contested case hearing if the party-in-interest fulfills all the following requirements:

a. The party-in-interest is entitled to a contested case hearing;

b. The party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing; and

c. The party-in-interest meets all of the other requirements contained in these rules.

7.3(2) *Refusal to process an application.* Unless otherwise provided by law, when an appellant seeks a contested case hearing after the department refuses to process an application for benefits or services, a hearing will be granted.

7.3(3) *When a hearing is not granted.* A hearing will not be granted when one of the following issues is appealed:

a. Patient treatment interventions outlined in the patient handbook of the civil commitment unit for sexual offenders.

b. Children have been removed from or placed in a specific foster care setting or preadoptive placement.

c. A final decision from a previous hearing with a presiding officer has been implemented.

7.3(4) *Contractual rights not subject to contested case hearing.* Unless otherwise provided by law, when an appellant seeks a contested case hearing of an issue predicated upon or governed by the terms of a contract between appellant and another party, including the department, a contested case hearing will not be provided.

7.3(5) *Change in law.* A contested case hearing will not be granted when the sole issue raised is a federal or state law requiring an automatic change adversely affecting some or all beneficiaries.

7.3(6) *Competitive procurement bid appeals.* Competitive procurement bid appeals shall be adjudicated pursuant to Division II of this chapter.

441—7.4(17A) Initiating an appeal.

7.4(1) *Exhaustion of remedies.* An appellant will only be granted a contested case hearing if the appellant has exhausted all other appeal remedies available to the party-in-interest. An appellant should refer to program-specific provisions for the appropriate procedures applicable to specific programs.

7.4(2) *Medicaid managed care enrollees exhaustion of remedies.*

a. A Medicaid managed care enrollee will be granted a contested case hearing pursuant to 42 CFR 438.402(c)(1) as amended to November 13, 2020.

b. If a Medicaid enrollee's managed care organization fails to provide a decision in the time and manner pursuant to 42 CFR 438.408 as amended to November 13, 2020, the enrollee will be deemed to have exhausted the managed care organization's appeals process and may initiate a contested case hearing.

7.4(3) *Time to appeal.* For a contested case hearing to be granted, the following appeal timelines must be met:

a. Supplemental Nutrition Assistance Program (SNAP), Medicaid eligibility, healthy and well kids in Iowa (hawki), fee-for-service Medicaid coverage, family planning program, and autism support program. On or before the ninetieth day following the date of notice of an adverse benefit determination.

b. Managed care organization medical services coverage. On or before the 120th day following the date of exhaustion, actual or deemed, of the managed care organization appeal process.

c. Federal tax or debtor offsets. On or before the 15th day following the date of notice of the action.

d. Women, Infants and Children (WIC) program. On or before the ninetieth day following the date of notice of an adverse benefit determination for a participant. On or before the 10th day following the date of notice of adverse action for a vendor pursuant to 7 CFR 246.18(a)(1) as amended to August 1, 2024. On or before the 10th business day following the receipt of notification to a local agency of an adverse decision pursuant to 7 CFR 246.18(a)(3) as amended to August 1, 2024.

e. Reserved.

f. Dependent adult abuse. Within six months of the date of notice of the action as provided in Iowa Code section 235B.10.

g. Child abuse. For an appeal regarding child abuse, the person alleged responsible for the abuse must appeal on or before the ninetieth day following the date of notice of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the appeal on or before the tenth day following the date of notice of the right to intervene.

h. Assistance program overpayments. For an appeal pertaining to overpayments, the party-in-interest's right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first notice informing the party-in-interest of the overissuance or overpayment. The appeal timelines for overpayments follow the same timelines as other actions within the same program.

i. All other appeals. For all other appeals, and unless federal or state law provides otherwise elsewhere, the appellant must appeal on or before the thirtieth day following the date of notice of the

action being appealed. If such an appeal is made more than 30 days, but less than 90 days, of the date of notice, the director or director's designee may, at the director's or designee's sole discretion, allow a contested case hearing if the delay was for good cause, substantiated by the appellant.

7.4(4) *Written and oral notification.* The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person's status pursuant to 441—Chapter 16.

a. Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

(1) The right to request a hearing.

(2) The procedure for requesting a hearing.

(3) The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

b. Written notification will be given on the application form and all notices of decision.

441—7.5(17A) How to request an appeal.

7.5(1) *Ways to request a hearing.* An appellant may request a contested case hearing:

a. Via the department's website,

b. By telephone, except as specified in subrule 7.5(4),

c. By mail,

d. In person, except as specified in subrule 7.5(4), or

e. Through other commonly available electronic means (such as email or facsimile).

7.5(2) *Hearing request.* The request for a contested case hearing must be sufficiently detailed so that the department can reasonably understand the action being appealed. The department may request additional information to determine the scope of the appeal. The department may deny if there is not sufficient information to determine the action being appealed.

7.5(3) *Filing date.* The date of filing for appeal requests sent by regular mail shall be the date postmarked on the envelope sent to the department or, when a postmarked envelope is not available, on the date the appeal is stamped received by the agency. The date of filing for appeal requests sent electronically will be determined by the date on which the electronic submission was completed.

7.5(4) *Appeals that must be filed in writing.* Appeal requests pertaining to foster care, adoption, state supplementary assistance, the autism support program, record check evaluation, child care, registered or nonregistered homes, child abuse, dependent adult abuse or child support must be made in writing.

7.5(5) *Department's responsibilities.* Unless the appeal is voluntarily withdrawn, the department will:

a. Within one working day of receipt of an appeal request, forward the request for appeal and envelope (if any) and a copy of the notice to the appeals section.

b. Within ten days of the receipt of the appeal, forward a summary and supporting documentation of the worker's or agent's factual basis for the proposed action to the appeals section.

c. Copies of all materials sent to the appeals section or the presiding officer to be considered in reaching a decision on the appeal are to be provided to the appellant at the same time as the materials are sent to the appeals section or the presiding officer.

441—7.6(17A) Prehearing procedures.

7.6(1) *Acknowledgment of appeal.* When the appeals section receives a request for appeal, it will send acknowledgment of the receipt of the appeal to the parties to the appeal. For an appeal regarding child abuse, all subjects other than the person alleged responsible (party-in-interest) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

7.6(2) *Acceptance or denial of appeal.* The appeals section will determine with reasonable promptness whether the party-in-interest is entitled to a contested case hearing. If a request is accepted, the appeals section will certify the appeal to DIAL and designate the issues on appeal. If a request for a contested case hearing is denied, the appeals section will provide written notice of and

the reasons for the denial. On or before the thirtieth day following the denial, the individual requesting the appeal may provide additional information related to the individual's asserted right to a contested case hearing and request reconsideration of the denial.

7.6(3) *Designation of issues for appeal.*

a. Initial designation. After determining that the party-in-interest is entitled to a contested case hearing, the appeals section will designate the issues to be decided at the contested case hearing. The issues designated will be certified to DIAL and be identified in the notice of hearing issued pursuant to subrule 7.6(5).

b. Additional designation of issues. If any party believes additional issues should be designated, the party shall identify the additional issues within the following timelines. The presiding officer shall determine whether all issues have properly been preserved.

(1) Child abuse and dependent adult abuse registry appeals. For a child abuse and dependent adult abuse registry appeal, the party shall identify additional issues at least 30 days before the date of hearing.

(2) Appeals set on or before the tenth day following the notice of hearing. If the hearing is on or before the tenth day following the date of the notice of hearing, the party shall identify any additional issues at the hearing.

(3) All other appeals. For all other appeals not identified in this paragraph, the party shall identify the additional issues on or before the tenth day following the date of the notice of hearing.

7.6(4) *Group hearings regarding medical assistance.* The appeals section may respond to a series of related, individual requests for hearings regarding medical assistance by consolidating individual hearings into a single group hearing where the sole issue is based on state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

7.6(5) *Notice of hearing.*

a. Issuance of hearing notice. Except as provided in paragraph 7.6(5)*"b,"* DIAL shall send notice to the parties of the appeal at least 15 calendar days in advance of the hearing setting forth the date, time, method, and place of the hearing; that evidence may be presented orally or documented to establish pertinent facts; that the parties may bring and question witnesses and refute testimony; and that the parties may be represented by others, including an attorney, at the parties' own cost and as subject to state and federal law. Notice shall be mailed by first-class mail, postage prepaid, and addressed to the appellant at the appellant's last-known address or accessible via client portal, if appellant has opted in to portal communications.

b. Intentional program violation hearing notices. DIAL shall send notices of hearing regarding alleged intentional program violations at least 30 days in advance of the hearing date. The notices under this paragraph shall otherwise comply with the requirements of paragraph 7.6(5)*"a."*

7.6(6) *Appellant's right to department's case file.* Prior to and during the contested case hearing, the department will provide the appellant or the appellant's authorized representative the opportunity to examine the content of the appellant's case file, if any, and all documents and records to be used by the department at the hearing.

7.6(7) *Informal conference.* The purpose of an informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action or position, and to provide an opportunity for the appellant to examine the contents of the case record.

a. When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the informal conference unless precluded by federal rule or state statute.

b. An informal conference need not be requested for the appellant to examine the contents of the case record.

441—7.7(17A) Timelines for contested case hearings.

7.7(1) *Medical assistance.* In cases involving the determination of medical assistance, the contested case hearing shall be held within a time frame such that the final administrative action is timely pursuant to 42 CFR 431.244(f) as amended to December 8, 2021.

7.7(2) *Community spouse resource allowance.* In cases involving the determination of the community spouse resource allowance, the hearing shall be held within 30 days of the date of the appeal request.

441—7.8(17A) Contested case hearing procedures.

7.8(1) *Method.* Contested case hearings may be conducted via telephone or videoconference. Upon request of a party to the appeal or order of the presiding officer, the contested case hearing shall be conducted in person.

7.8(2) *Evidence.*

a. The parties to a contested case hearing may:

(1) Bring witnesses,

(2) Submit competent evidence to establish all pertinent facts and circumstances,

(3) Present arguments without undue interference,

(4) Question or refute any testimony or evidence, including through cross-examination, and

(5) Respond to evidence and arguments on all issues.

b. Evidence shall be received or excluded as provided in Iowa Code section 17A.14.

7.8(3) *Right to counsel.* Parties to an appeal shall be permitted to be represented by counsel at the parties' own expense.

7.8(4) *Self-represented appellant.* The presiding officer shall, at the officer's discretion, provide reasonable assistance to a self-represented appellant. The presiding officer must, however, ensure that such assistance does not impact the independence and fairness of the contested case hearing process.

7.8(5) *Closed to public.* Contested case hearings are closed to the public, and unless otherwise provided by state or federal law, only the parties, their representatives, permissible intervenors, and witnesses may be present for a contested case hearing in the absence of mutual agreement of the parties.

7.8(6) *Administration of appeals.* Except as otherwise provided in this chapter or other applicable federal or state law, discretion in the conduct and administration of appeals is vested in the contested case hearing presiding officer.

7.8(7) *Contested cases with no factual dispute.* If the parties in a contested case agree that there is no dispute of material fact, the parties may present all admissible evidence either by stipulation, or as otherwise agreed, in lieu of an evidentiary hearing. If an agreement is reached, the parties shall jointly submit a schedule for submission of the record, briefs and oral arguments to the presiding officer for approval. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

441—7.9(17A) Miscellaneous rules governing contested case hearings.

7.9(1) *Ex parte communication.* Ex parte communications between the presiding officer and person or party in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of the provisions of Iowa Code section 17A.17 apply.

7.9(2) *Default.* If a party fails to appear at a scheduled hearing or prehearing conference without good cause as determined by the presiding officer, the party's appeal may be denied and dismissed or may be heard and ruled upon, consistent with Iowa Code section 17A.12(3). Defaulting parties may file a timely motion to vacate, which shall be granted if the presiding officer determines good cause has been shown.

7.9(3) *Withdrawal.* An appellant may submit a withdrawal of a fair hearing request at any time prior to hearing through any of the methods identified in subrule 7.5(1), except for programs listed in

subrule 7.5(4). For programs listed in subrule 7.5(4), a written request may be submitted via the department's website, by mail, in person, or through other commonly available electronic means (such as email or facsimile). Unless otherwise provided, a withdrawal shall be with prejudice.

7.9(4) *Medical assessment.* For Medicaid enrollees engaged in an appeal involving medical issues, the department may request, at the department's own expense, that the appellant submit to an appropriate medical assessment. The presiding officer shall order such assessment upon sufficient showing of necessity.

7.9(5) *Standard of review.* In a child abuse appeal, the criteria and level of deference by which the presiding officer shall render a decision is based on a preponderance of evidence.

7.9(6) *Interpreters.* The department will provide translation and interpretation services to an appellant, if requested. In all cases when an appellant is illiterate or semiliterate, the presiding officer shall advise the appellant of the appellant's rights to the satisfaction of the appellant's understanding.

7.9(7) *Persons living with disabilities.* Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act (as amended to December 31, 2023) and Section 504 of the Rehabilitation Act (as amended, effective October 1, 2016).

441—7.10(17A) Proposed decision.

7.10(1) *Contents.* The presiding officer shall issue a written proposed decision to all parties clearly identifying the issues on appeal, holding, findings of fact, conclusions of law, and order. The findings of fact shall cite and be based exclusively on the record as defined by Iowa Code section 17A.12(6). The conclusions of law shall be limited to the contested issues of fact, policy or law and shall identify the specific provisions of law that support the ultimate conclusion.

7.10(2) *Access to record.* After receiving the proposed decision, an appellant shall be given reasonable access to the record at a convenient place and time.

441—7.11(17A) Director's review.

7.11(1) *Time.* Parties, including the department, may appeal the proposed decision to the director.

a. A request for director's review shall be in writing and postmarked or received within 14 calendar days of the date on which the proposed decision was issued, except as provided for under paragraph 7.11(1)*"b."* A request for director's review may be accompanied by a brief written summary of the arguments in favor of director's review.

b. A managed care organization appealing a proposed decision reversing an adverse benefit determination shall request director's review within 72 hours from the date it received notice of the proposed decision.

7.11(2) *Grant or denial of review.* The department has full discretion to grant or deny a request for review. In addition, the director may initiate review of a proposed decision on the director's own motion at any time on or before the thirtieth day following the issuance of the proposed decision.

When the department grants a request for director's review, the department will notify the parties and enclose a copy of the request. All other parties shall have 14 calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

7.11(3) *Cross-appeal.* When a party requests director's review in accordance with subrule 7.11(1), the remaining parties shall have 14 calendar days from that date to submit cross-requests for director's review. The party originally seeking director's review shall have 14 calendar days from the date of the cross-request for director's review to submit further written arguments or objections for consideration upon review.

7.11(4) *Limited record.* Director's review shall be limited to the issues and record before the contested case hearing presiding officer.

7.11(5) *Oral arguments.* Upon specific request, the director may, at the director's discretion, permit parties to present oral arguments with the parties' requests for director's review.

441—7.12(17A) Final decisions.

7.12(1) *No appeal or denial of director review.* If there is no timely appeal from or review of the proposed decision, the presiding officer's proposed decision becomes the final decision of the agency.

7.12(2) *Timelines.*

a. The department or director will issue a final decision within the timelines prescribed by federal or state law. For all appeals for which there is no federal or state timeliness standard, the department or director will issue a final decision on or before the ninetieth day from the date the department receives an appeal request.

b. Except as otherwise provided by state or federal law, the time frames for a final decision provided under this rule may be tolled when:

(1) The appellant requests a delay;

(2) The appellant fails to take a required action; or

(3) There is an administrative or other emergency beyond the department's control.

c. DIAL shall document in the record the reasons for any delay and the requesting party.

7.12(3) *Written notice of final decision.* The parties to the appeal shall be provided written notice of the department's final decision. The department will also notify the appellant of the appellant's right to seek judicial review, where applicable.

441—7.13(17A) Expedited review.

7.13(1) *Expedited review criteria.* An appellant to a medical assistance appeal may, at any time, file with the department a request for expedited review of the appeal. Expedited review shall be granted pursuant to 42 CFR 438.410 (as amended to August 1, 2024) for a managed care organization appeal or 42 CFR 431.224 (as amended to August 1, 2024) for a non-managed care organization appeal.

7.13(2) *Managed care expedited proceedings.*

a. If the appellant is granted an expedited review, all subsequent proceedings shall also be expedited without an additional request if the appeal request indicates that the managed care organization appeal was expedited and provides the basis for expedited relief.

b. When review is expedited pursuant to paragraph 7.13(2)*"a,"* the presiding officer shall issue a proposed decision as expeditiously as the enrollee's health condition requires, but no later than three working days after the department receives from the managed care organization the case file and information for any appeal of a denial of a service that, as indicated by the managed care organization:

(1) Meets the criteria for expedited resolution but was not resolved within the time frame for expedited resolution; or

(2) Was resolved within the time frame for expedited resolution but reached a decision wholly or partially adverse to the enrollee.

7.13(3) *Medicaid eligibility or preadmission and annual resident review expedited proceedings.* For expedited appeals related to Medicaid eligibility or preadmission and annual resident review requirements, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than seven working days after the department receives a request for an expedited fair hearing.

7.13(4) *Medicaid-covered benefits or services expedited proceedings.* For expedited appeals related to Medicaid-covered benefits or services, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than provided in paragraph 7.13(2)*"b."*

7.13(5) *Final decision for expedited proceeding.* The department will issue its final decision in accordance with this rule, except as provided by subrule 7.12(2).

7.13(6) *Notification if expedited relief is granted or denied.* The department will notify the appellant as expeditiously as possible whether the request for expedited relief is granted or denied. Such notice will be provided orally or through electronic means to the extent consistent with federal and state law. If oral notice is provided, the department will follow up with written notice, which may be through electronic means to the extent consistent with federal and state law.

441—7.14(17A) Effect.

7.14(1) If the contested case hearing presiding officer's proposed decision is favorable to an enrollee in a Medicaid appeal, the department will promptly make corrective payments retroactive to the date an incorrect action was taken. If the presiding officer reverses a decision of a managed care organization to deny, limit, or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires, but no later than 72 hours from the date the managed care organization receives notice reversing the determination.

7.14(2) Unless there is contravening federal or state law, all final decisions shall be put into effect within seven days of the issuance of the final decision.

441—7.15(17A) Calculating time. In computing any time period specified in this chapter, the period:

1. Excludes the day of the event that triggers the period;
2. Includes every day of the time period (including Saturdays, Sundays, and holidays on which the department is closed); and
3. Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

441—7.16(17A) Authorized representatives.

7.16(1) *Regulations.* The provisions of this rule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law.

7.16(2) *Designation of authority.* Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar designations, shall be sufficient for a delegate to serve as authorized representative under this chapter. A person who is not designated a legally recognized delegation of authority but who otherwise seeks to act as an authorized representative for an individual in an appeal under this chapter shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative's representation.

7.16(3) *Written designation.* For a person other than an attorney seeking to act as an authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative's written designation of authority pursuant to subrule 7.16(2) shall be on an authorized representative form prescribed by the department. This form is required for all managed care appeals, including those handled through the expedited appeals process. Failure to provide the form or legal documentation may result in denial of the appeal request.

7.16(4) *Appearance by attorney.* Legal counsel appearing on behalf of any person in a proceeding under this chapter shall enter an appropriate written appearance.

441—7.17(17A) Continuation and reinstatement of benefits.

7.17(1) *Programs for which no federal or state law applies.* For all assistance programs for which there is no contravening federal or state law, benefits or services shall not be suspended, reduced, restricted, or discontinued, nor shall a license, registration, certification, approval, or accreditation be revoked or other adverse action taken pending a final decision when:

a. An appeal is filed before the effective date of the intended action; or

b. The appellant requests a hearing within ten days of receipt of a notice to suspend, reduce, restrict, or discontinue benefits or services. The date on which the notice is received is considered to be five days after the date on the notice unless the appellant shows the notice was not received within the five-day period.

7.17(2) *Sole issue is state or federal law or policy.* Benefits or services continued pursuant to subrule 7.17(1) may be suspended, reduced, restricted, or discontinued if the presiding officer determines at the contested case hearing that the sole issue is one of state or federal law or policy and the department has notified the enrollee in writing that services are to be suspended, reduced, restricted, or discontinued pending the proposed decision.

7.17(3) *Recoup cost of services or benefits.* The department or managed care organization may recoup the cost of benefits or services provided pursuant to this chapter if the adverse action appealed from is affirmed, consistent with state and federal law.

441—7.18(17A) Emergency adjudicative proceedings.

7.18(1) *Necessary emergency action.* When and to the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with state and federal law, a contested case hearing presiding officer may issue a written order 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 department by emergency adjudicative order. In determining the necessity of such an action, the presiding officer shall consider factors, including but not limited to the following:

a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;

b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;

c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of 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 is necessary to avoid the immediate danger.

7.18(2) *Issuance of order.* An emergency adjudicative order shall contain, or shall be expeditiously followed by, a written analysis, including findings of fact, conclusions of law, and policy reasons to justify the order. The agency shall provide written notice that best ensures prompt, reliable delivery. Such order shall be immediately delivered to the persons required to comply with the order.

7.18(3) *Completion of proceedings.* Upon issuance of an order under this rule, the department will proceed as quickly as reasonably practicable to complete any proceedings that would be required if the matter did not involve an immediate danger. An order issued under this rule shall include notice of the date on which proceedings under this chapter are to be completed. After issuance of an order under this rule, continuance of further proceedings under this chapter shall only be granted in compelling circumstances upon application in writing. Before issuing an emergency adjudicative order, the presiding officer shall consider factors, including but not limited to the following:

a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;

b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;

c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of 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 is necessary to avoid the immediate danger.

441—7.19(17A) Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings. An intentional program violation is determined through a SNAP administrative disqualification hearing, a court conviction, or when an individual signs and returns a

form prescribed by the department, which may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both in accordance with the procedures outlined in this rule and in 7 CFR 273.16(e) and (f) as amended to December 8, 2021.

7.19(1) When a case is referred for an administrative disqualification hearing, the department will mail written notification to the individual that the individual can waive the right to an administrative disqualification hearing by signing and returning Waiver of Right to an Administrative Disqualification Hearing.

7.19(2) By signing Waiver of Right to an Administrative Disqualification Hearing, the individual:

a. Waives the right to an administrative disqualification hearing;

b. Consents to the SNAP disqualification period designated Waiver of Right to an Administrative Disqualification Hearing, and a reduction of benefits for the period of disqualification; and

c. Acknowledges that remaining household members, if any, may be held responsible for repayment of the resulting claim.

7.19(3) An administrative disqualification hearing shall be scheduled if the individual does not sign and mail or fax Waiver of Right to an Administrative Disqualification Hearing to the department within ten days of receipt of the written notification stating the individual can waive the right to an administrative disqualification hearing. The date on which the written notification is received is considered to be five days after the date on the notification unless the individual shows the notification was not received within the five-day period.

7.19(4) An individual who waives the right to an administrative disqualification hearing will be subject to the same penalties as an individual found to have committed an intentional program violation in an administrative disqualification hearing.

441—7.20 to **7.40** Reserved.

DIVISION II
APPEALS BASED ON THE COMPETITIVE PROCUREMENT BID PROCESS

441—7.41(17A) Scope, bidder and applicability. The rules in Division II apply to appeals based on the department's competitive procurement bid process. A bidder is an entity that submits a proposal in response to a solicitation issued through the department's competitive procurement process.

441—7.42(17A) Requests for timely filing of an appeal. Any bidder that receives either a notice of disqualification or a notice of award, and has first exhausted the reconsideration process, is considered an aggrieved party and may file a written appeal with the department.

7.42(1) An aggrieved party in a competitive procurement must seek reconsideration of a disqualification or a notice of award prior to filing any appeal. The request for reconsideration must be received by the department within five calendar days of the date of either a disqualification notice or notice of award, exclusive of Saturdays, Sundays and legal state holidays. The department will expeditiously address the request for reconsideration and issue a decision on the reconsideration. If the party seeking reconsideration continues to be an aggrieved party following receipt of the decision on reconsideration, the aggrieved party may file an appeal within five calendar days of the date of the department's decision on reconsideration, exclusive of Saturdays, Sundays and legal state holidays.

7.42(2) The written appeal will state the grounds upon which the appellant challenges the department's decision.

7.42(3) The day after the department's decision on reconsideration is issued is the first day of the period in which the appeal may be filed. Appeals may be sent by mail, email, fax or in-person delivery.

When an appeal is submitted through an electronic delivery method, such as email or fax, the appeal is filed on the date it is submitted. The electronic delivery method will record the date and time the appeal request was submitted. If there is no date recorded by the electronic delivery method or the appeal was filed via in-person delivery, the date of filing is the date the appeal is stamped received by the agency. Receipt date of all appeals will be documented by the office where the appeal is received.

When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

441—7.43(17A) Bidder appeals. The bidder appeal will be a contested case proceeding and shall be conducted in accordance with the provisions of Division II. Division I of this chapter does not apply to competitive procurement bid appeals unless otherwise noted.

7.43(1) *Hearing time frame.* The presiding officer shall hold a hearing on the bidder appeal within 60 days of the date the notice of appeal was received by the department.

7.43(2) *Registration.* Upon receipt of the notice of appeal, the department will register the appeal.

7.43(3) *Acknowledgment.* Upon receipt of the notice of appeal, the department will send a written acknowledgment of receipt of the appeal to the appellant, the appellant's representative, or both.

7.43(4) *Granting a hearing.* The department will determine whether an appellant may be granted a hearing and the issues to be discussed at the hearing in accordance with the applicable rules, statutes or federal regulations or request for proposal.

a. An appeal of an appellant who is granted a hearing shall be certified to DIAL for the hearing to be conducted. The department will indicate at the time of certification the issues to be discussed at the hearing.

b. An appeal of an appellant who is denied a hearing shall not be closed until a letter is sent to the appellant and the appellant's representative advising of the denial of the hearing and the basis upon which that denial is made. Any appellant who disagrees with a denial may present additional information relative to the reason for denial and request reconsideration by the department over the denial.

7.43(5) *Hearing scheduled.* For those records certified for hearing, DIAL shall establish the date, time, method and place of the hearing, with due regard for the convenience of the appellant as set forth in DIAL rules in 481—Chapter 10 unless otherwise designated by federal or state statute or regulation.

7.43(6) *Method of hearing.* DIAL shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. All parties shall be granted the same rights during a teleconference hearing as specified in rule 441—7.8(17A).

7.43(7) *Reschedule requests.* Requests made by the appellant or the department to set another date, time, method or place of hearing shall be made to DIAL except as otherwise noted. The granting of the requests will be at the discretion of DIAL. All requests concerning the scheduling of a hearing shall be made to DIAL directly.

7.43(8) *Notification.* For those appeals certified for hearing, DIAL shall send a notice to the appellant at least ten calendar days in advance of the hearing date.

a. The notice shall comply with Iowa Code section 17A.12(2), and include a statement that opportunity shall be afforded to all parties to respond and present evidence on all issues involved and to be represented by counsel at their own expense.

b. A copy of this notice shall be made available to the department employee who took the action and to any other parties to the appeal.

441—7.44(17A) Procedures for bidder appeal.

7.44(1) Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

7.44(2) Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the date set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

7.44(3) Amendments to notice of appeal. The aggrieved bidder may amend the grounds upon which the bidder challenges the department's award no later than 15 days prior to the date set for the hearing.

7.44(4) If the hearing is not conducted in person, the parties must deliver all exhibits to the office of the presiding officer at least three days prior to the time the hearing is conducted.

7.44(5) The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code chapter 17A. The presiding officer shall send the proposed decision to the appellant and representative by mail.

7.44(6) The record of the contested case shall include all materials specified in Iowa Code section 17A.12(6).

441—7.45(17A) Stay of agency action for bidder appeal.

7.45(1) *When a stay may be requested.*

a. Any party appealing the issuance of a notice of disqualification or notice of award may petition for stay of the decision pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

b. Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order and shall state the reasons justifying a stay.

7.45(2) *When a stay is granted.* In determining whether to grant a stay, the director will consider the factors listed in Iowa Code section 17A.19(5)*"c."*

7.45(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

441—7.46(17A) Request for review of the proposed decision. A request for review of the proposed decision shall follow the provisions outlined in rule 441—7.11(17A).

441—7.47(17A) Other procedural considerations.

7.47(1) *Consolidation—severance.* The provisions regarding consolidation and severance in rule 481—10.10(10A,17A) apply.

7.47(2) *Rights of an appellant during a hearing.* All rights afforded an appellant in rule 441—7.8(17A) shall apply.

441—7.48(17A) Appeal record.

7.48(1) The appeal record shall consist of all items specified in Iowa Code section 17A.16.

7.48(2) The party that requests a transcription of the proceedings shall bear the cost.

441—7.49(17A) Pleadings. The provisions regarding pleadings in rule 481—10.11(10A,17A) apply.

441—7.50(17A) Ex parte communications. The rules regarding ex parte communications specified in subrule 7.9(1) and Iowa Code section 17A.17 apply.

441—7.51(17A) Right of judicial review. The rules regarding right of judicial review specified in subrule 7.12(3) and Iowa Code section 17A.19 apply.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 2. Rescind 441—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

441—9.1(17A,22) Statement of policy, purpose and scope of chapter.

9.1(1) The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate department determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The department is committed to the policies set forth in Iowa Code chapter 22; department staff will cooperate with members of the public in implementing the provisions of that chapter.

These rules also implement the federal Health Insurance Portability and Accountability Act (HIPAA) regulations at 45 CFR Parts 160 and 164 as amended to June 25, 2024. These rules set forth the standards the department must meet to protect the privacy of protected health information. The department is a hybrid entity for purposes of HIPAA. The rules on protected health information apply only to those parts of the department that are considered part of the covered entity.

9.1(2) This chapter does not:

a. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the rules of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

e. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

f. Require the agency to create, compare or procure a record solely for the purpose of making it available.

441—9.2(17A,22) Definitions. As used in this chapter:

"Business associate" means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Client" means a person who has applied for or received services or assistance from the department.

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

"Covered entity" means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Custodian" means the director of the department or the director's designee.

"Data aggregation" is the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

"Designated record set" is the same as defined in 45 CFR §164.501 as amended to March 26, 2013, including:

1. The medical records about subjects that are maintained for facilities;
2. The enrollment, payment, and eligibility record systems maintained for Medicaid; or
3. The enrollment, payment, and eligibility record systems maintained for the hawki program that are used, in whole or in part, by the hawki program to make decisions about subjects.

For purposes of this definition, the term "record" means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

"Disclosure" means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Facility" or *"facilities"* means, with respect to HIPAA rules about health information, one or more of these department institutions: Cherokee Mental Health Institute, Independence Mental Health Institute, and Woodward Resource Center.

"Health care" means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Health care clearinghouse" means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Health care operations" for covered entities in the department has the same definition as that stated in 45 CFR §164.501 as amended to March 26, 2013.

"Health care provider" means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Health information" means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Health oversight agency" means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

"Health plan" means an individual or group plan that provides or pays the cost of medical care, as defined at 45 CFR §160.103 as amended to June 25, 2024. In the department, "health plan" means Medicaid or hawki.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

"Law enforcement official" means an officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to:

1. Investigate or conduct an official inquiry into a potential violation of law; or
2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

"Legal representative" is a person recognized by law as standing in the place or representing the interests of another for one or more purposes.

"Mental health information" means oral, written, or otherwise recorded information which indicates the identity of a person receiving professional services (as defined in Iowa Code section 228.1(8)) and which relates to the diagnosis, course, or treatment of the person's mental or emotional condition.

"Open record" means a record other than a confidential record.

"Payment," with respect to protected health information, has the same definition as that stated in 45 CFR §164.501 as amended to March 26, 2013. In the department, "payment" applies to subjects for whom health care coverage is provided under the Medicaid program or the hawki program.

"Personally identifiable information" means information about or pertaining to the subject of a record which identifies the subject and which is contained in a record system.

"Personal representative" means someone designated by another as standing in the other's place or representing the other's interests for one or more purposes. The term "personal representative" includes, but is not limited to, a legal representative. For disclosure of protected health information, the definition of "personal representative" is more restrictive, as described at rule 441—9.15(17A,22).

"Protected health information" means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Psychotherapy notes" means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

"Public health authority" means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

"Record" means the whole or a part of a "public record" as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department.

"Record system" means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of a subject, number, symbol, or other unique identifier assigned to a subject.

"Subject" means the person who is the subject of the record, whether living or deceased.

"Substance abuse information" means information which indicates the identity, diagnosis, prognosis, or treatment of any person in an alcohol or drug abuse program.

"Transaction" means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Treatment" means the same as defined in 45 CFR §164.501 as amended to March 26, 2013.

"Use," with respect to protected health information, means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

"Workforce," with respect to protected health information, means the same as defined in 45 CFR §160.103 as amended to June 25, 2024.

441—9.3(17A,22) Requests for access to records.

9.3(1) *Location of record.* A request for access to a record should be directed to the Records Officer, 321 East 12th Street, Des Moines, Iowa 50319. If a request for access to a record is misdirected, department personnel will promptly forward the request to the department's records officer.

9.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

9.3(3) *Request for access.* Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information.

9.3(4) *Response to requests.* Access to an open record will be provided upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4).

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 441—9.4(17A,22) and other applicable provisions of law.

9.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

9.3(6) *Copying.* A reasonable number of copies of an open record may be made in the department office. If photocopy equipment is not available in the department office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

9.3(7) *Fees.* The department may charge fees as permitted by Iowa Code chapter 22. The department will publish a fee schedule for open records on its website. The department may charge a fee for the cost of preparing an explanation or summary of health information. The department and the subject requesting the information shall agree to the amount of any fee imposed before the department prepares the explanation or summary.

441—9.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 441—9.3(17A,22).

9.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

9.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

9.4(3) *Notice to subject of record and opportunity to obtain injunction.* Except as provided in 441—subrule 175.41(2), after the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

9.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

9.4(5) *Request granted.* Except as provided in 441—subrule 175.41(2), when the custodian grants a request for access to a confidential record, the custodian shall notify the requester or the person who is to receive the information and include any limits on the examination and copying of the record.

9.4(6) *Records requiring special procedures.* Special procedures are required for access to:

a. Child abuse information. Access to child abuse information is obtained according to rules 441—175.41(235A) and 441—175.42(235A).

b. Dependent adult abuse information. Access to adult abuse information is governed by rule 441—176.9(235A).

441—9.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examinations. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

9.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of

law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

9.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian.

a. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

b. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit stating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts.

c. Requests to temporarily treat a record as a confidential record shall specify the precise period of time for which that treatment is requested.

d. A person filing such a request shall, if possible, provide a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the department by the person requesting confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

9.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the department does not request that it be withheld from public inspection under Iowa Code section 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

9.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

9.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

9.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

9.5(7) *Requesting privacy protection for protected health information.*

a. Requesting restrictions on protected health information use or disclosure. The department will follow the requirements of 45 CFR §164.522 as amended to March 26, 2013, in responding to these requests.

b. Requesting the receipt of communications of protected health information by alternative means or at alternative locations. The department will follow the requirements of 45 CFR §164.522 as amended to March 26, 2013, in responding to these requests. For Medicaid and hawki, the subject is required to clearly indicate the reason for requesting the confidential communication. Facilities shall not require the subject to explain the basis for the request as a condition of providing confidential communications.

441—9.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

9.6(1) *All programs.* Except as otherwise provided by law, a subject may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that subject. However, the subject is not authorized to alter the original copy of the record or to expand the official record of any department proceeding.

a. The subject shall send the request to review such a record or the written statement of additions, dissents, or objections to the department.

b. The request to review such a record or the written statement of additions, dissents, or objections must be dated and signed by the subject and shall include the current address and telephone number of the subject or the subject's representative.

9.6(2) *Additional procedures for protected health information.* The department will follow the protected health information right to amend standards as outlined in 45 CFR §164.526 as amended to March 26, 2013. The subject shall provide a reason to support the requested amendment.

441—9.7(17A,22,228) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records to be disclosed, the particular person or class of persons to whom the record may be disclosed, and the time period during which the record may be disclosed. The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Appearance of counsel before the department on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the department to disclose records about that person to the person's attorney. An attorney requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record. No confidential information about clients of the department shall be released without the client's consent, except as otherwise provided by law. Release of confidential information includes granting access to or allowing the copying of a record, providing information either in writing or orally, or acknowledging information to be true or false.

9.7(1) *Release forms.*

a. Releases allowing the department to provide confidential information, including protected health information. Subjects should complete an authorization for release on a form that meets the requirements of applicable law.

b. Releases allowing the department to provide protected health information under HIPAA. The department shall not require a subject to sign a HIPAA authorization form as a condition of treatment, payment, enrollment in a health plan, or eligibility for benefits. The department as a health care provider may require a subject to sign a HIPAA authorization form for the use or disclosure of protected health information for research, as a condition of the subject's receiving research-related treatment. A subject may revoke a HIPAA authorization at any time, provided that the revocation is in writing using a form that meets the requirements of applicable law, except to the extent that the department has taken action in reliance thereon.

c. Releases allowing the department to obtain confidential information from a third party. The department is required to obtain confidential information from third parties. The department may

make these requests unless prohibited by applicable law or when the client has authorized the release on one of the following forms:

(1) Authorization for Release of Information.
(2) Household Member Questionnaire.
(3) Bank or Credit Union Information.
(4) Addendum for Application and Review Forms for Release of Information.
(5) Request for School Verification.
(6) Employer's Statement of Earnings.
(7) Verification of Educational Financial Aid.
(8) Financial Institution Verification.
(9) Authorization to Obtain or Release Health Care Information.

d. Releases for photographs and recordings. The department may seek permission to use photographs in department publications on a form that meets the requirements of applicable law. The department will obtain authorization from the subject or person responsible (such as a guardian, custodian, or personal representative) for the subject before taking photographs or making any type of recording for any purpose other than those specifically allowed by law or for internal use within an institution.

9.7(2) *Exceptions to use of release forms.*

a. Public official. A letter from the subject to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the department shall be treated as an authorization to release information upon receipt of appropriate authorization from the subject to do so. The department shall release only the minimum amount of information necessary about the subject to the official to resolve the matter. If the information includes protected health information, the department may only provide the protected health information if, in the exercise of professional judgment, the department determines that disclosure is in the best interest of the subject. When the department determines that disclosure is in the subject's best interest, the department may disclose only the protected health information that is directly relevant to the public official's intervention with the matter involving the department.

b. Medical emergency. Department staff may authorize release of confidential information to medical personnel in a medical emergency if the subject is unable to give or withhold consent. As soon as possible after the release of information, the subject shall be advised of the release.

c. Abuse information. Consent to release information is not required to gather information for investigations of child abuse or dependent adult abuse.

9.7(3) *Opportunity for subject to agree or object for protected health information under HIPAA.* This subrule describes when the department may use or disclose protected health information, without a written authorization, to persons involved in the subject's care and for notification purposes. However, the department shall give the subject an opportunity to agree or object unless this requirement is waived as specified in paragraph 9.7(3)*"e."*

a. Involvement in the subject's care. The department may, in accordance with paragraphs 9.7(3)*"c," "e,"* and *"f,"* disclose protected health information that is directly relevant either to a subject's care or to payment related to the subject's care, provided payment is relevant to the person's involvement in the subject's care. The person involved must be:

(1) A family member;
(2) Another relative;
(3) A close personal friend of the subject; or
(4) Any other person identified by the subject.

b. Notification purposes. The department may use or disclose protected health information to notify, or assist in notifying, identifying or locating a family member, a personal representative of the subject, or another person responsible for the care of the subject of the subject's location, general condition or death. For disaster relief purposes, the use or disclosure shall be in accordance with paragraph 9.7(3)*"f."*

c. Uses and disclosures with the subject present. If the subject is present for, or available before, a use or disclosure permitted by this subrule and has the capacity to make health care decisions, the department may use or disclose the protected health information if the department:

(1) Obtains the subject's agreement;

(2) Provides the subject with the opportunity to object to the disclosure, and the subject does not express an objection; or

(3) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the subject does not object to the disclosure.

d. Informing the subject. The department may orally inform the subject of and obtain the subject's oral agreement or objection to a use or disclosure permitted by this subrule.

e. Limited uses and disclosures when the subject is not present. When the subject is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the subject's incapacity or an emergency circumstance, the department may, in the exercise of professional judgment, determine that disclosure is in the best interest of the subject.

(1) When the department determines that disclosure is in the subject's best interest, the department may disclose only the protected health information that is directly relevant to the person's involvement with the subject's health care.

(2) The department may use professional judgment and its experience with common practice to make reasonable inferences of the subject's best interest in allowing a person to act on behalf of the subject to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

f. For disaster relief purposes. The department may use protected health information or disclose protected health information to a public or private organization authorized by law or by its charter to assist in disaster relief efforts for the purpose of coordinating with these organizations the uses or disclosures permitted by paragraph 9.7(3)*"b."* The requirements in paragraphs 9.7(3)*"c"* and *"d"* apply to these uses and disclosures to the extent that the department, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

441—9.8(17A,22) Notice to suppliers of information. When the department requests a person to supply information about that person, the department shall notify the person of how the information will be used, which entities outside the department might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. The notice shall generally be given at the first contact with the department and need not be repeated. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or where it would compromise the purpose of a department investigation.

441—9.9(17A,22) Release to subject. The department will follow the access of individuals to protected health information standards as outlined in 45 CFR §164.524 as amended to February 6, 2014. If the department does not maintain the protected health information that is the topic of the subject's request for access, and the department knows where the requested information is maintained, the department shall inform the subject where to direct the request for access.

441—9.10(17A,22) Use and disclosure without consent of the subject. Open records are routinely disclosed without the consent of the subject. To the extent allowed by law, the department may also use and disclose confidential information without the consent of the subject or the subject's representative.

9.10(1) *Routine use.* To the extent allowed by law, the following are considered routine uses of all department records:

a. Disclosure to employees and agents of the department as needed for the performance of their duties.

b. Transfers of information within the department, to other state or federal agencies, agents of tribes and tribal public health authorities, or to local units of government as necessary to administer the program for which the information is collected or as necessary to administer a program within the other entity.

c. To a recipient who has provided the department with advance written assurance that the record will be used solely to create a statistical report. The department shall not release confidential data or information pursuant to this chapter unless the department and the recipient have executed an agreement that includes the conditions under which the confidential data or information may be used and a restriction on the further disclosure of the data or information.

9.10(2) *Audits and health oversight activities.*

a. Audits. Information concerning program expenditures and client eligibility is released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. Information is also released to auditors from federal agencies when those agencies provide program funds.

b. Health oversight activities. The department will follow the uses and disclosures standards for health oversight activities as outlined in 45 CFR §164.512 as amended to June 25, 2024.

9.10(3) *Program review.* Information concerning client eligibility and benefits is released to state or federal officials responsible for determining whether the department is operating a program lawfully. These officials include the ombudsman office under Iowa Code section 2C.9, the auditor of state under Iowa Code section 11.2, the Office of Inspector General in the federal Department of Health and Human Services, and the Centers for Medicare and Medicaid Services.

9.10(4) *Contracts and agreements with agencies and persons.*

a. The department may enter into contracts or agreements with public or private agencies to carry out the department's official duties or as necessary to administer a program within the other agency. Information necessary to carry out these duties may be shared with these agencies. The department may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf if the department obtains satisfactory assurance that the business associate will appropriately safeguard the information.

b. The department may enter into agreements to share information with agencies administering federal or federally assisted programs which provide assistance or services directly to persons on the basis of need. Only information collected in the family investment program, the child care assistance program, the food assistance program, the refugee resettlement program, or the child support recovery program may be shared under these agreements.

c. To meet federal income and eligibility verification requirements, the department has entered into agreements with the department of workforce development, the United States Internal Revenue Service, and the United States Social Security Administration. The department obtains information regarding persons whose income or resources are considered in determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, child care assistance, food assistance, Medicaid, state supplementary assistance and foster care. Identifying information regarding clients of these programs is released to these agencies. The information received may be used for eligibility and benefit determinations.

d. To meet federal requirements under the Immigration Reform and Control Act of 1986 (IRCA) relating to the Systematic Alien Verification for Entitlements (SAVE) program, the department has entered into an agreement with the Bureau of Citizenship and Immigration Service (BCIS). Under the agreement, the department exchanges information necessary to verify alien status for the purpose of determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, food assistance, Medicaid, state supplementary assistance and foster care assistance.

Identifying information regarding these subjects is released to the BCIS. The information received may be used for eligibility and benefit determinations.

e. The department has entered into an agreement with the department of workforce development to provide services to family investment program clients participating in the PROMISE JOBS program as described at 441—Chapter 93. Information necessary to carry out these duties shall be shared with the department of workforce development, as well as with its subcontractors.

f. The department has entered into an agreement with the department of education, vocational rehabilitation, disability determination services, to assist with Medicaid disability determinations.

g. The department has entered into an agreement with the department of education to share information that assists both schools and department clients in carrying out the annual verification process required by the United States Department of Agriculture, Food and Nutrition Service. That federal agency requires the department of education and local schools to verify eligibility of a percentage of the households approved for free-meal benefits under the school lunch program. When a department office receives a written request from the local school, the department office responds in writing with the current family investment program and food assistance program status of each recipient of free meals listed in the request. Other client-specific information is made available only with written authorization from the client.

9.10(5) *Release for judicial and administrative proceedings.* Information is released to the court as required in Iowa Code sections 125.80, 125.84, 125.86, 229.8, 229.10, 229.13, 229.14, 229.15, 229.22, 232.48, 232.49, 232.52, 232.71B, 232.81, 232.97, 232.98, 232.102, 232.111, 232.117 and 235B.3.

a. The department may disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the department discloses only the protected health information expressly authorized by the order and the court makes the order knowing that the information is confidential.

b. When a court subpoenas information that the department is prohibited from releasing, the department shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

9.10(6) *Fraud.* Information concerning suspected fraud or misrepresentation to obtain department services or assistance is disclosed to DIAL and to law enforcement authorities.

9.10(7) *Service referrals.* Information concerning clients may be shared with purchase of service providers under contract to the department.

a. Information concerning the client's circumstances and need for service is shared with prospective providers to obtain placement for the client. If the client is not accepted for service, all written information released to the provider shall be returned to the department.

b. When the information needed by the provider is mental health information or substance abuse information, the subject's specific consent is required.

9.10(8) *Medicaid billing.* Only the following information shall be released to bona fide providers of medical services in the event that the provider is unable to obtain it from the subject and is unable to complete the Medicaid claim form without it:

a. Patient identification number.

b. Health coverage code as reflected on the subject's medical card.

c. The subject's date of birth.

d. The subject's eligibility status for the month that the service was provided.

e. The amount of spenddown.

f. The bills used to meet spenddown.

9.10(9) Reserved.

9.10(10) *Child support recovery.* The child support recovery unit has access to information from most department records for the purpose of establishing and enforcing support obligations. Information about absent parents and recipients of child support services is released according to the provisions of Iowa Code chapters 234, 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I,

252J, 252K, 598, and 600B and any other support chapter. Information is also released to consumer reporting agencies as specified in rule 441—98.116(252B).

9.10(11) *Refugee resettlement program.* Contacts with both sponsor and resettlement agencies are made as a part of the verification process to determine eligibility or the amount of assistance. When a refugee applies for cash or Medicaid, the refugee's name, address, and telephone number are given to the refugee's local resettlement agency.

9.10(12) *Abuse investigation.* The central abuse registry disseminates child abuse information and dependent adult abuse information as provided in Iowa Code sections 235A.15 and 235B.7, respectively. Reports of child abuse and dependent adult abuse investigations are submitted to the county attorney as required in Iowa Code sections 232.71B and 235B.3. Results of the investigation of a report by a mandatory reporter are communicated to the reporter as required in Iowa Code sections 235A.17(2) and 235A.15(2)*"b"*(5).

9.10(13) *Foster care.* Information concerning a child's need for foster care is shared with foster care review committees or foster care review boards and persons named in the case permanency plan.

9.10(14) *Adoption.* Adoptive home studies completed on families who wish to adopt a child are released to licensed child-placing agencies, to the United States Immigration and Naturalization Service, and to adoption exchanges. Information is released from adoption records as provided in Iowa Code sections 600.16 and 600.24.

9.10(15) *Disclosures to law enforcement.*

a. Disclosures by workforce members who are crime victims. The department is not considered to have violated the requirements of this chapter if a member of its workforce who is the victim of a criminal act discloses confidential information to a law enforcement official, provided that:

(1) The confidential information disclosed is about the suspected perpetrator of the criminal act and intended for identification and location purposes; and

(2) The confidential information disclosed is limited to the following information:

1. Name and address.
2. Date and place of birth.
3. Social security number.
4. ABO blood type and Rh factor.
5. Type of injury.
6. Date and time of treatment.
7. Date and time of death, if applicable.
8. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

b. Crime on premises. The department may disclose to a law enforcement official protected health information that the department believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the department.

c. Decedents. The department may disclose protected health information to a law enforcement official about a subject who has died when the death resulted from child abuse or neglect or the death occurred in a department facility.

d. Other. The department may disclose confidential information to a law enforcement official when otherwise required or allowed by this chapter, such as disclosures about victims of child abuse or neglect; disclosures to avert a threat to health or safety, or to report suspected fraud; disclosures required by due process of law, such as disclosures for judicial and administrative proceedings; or other disclosures required by law.

9.10(16) *Response to law enforcement.* The address of a current recipient of family investment program benefits may be released upon request to a federal, state or local law enforcement officer if the officer provides the name of the recipient, and the officer demonstrates that:

a. The recipient is a fugitive felon who is fleeing prosecution, custody or confinement after conviction under state or federal law, or who is a probation or parole violator under state or federal law, or

b. The recipient has information that is necessary for the officer to conduct the officer's official duties, and

c. The location or apprehension of the recipient is within the officer's official duties.

9.10(17) *Research and evaluation.* Disclosure is made to employees of federal, state and local agencies and other investigators for purposes of bona fide research or evaluation. The department shall not release data or information pursuant to this paragraph unless the department and the researcher have executed an agreement that includes the conditions under which the confidential data or information may be used and restrictions on further disclosure of the data or information.

a. Mental health information may be disclosed for purposes of scientific research as provided in Iowa Code sections 228.5 and 229.25. Requests to do research involving records of a department facility shall be approved by the designated authority.

b. Abuse registry information may be disclosed for research purposes as provided in rules 441—175.42(235A) and 441—176.12(235B) and authorized by Iowa Code sections 235A.15(2)*"e"*(1) and 235B.6(2)*"e"*(1).

c. For research relating to protected health information, the researcher shall provide the department with information about the nature of the research, the protocol, the type of information being requested, and any other relevant information that is available concerning the request. If the researcher feels that contact with the subject is needed, the researcher shall demonstrate to the department that the research cannot be conducted without contact with the subject. The researcher shall pay for the costs of obtaining authorizations needed to contact the subjects and for the cost of files and preparation needed for the research.

9.10(18) *Threat to health or safety.*

a. All programs. A client's name, identification, location, and details of a client's threatened or actual harm to department staff or property may be reported to law enforcement officials. Other information regarding the client's relationship to the department shall not be released. When a department staff person believes a client intends to harm someone, the staff person may warn the intended victim or police or both. Only the name, identification, and location of the client and the details of the client's plan of harm shall be disclosed.

b. Protected health information. The department will follow the disclosure standards in 45 CFR §164.512 as amended to June 25, 2024.

9.10(19) *Required by law.*

a. Information is shared with other agencies without a contract or written agreement when federal law or regulations require it.

b. The department may use or disclose protected health information to the extent that use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law.

c. State law shall preempt rules in this chapter about protected health information when any one of the following conditions exists:

(1) Exception granted by Secretary of Health and Human Services under 45 CFR §160.204 as amended to March 26, 2013.

(2) State law more stringent. The provision of state law relates to the privacy of protected health information and is more stringent than a requirement of this chapter, within the meaning of "more stringent" found at 45 CFR §160.202 as amended to March 26, 2013.

(3) Reporting requirements. The provision of state law, including state procedures established under the law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(4) Requirements related to audits, monitoring, evaluation, licensing, and certification. The provision of state law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities and persons.

9.10(20) *Treatment, payment, or health care operations.*

a. The department may use or disclose protected health information for treatment, payment, or health care operations, as permitted by 45 CFR §164.506 as amended to March 26, 2013, except for psychotherapy notes, which are subject to the limits described in paragraph 9.10(21)*"b."* The use or disclosure shall be consistent with other applicable requirements of this chapter.

b. The department may use or disclose psychotherapy notes without an authorization for any one of the following reasons:

(1) To carry out the following treatment, payment, or health care operations:

1. Use by the originator of the psychotherapy notes for treatment.

2. Use or disclosure by the department for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling.

3. Use or disclosure by the department to defend itself in a legal action or other proceeding brought by the subject.

(2) When required by the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations.

(3) For health oversight activities with respect to the oversight of the originator of the psychotherapy notes.

(4) When necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public as described in this chapter.

(5) When required by law as described in this chapter.

(6) To disclose protected health information in the designated record set to a coroner or medical examiner as described in this chapter.

9.10(21) *Other uses and disclosures for which an authorization or opportunity to agree or object is not required.* The department may use or disclose protected health information for which an authorization or opportunity to agree or object is not required as permitted by 45 CFR §164.512 as amended to June 25, 2024.

9.10(22) *Victims of domestic violence.* The department shall disclose confidential information about an individual whom the department reasonably believes to be a victim of domestic violence when required by state law.

9.10(23) *Whistle blowers.* The department is not considered to have violated the requirements of this chapter when a member of its workforce or a business associate discloses protected health information, provided that:

a. The workforce member or business associate has a good-faith belief that the department or a business associate has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or has provided care, services, or conditions that potentially endanger one or more patients, workers, or the public; and

b. The disclosure is made to one of the following:

(1) A health oversight agency or public health authority authorized by law to investigate or oversee conduct or conditions for the purpose of reporting the allegation of failure to meet professional standards or misconduct.

(2) An appropriate health care accreditation organization.

(3) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate.

9.10(24) *Secondary to a use or disclosure of protected health information.* The department may use or disclose protected health information that is secondary to a use or disclosure otherwise permitted or required by these rules, such as when a visitor in a facility overhears a doctor speaking to a subject about the subject's health.

9.10(25) *De-identified data or a limited data set.* The department may use or disclose protected health information to create information that is de-identified or a limited data set under the conditions specified in 45 CFR §164.514 as amended to June 7, 2013.

441—9.11(22) Availability of records.

9.11(1) *Open records.* Department records are open for public inspection and copying unless otherwise provided by rule or law.

9.11(2) *Confidential records.* Iowa Code chapters governing the operations of the department establish the confidential nature of many department records. The department also administers several federally funded programs and is authorized by Iowa Code section 22.9 to enforce confidentiality standards from federal law and regulation as required for receipt of the funds where the department has determined that the right to examine and copy public records under Iowa Code section 22.2 would cause the denial of funds, services, or essential information from the United States government that would otherwise be available to the department.

9.11(3) *Authority to release confidential records.* The department may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other provision of law.

441—9.12(22,252G) Personally identifiable information. The nature and extent of personally identifiable information collected by the department varies by the type of record. This rule describes personally identifiable information collected, maintained, and retrieved by the department by personal identifiers in record systems and the legal authority for the collection of that information. This rule also identifies the legal authority for keeping some or all of the collected personally identifiable information confidential.

9.12(1) Department administrative records.

a. Personnel records. These records contain information about employees, families and dependents, and applicants for positions with the department. Some of this information is confidential under Iowa Code section 22.7(11) and 22.7(18).

b. Fiscal records. These records contain itemized vouchers collected from individuals pursuant to Iowa Code section 8A.514. Some of this information is confidential under Iowa Code section 22.7(11) and 22.7(18).

c. Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court that maintains the official copy. These records are confidential as outlined in Iowa Code sections 217.30, 22.7(4) and 622.10.

9.12(2) Program records.

a. Adoption investigator certification. These records are collected pursuant to Iowa Code chapter 600.

b. Adoption program records. These records are collected pursuant to Iowa Code sections 600.8 and 600.16. These records are confidential as outlined in Iowa Code sections 600.16 and 600.24.

c. Appeals. These records are collected pursuant to Iowa Code section 217.1. Some of these records are confidential as outlined in Iowa Code section 217.1.

d. AIDS drug reimbursement program. These records are collected for purposes of implementing a federal grant program authorized by HR 1827. Certain patient records are confidential as outlined in Iowa Code section 141A.9.

e. Brain injury service program recipients. These records are collected pursuant to Iowa Code section 135.22B. These records are confidential as outlined in Iowa Code section 135.22(2).

f. Center for congenital and inherited disorders. These records are collected pursuant to Iowa Code chapter 136A. These records are confidential as outlined in Iowa Code section 136A.7.

g. Central registry for brain or spinal cord injuries. These records are collected pursuant to Iowa Code section 135.22. Except for statistical reports, these records are maintained as confidential pursuant to Iowa Code section 135.22.

h. Child abuse program. These records are collected pursuant to Iowa Code section 235A.14. These records are confidential as outlined in Iowa Code sections 235A.13, 235A.15, 235A.16, and 235A.17.

i. Childcare assistance client records. These records are collected pursuant to Iowa Code chapter 237A. These records are confidential as outlined in Iowa Code section 237A.13.

j. Childcare facility licensing. These records are collected pursuant to Iowa Code chapter 237A. Some of these records are confidential as outlined in Iowa Code section 237A.7.

k. Childhood lead poisoning prevention program. These records are collected pursuant to Iowa Code sections 135.100 through 135.105. Certain of these records are confidential as outlined in Iowa Code chapter 139A.

l. Child support recovery program. These records are collected pursuant to Iowa Code chapters 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, and 252K and sections 144.13, 144.26, 232.147, 234.39, 595.4, 598.22B and 600.16A. These records are confidential as outlined in Iowa Code sections 252B.9 and 252G.5, 42 U.S.C. §654(26) (as amended to August 1, 2024), 42 U.S.C. §654a(d) (as amended to August 1, 2024), and 45 CFR §303.21 and 307.13 (as amended to August 1, 2024).

m. Chronic disease prevention and management programs. These records are collected pursuant to Iowa Code section 135.11(1). Certain medical information in these records is confidential as outlined in Iowa Code section 22.7(2).

n. Collection service center payment. These records are collected pursuant to Iowa Code sections 252B.9, 252B.13A and 252B.16. These records are confidential as outlined in Iowa Code section 252B.9(2) and 42 U.S.C. §654a(d) and 45 CFR §307.13 (as amended to August 1, 2024).

o. Criminal and juvenile justice information. These records are collected pursuant to Iowa Code sections 216A.136 and 216A.138 and through interagency agreements.

p. Dental health program. These records are collected pursuant to Iowa Code section 135.11(19). Certain medical information in these records is confidential as outlined in Iowa Code section 22.7(2).

q. Dependent adult abuse program. These records are collected pursuant to Iowa Code section 235B.1. These records are confidential as outlined in Iowa Code section 235B.1.

r. Domestic abuse death review team. These records are collected pursuant to Iowa Code section 135.110. These records are confidential as outlined in Iowa Code section 135.11.

s. Emergency medical services. These records are collected pursuant to Iowa Code chapter 147A.

t. Environmental health program. These records are collected pursuant to Iowa Code section 135.11(1) and PL 96-510, Section 104(d)(1), 40 CFR 763 effective June 28, 1983, and 40 CFR 761 effective May 31, 1979, dealing with asbestos, PCB and other environmental health factors. Certain medical information in the work-related disease program file may be confidential as outlined in Iowa Code section 22.7(2). Certain asbestos and PCB inspection records are collected under contract with the federal Environmental Protection Agency, and requests for such records will be referred to that agency.

u. Family investment program client records. These records are collected pursuant to Iowa Code section 234.6. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §602(a)(1) and §1306a (as amended to August 1, 2024).

v. Food assistance client files. These records are collected pursuant to Iowa Code section 234.6. These records are confidential as outlined in Iowa Code section 217.30 and 7 U.S.C. §2020(e)(8) as amended to August 1, 2024, and 7 CFR 272.1(c) and (d) (as amended to June 23, 2000).

w. Foster care client/service files. These records are collected pursuant to Iowa Code sections 237.3 through 237.5. These records are confidential as outlined in Iowa Code section 237.9.

x. Foster care facility licensing. These records are collected pursuant to Iowa Code chapter 237. Some of these records are confidential as outlined in Iowa Code section 237.9.

y. Foster care review board files. These records are collected pursuant to Iowa Code section 237.17. Some of these records are confidential as outlined in Iowa Code section 237.21.

z. Hawki client files. These records are collected pursuant to Iowa Code section 514I.4. These records are confidential as outlined in Iowa Code section 514I.4, and 42 CFR §457.1110 as amended to January 1, 2001.

aa. Human rights advocacy files. These records are collected pursuant to Iowa Code chapter 216A; the Omnibus Budget Reconciliation Act, P.L. 97-35; Juvenile Justice and Delinquency Prevention Act, P.L. 93-415; and the Victims Compensation and Assistance Act, P. L. 98-473. These records are confidential as outlined in Iowa Code section 22.7(18).

bb. Long term and managed care ombudsman complaints. These records are collected pursuant to Iowa Code sections 135C.37 and 231.42. These records are confidential as outlined in Iowa Code sections 135C.37 and 231.42.

cc. Maternal and child health program. These records are collected pursuant to Iowa Code section 135.11(20). Records that contain medical information are confidential pursuant to Iowa Code section 22.7(2).

dd. Medicaid clients. These records are collected pursuant to Iowa Code section 249A.4. These records are confidential as outlined in Iowa Code section 217.30, 42 U.S.C. §1396a(7), and 42 CFR §431.300 to 307 as amended to November 13, 1996.

ee. Medicaid provider information. These records are collected pursuant to Iowa Code section 249A.4. Some of these records are confidential as outlined in Iowa Code section 217.30, 42 U.S.C. §1396a(7), and 42 CFR §431.300 to 307 as amended to November 13, 1996.

ff. Newborn and infant hearing screening program. These records are collected pursuant to Iowa Code section 135.131. Information which identifies an individual patient is confidential as outlined in Iowa Code section 135.131.

gg. Nutrition and WIC (supplemental food program for women, infants and children) program. These records are collected pursuant to Iowa Code section 135.11(1) and Chapter 17 of the federal Child Nutrition Act of 1966 as amended to January 5, 2023. These records are confidential as outlined in 7 CFR 246 as amended to August 1, 2024, and Iowa Code section 22.7(2).

hh. Radiological health program. These records are collected pursuant to Iowa Code chapters 136B and 136C. Certain of these records are confidential as outlined in 641—39.4(24).

ii. Refugee health program. These records are collected pursuant to Iowa Code section 135.11(1) and Section 412(c)(3) of the federal Immigration and Naturalization Act. Records that contain medical information are confidential pursuant to Iowa Code section 22.7(2).

jj. Refugee resettlement client records. These records are collected pursuant to Iowa Code section 217.1. These records are confidential as outlined in Iowa Code section 217.30, and 45 CFR §400.27 as amended to March 22, 2000.

kk. Reportable diseases and other diseases and health conditions, including lead and other heavy metal poisonings. These records are collected pursuant to Iowa Code chapter 139A. Except for statistical reports, these records are confidential as required by Iowa Code chapter 139A.

ll. Reportable sexually transmitted diseases or infections. These records are collected pursuant to Iowa Code chapter 139A. Except for statistical reports, these records are confidential as required by Iowa Code chapter 139A.

mm. State institution resident records. These records are collected pursuant to Iowa Code section 218.1. These records are confidential as outlined in Iowa Code sections 218.22, 229.24 and 229.25.

nn. State supplementary assistance clients. These records are collected pursuant to Iowa Code chapter 249. Some of these records are confidential as outlined in Iowa Code section 217.30.

oo. Substance abuse client records. These records are collected pursuant to Iowa Code chapters 125 and 218 and sections 234.6 and 249A.4. These records are confidential as outlined in Iowa Code

sections 125.37 and 125.93, 42 U.S.C. §29 dd.3 and ee.3 as amended to January 1, 2024, 42 CFR Part 2 as amended to April 16, 2024, and 38 U.S.C. §4132 as amended to August 1, 2024.

pp. Substance abuse program licensing complaints. These records are collected pursuant to Iowa Code chapter 125. Certain information in these records may be confidential as outlined in Iowa Code sections 22.7(2), 22.7(18) and 125.37.

qq. Title IV-E foster care and adoption assistance client files. These records are collected pursuant to Iowa Code sections 217.1 and 600.17 through 600.22. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §671(a)(8), and 45 CFR 1355.30(1) (as amended to January 20, 2016).

rr. Veterinary public health. These records are collected pursuant to Iowa Code chapter 139A. Certain medical information in these records may be confidential as outlined in Iowa Code chapter 139A.

ss. Vital records. These records are collected pursuant to Iowa Code chapter 144, including records of births, deaths, fetal deaths, adoptions, marriages, divorces, annulments and related data and correspondence. These records are confidential as outlined in Iowa Code section 144.43.

9.12(3) Other restricted data contained in department client records includes:

a. Department of revenue information. These records are collected pursuant to Iowa Code sections 252B.5 and 252B.9. These records are confidential as outlined in Iowa Code sections 421.17 and 422.20(1).

b. Department of workforce development information. These records are collected pursuant to Iowa Code chapters 239B and 249A and section 252B.9. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §503(d) and (e).

c. Income and eligibility verification system. These records are collected pursuant to Iowa Code chapters 239B and 249A and sections 217.1 and 234.6(7). These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §1230b-7.

d. Department of public safety information. These records are collected pursuant to Iowa Code sections 237.8, 237A.5 and 252B.9. These records are confidential as outlined in Iowa Code sections 692.2, 692.3, 692.8 and 692.18.

e. Federal tax return information. These records are collected pursuant to Iowa Code chapters 239B, 249A and 252B and sections 217.1 and 234.6(7). These records are confidential as outlined in Iowa Code section 422.20(2) and 26 U.S.C. §6103.

f. Juvenile court information. These records are collected pursuant to Iowa Code chapter 232 and section 234.6. These records are confidential as outlined in Iowa Code sections 232.48, 232.97 and 232.147 through 232.151.

g. Peer review organization. These records are collected pursuant to Iowa Code section 249A.4. These records are confidential as outlined in Iowa Code section 217.30 and 42 U.S.C. §1320c-9.

h. United States Department of Health and Human Services information. These records are collected pursuant to Iowa Code chapters 239B, 249, 249A and 252B and sections 217.1 and 234.6(7). These records are confidential as outlined in Iowa Code section 217.30 and 42 CFR Part 401.134(c) as amended to October 1, 2002.

441—9.13(17A,22) Special policies and procedures for protected health information. The department will follow all special policies and procedures for using and disclosing protected health information as outlined in 45 CFR Part 164 as amended through December 31, 2023, including the minimum necessary standard, uses and disclosures for premium rating and related purposes, verification and documentation requirements, notice of privacy practices, the right to receive an accounting of disclosures, complaint procedures, appeal rights and record retention.

441—9.14(17A,22) Person who may exercise rights of the subject.

9.14(1) *Adults.* When the subject is an adult, including an emancipated minor, the subject's rights under this rule may also be exercised by the subject's legal or personal representative, except as provided in subrule 9.14(3).

9.14(2) *Minors.* Within the limits of subrule 9.14(3), when the subject is an unemancipated minor, the subject's rights under this rule shall be exercised only by the subject's legal representative, except as follows:

a. When the department otherwise deals with the minor as an adult, as in the case of minor parents under the family investment program.

b. When otherwise specifically provided by law. However, minor subjects shall be granted access to their own records upon request, subject to the limits in rule 441—9.9(17A,22).

9.14(3) *Exceptions.*

a. Scope of authority. Legal and personal representatives may act only within the scope of their authority. For protected health information, the designation must reflect the subject's ability to make health care decisions and receive protected health information. For example, court-appointed conservators shall have access to and authority to release only the following information:

(1) Name and address of subject.

(2) Amounts of assistance or type of services received.

(3) Information about the economic circumstances of the subject.

b. Mental health information. Only an adult subject or a subject's legal representative may consent to the disclosure of mental health information. Records of involuntary hospitalization shall be released only as provided in Iowa Code section 229.24. Medical records of persons hospitalized under Iowa Code chapter 229 shall be released only as provided in Iowa Code section 229.25.

c. Substance abuse information. Only the subject may consent to the disclosure of substance abuse information, regardless of the subject's age or condition.

d. Failure to act in good faith. If the department has reason to believe that the legal or personal representative is not acting in good faith in the best interests of the subject, the department may refuse to release information on the authorization of the legal or personal representative.

e. Abuse, neglect, and endangerment situations. Notwithstanding a state law or any other requirement of this chapter, the department, in the exercise of professional judgment, may elect not to treat a person as a subject's personal representative if:

(1) The department has reason to believe that the subject has been or may be subjected to domestic violence, abuse, or neglect by the person; or

(2) The department has reason to believe that treating the person as a personal representative could endanger the subject.

f. Protected health information. A parent, guardian, or other person acting in place of a parent who does not represent the minor for protected health information may still access protected health information about the minor if required by law.

g. Deceased subjects. If, under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased subject or of the subject's estate, the department shall treat that person as a personal representative.

h. Other. If, under applicable law, the subject of a confidential record is precluded from having a copy of a record concerning the subject disclosed to a third party, the department shall not treat the third party as a personal representative.

These rules are intended to implement Iowa Code chapters 17A, 22, 135, 217, 228, and 252G and the Health Insurance Portability and Accountability Act of 1996.

ITEM 3. Rescind 441—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
NOTICES

441—16.1(17A) Definitions.

"Adequate notice" means any notice of decision or notice of action issued by the department or on the department's behalf that includes all the following information:

1. A description of the action taken;
2. The effective date of the action;
3. The specific reasons supporting the action, stated language likely to be understood by the average program applicant or enrollee;
4. References to applicable provisions of law supporting the action;
5. An explanation of the right to appeal; and
6. The circumstances under which assistance is continued when an appeal is filed.

"Adverse benefit determination" means any adverse action taken by the department regarding a program administered by the department or on the department's behalf, excluding department decisions about requests for waivers of administrative rules.

"Assistance program" means a program administered by the department or on the department's behalf through which qualifying individuals receive benefits or services.

"Enrollee" means any applicant for, or recipient of, benefits or services pursuant to an assistance program.

"Timely" means that the notice is sent at least ten calendar days before the date the adverse benefit determination would become effective. The timely notice period begins on the day after the notice is sent.

441—16.2(17A) Notices.

16.2(1) *Written timely and adequate notice.* When required by federal or state law, the department will provide written timely and adequate notice of the right to appeal any adverse benefit determination that affects an individual who is applying for, or receiving benefits from, an assistance program. The department will also provide written timely notice of pending actions for a federal tax or debtor offset.

16.2(2) *Adequate notice.* The department will give adequate notice of the approval or denial of assistance or services and the approval or denial of a license, certification, approval, registration, or accreditation.

16.2(3) *Dispensing with timely notice.* Timely notice may be dispensed with, but adequate notice will be sent no later than the date benefits would have been issued, when:

a. There is factual information confirming the death of the enrollee or of the family investment program payee and there is no relative available to serve as a new payee.

b. The enrollee provides a clear written, signed statement that the enrollee no longer wishes to receive assistance, or gives information that requires termination or reduction of assistance, and the enrollee has indicated, in writing, that the enrollee understands that the consequence of supplying the information is termination or reduction of assistance.

c. The enrollee has been admitted or committed to an institution that does not qualify for payment under an assistance program.

d. The enrollee has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

e. The whereabouts of the enrollee are unknown and mail directed to the enrollee has been returned by the post office indicating no known forwarding address. When the whereabouts of the enrollee become known during the payment period covered by the returned warrant, the warrant will be made available to the enrollee.

f. The department establishes that the enrollee has been accepted for assistance in another state.

g. Cash assistance or the supplemental nutrition assistance program is changed because a child is removed from the home as a result of a judicial determination or is voluntarily placed in foster care.

h. A change in the level of medical care is prescribed by the enrollee's physician.

i. A special allowance or service granted for a specific period is terminated and the enrollee has been informed in writing at the time of initiation that the allowance or service will terminate at the end of the specified period.

j. The notice involves an adverse determination made with regard to the preadmission screening requirements.

k. The department terminates or reduces benefits or makes changes as described at 441—subrule 40.27(3) or rule 441—75.52(249A).

l. The department terminates benefits for failure to return a completed report form, as described in paragraph 16.3(3)*"k."*

m. The department approves or denies an application for assistance.

n. The department implements a mass change based on law or rule changes that affect a group of enrollees.

These rules are intended to implement Iowa Code chapter 17A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 265—Chapter 13
"Public Records and Fair Information Practices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5
State or federal law(s) implemented by the rulemaking: Iowa Code section 22.11

Public Hearing

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

October 8, 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 Iowa Finance Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Finance 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 13 and to adopt a new chapter in lieu thereof. The new chapter will incorporate the text of the Uniform Rules on Agency Procedure regarding fair information practices in addition to other information required to be addressed by Iowa Code section 22.11.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons who want to request public records or participate in other procedures regarding the Authority's records may incur the costs described below.

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

This proposed rulemaking will benefit persons interested in the Authority's public records procedures and other fair information practices.

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:

Members of the public may incur costs to request records, to request confidential treatment of records, or to provide written statements of additions, dissents, or objections to a record.

The Authority provides two free hours of staff time to search for records, evaluate potentially confidential information, and assemble a request. Any time exceeding two hours is charged at $32 per hour. The Authority may charge a different hourly rate based on the actual hourly pay rate of staff working to fulfill the request and will give notice of an anticipated change to the hourly rate.

Costs for staff time or external legal counsel work may also be incurred to participate in the other procedures outlined in the chapter, such as requests for confidential treatment or providing a written statement of additions, dissents, or objections to a record. The amount of such costs will vary based on the compensation of staff or legal counsel and the nature of the request or statement.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the Authority's procedures related to records.

3. Costs to the State:

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

Authority staff time is regularly required to respond to requests for public records and requests for confidential treatment.

- Anticipated effect on state revenues:

The rulemaking has no anticipated effect on state revenues.

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

Costs to the public to participate in the records-related procedures described in the chapter are minimal and ensure efficient use of Authority staff time.

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 of addressing public records and fair information practices.

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 alternative methods because the Authority did not identify any less costly or less intrusive method.

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

The Authority did not consider any alternative methods because the Authority did not identify any less costly or less intrusive method.

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 rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 265—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

265—13.1(16,22) Definitions. As used in this chapter:

"Authority" means the Iowa finance authority created in Iowa Code section 16.1A.

"Confidential records" means records, as identified in Iowa Code section 22.7 or any other provision of law, that are not disclosed to members of the public unless otherwise ordered by a court, by the custodian of the records, or by another person duly authorized to release the records. A record may be partially or wholly confidential.

"Custodian" means a lawful custodian as defined in Iowa Code section 22.1.

"Open record" means a record other than a confidential record.

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

"Record" means the whole or a part of a "public record" as defined in Iowa Code section 22.1 that is owned by or is in the physical possession of the authority.

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

"Request for confidential treatment" means a request, made pursuant to rule 265—13.4(16,22), for the authority to treat a record as a confidential record and withhold such record from public inspection.

265—13.2(16,22) Requests for access to authority records.

13.2(1) *Location of record.* A request for access to an authority record should be directed to the Iowa finance authority, located at the address set forth in rule 265—1.3(16). If a request for access to a record is misdirected, authority staff will promptly forward the request to the appropriate person within the authority.

13.2(2) *Office hours.* Open records are available during customary office hours of 8 a.m. to 4:30 p.m. on Monday through Friday, excluding legal holidays.

13.2(3) *Request for access.* Requests for access to authority records may be made in writing, including by email, in person, or by telephone. Requests must identify the particular records sought by name or description in order to facilitate the location of the record. A request made other than in person must include the name, email address, if available, and telephone number of the person requesting the information. If a person asks to be mailed paper copies of a record, a mailing address must be included in the request. A person is not required to give a reason for requesting an open record.

13.2(4) *Response to requests.* The authority is authorized to grant or deny access to records according to the provisions of Iowa Code chapter 22, this chapter or any other provision of law. Access to an open record shall be granted promptly upon request. If the size or nature of the request necessitates time for compliance, the authority shall comply with the request as soon as possible. The authority may delay access to a record for any of the reasons set forth in Iowa Code section 22.8(4) or 22.10(4). The authority must promptly give written notice to the requester of the reason for any delay in access to a record and the estimated length of that delay.

13.2(5) *Security of record.* No person may, without permission from the authority, search or remove any record from authority files. Examination and copying of records will be done under the supervision of authority staff to ensure records are protected from damage and disorganization.

13.2(6) *Copying.* The authority will permit the copying of records as described in Iowa Code section 22.3.

13.2(7) *Fees.* The authority may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. An hourly fee may be estimated in advance and charged for actual

authority expenses in the inspection, reviewing, and copying of requested records when the total staff time dedicated to fulfilling the request requires an excess of two hours. When the estimated fee chargeable under this subrule exceeds $25, the authority may require a requester to make an advance payment of all or part of the estimated fee. When a requester has previously failed to pay a fee charged under this subrule, the authority may require advance payment of the full amount of any estimated fee before the authority processes a new or pending request for access to records from that requester, as well as payment in full of the amount previously owed.

265—13.3(16,22) Access to confidential records. The following procedures for access to confidential records are in addition to those specified for all authority records in rule 265—13.2(16,22).

13.3(1) A person requesting access to a confidential record may be required to provide proof of identity or authority if access to the record is limited to a particular person or class of persons.

13.3(2) The authority may require a request for access to a confidential record to be in writing. A person requesting access to a confidential record may be required to sign a certified statement or affidavit enumerating the specific grounds justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

13.3(3) When the authority denies a request for access to a confidential record, in whole or in part, the requester shall be notified in writing. The written notice will include:

a. The name and title or position of the person or persons responsible for the denial; and

b. A brief statement of the grounds for the denial, including a citation to the applicable provision of law vesting authority in the authority to deny disclosure of the record.

13.3(4) When the authority grants a request for access to a confidential record to a particular person, the authority will indicate any lawful restrictions imposed by the authority on that person's examination and copying of the record.

265—13.4(16,22) Requests for confidential treatment.

13.4(1) A request for confidential treatment must be submitted in writing to the authority and:

a. Identify the information for which confidential treatment is sought.

b. Cite the legal and factual basis for confidential treatment.

c. Identify the name, address, telephone number, and email address, if available, of the person authorized to respond to any inquiry or action of the authority concerning the request.

d. Specify the precise period of time for which the confidential treatment is requested, if applicable.

13.4(2) The authority may request additional factual information from the person requesting confidential treatment.

13.4(3) The authority must notify the requester in writing of the granting or denial of the request. If a request for confidential treatment is denied, the authority shall notify the requester in writing of the reasons for its denial. Pursuant to Iowa Code section 22.8, the authority may reasonably delay examination of the record. However, if the authority determines that the requester had no reasonable grounds for the request for confidential treatment, then such record shall not be withheld from public inspection for any period of time after the denial of the request. The authority may notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The authority may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the authority to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

13.4(4) Failure of a person to request confidential treatment for a record does not preclude the authority from treating it as a confidential record.

265—13.5(16,22) Additions, dissents or objections. Except as otherwise provided by law, the person who is the subject of a record may have a written statement of additions, dissents or objections entered into that record. The statement must be filed with the authority, must be dated and signed by the person who is the subject of the record, and include the person's current address and telephone number, and email address, if available. This rule does not authorize the person who is the subject of the record to alter the original record or to expand the official record of any authority proceeding.

265—13.6(16,22) Notices to suppliers of information. The authority will notify suppliers of information of the use that will be made of the information, which persons outside the authority might routinely be provided the information collected and identify which parts of the requested information are required and which are optional and will state the consequences of failing to provide the information. This notice may be given in the authority's rules, on written forms used to collect the information, in contracts, in program guidance, verbally, or by other appropriate means.

265—13.7(16,22) Disclosure of records—consent.

13.7(1) *Disclosure for routine use.* In this chapter, "routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose that is compatible with the purpose for which the record was collected. To the extent allowed by law, the following uses are considered routine uses of all authority records, including confidential records:

a. Disclosure to those officers, employees, and agents of the authority who have a need for the record in the performance of their duties.

b. Disclosure to a contractor, including but not limited to the department of inspections, appeals, and licensing, for matters in which it is performing services or functions on behalf of the authority.

c. Transfers of information within the authority, to other state agencies, or to units of local government as appropriate to administer the program for which the information is collected.

d. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the authority is operating a program lawfully.

e. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

13.7(2) *Other disclosures of confidential records.* To the extent allowed by law, the following uses may result in disclosure of confidential records without the consent of the subject:

a. Disclosure to a recipient who has provided the authority with advance written assurance that the record will be used solely as statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the authority specifying the record desired and the law enforcement activity for which the record is sought.

d. Disclosure pursuant to a showing of compelling circumstances affecting the health or safety of any individual.

e. Disclosure to the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. Disclosure in response to a court order or subpoena.

13.7(3) *Consent to disclosure of confidential records.*

a. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to the subject or to a third party. A request for such a disclosure must be in writing and must identify the

particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, if applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, if applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity.

b. When a record has multiple subjects with interest in the confidentiality of the record, the authority may take reasonable steps to protect confidential information relating to another subject.

265—13.8(16,22) Availability of records.

13.8(1) Authority open records are open for public inspection and copying unless otherwise prohibited by current rule or law.

13.8(2) Certain records identified in rules 265—13.9(16,22) and 265—13.10(16,22), or otherwise maintained by the authority, may be confidential records, in whole or in part, and not routinely made available for public inspection pursuant to Iowa Code section 22.7 or other applicable law.

265—13.9(16,22) Personally identifiable information.

13.9(1) The authority collects personally identifiable information pursuant to Iowa Code chapter 16, federal statutes and regulations governing federal programs and the issuance of debt by the authority, and other applicable laws. Personally identifiable information is stored by electronic and physical methods. The authority's record systems do not match, collate or compare personally identifiable information in each system with personally identifiable information contained in other record systems. The authority's record systems can collect, maintain and retrieve information by personal identifiers, including names, mailing addresses, and email addresses. This rule describes the nature and extent of personally identifiable information that is collected, maintained and retrieved by the authority by personal identifier in record systems.

13.9(2) *Program records.* Records of persons or organizations participating in the authority's programs are collected by the authority. These records may contain information about individuals collected pursuant to specific federal or state statutes or regulations. Personally identifiable information, such as name, address, social security number and telephone number, may be included in these records when the applicant is an individual. Portions of program records may be confidential pursuant to Iowa Code section 22.7 or other applicable law.

13.9(3) *Correspondence.* Records of correspondence from persons outside the authority or sent to persons outside the authority may contain personally identifiable information provided by the sender or recipient of such correspondence. Portions of correspondence may be confidential pursuant to Iowa Code section 22.7 or other applicable law.

13.9(4) *Litigation files.* The authority maintains records regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. These records contain materials that are confidential as attorney work product and attorney-client communications pursuant to Iowa Code sections 22.7(4), 622.10 and 622.11; Iowa Rule of Civil Procedure 1.503(3); Federal Rule of Civil Procedure 26(b)(3); the rules of evidence; the Code of Professional Responsibility; and case law. Some materials are confidential under other applicable provisions of law or as directed by a court order.

13.9(5) *Personnel files.* The authority maintains files containing information about employees, families and dependents, and applicants for positions with the authority. Portions of personnel files may be confidential pursuant to Iowa Code section 22.7(11).

13.9(6) *Bond records.* The authority maintains records related to bonds as provided in Iowa Code section 76.10. Such records may be confidential pursuant to Iowa Code section 22.7(17).

265—13.10(16,22) Other groups of records. This rule describes groups of records maintained by the authority other than record systems. These records are routinely available to the public. All or portions

of such records may contain confidential information pursuant to Iowa Code section 22.7 or other applicable law. The records are stored by electronic and physical methods.

13.10(1) *Rulemaking records.* Rulemaking records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

13.10(2) *Meeting records.* Agendas, minutes and materials presented to boards and other bodies associated with the authority are available from the authority, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5(4) or that are otherwise confidential by law. Authority meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

13.10(3) *Publications.* News releases, annual reports, project reports, newsletters, and related documents are available from the authority. Authority news releases, project reports, and newsletters may contain information about individuals, including authority staff. This information is not retrieved by individual identifier.

13.10(4) *Statistical reports.* Periodic reports for various authority programs are available from the authority. Statistical reports do not contain personally identifiable information.

13.10(5) *Published materials.* The authority uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

13.10(6) *Policy manuals.* The authority employees' manual, containing procedures describing the authority's regulations and practices, is available. Policy manuals do not contain information about individuals.

13.10(7) *Other records.* All other records that are not exempt from disclosure by law are available from the authority.

265—13.11(16,22) Applicability. This chapter does not:

13.11(1) Require the authority to index or retrieve records that contain information about an individual by that person's name or other personal identifier.

13.11(2) Make available to the general public records that would otherwise not be available pursuant to Iowa Code chapter 22.

13.11(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the authority that are governed by the regulations of another agency.

13.11(4) Make available records compiled by the authority in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, rules of discovery, evidentiary privileges and applicable regulations of the authority.

These rules are intended to implement Iowa Code chapters 16 and 22.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 1
"Description of Organization and Procedures Before the Division"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 10A.206
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 24, 2024 11 to 11:15 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 1 in accordance with the goals and directives of Executive Order 10. This chapter is being rescinded because the former Division of Labor has been greatly reduced; was moved into the Department of Inspections, Appeals, and Licensing; and will be utilizing procedures applicable to the Department.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
- Classes of persons that will bear the costs of the proposed rulemaking:

There is no cost resulting from this rulemaking.
- Classes of persons that will benefit from the proposed rulemaking:

The enforcing agency will benefit from the absence of superfluous rules.

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

This rulemaking imposes no costs.
- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:
- Implementation and enforcement costs borne by the agency or any other agency:

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

There is no fiscal impact.

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

This rulemaking has the benefit of reducing unnecessary rules.

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

Less costly or intrusive methods do not exist other than rescinding without replacement.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **875—Chapter 1**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 67
"Elevator Safety Board Petitions for Rule Making"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89A.3
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 67 in accordance with the goals and directives of Executive Order 10. This chapter is being rescinded because procedures for rulemaking by the Elevator Safety Board will now be in a different chapter applicable to programs in the Department of Inspections, Appeals, and Licensing.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
- Classes of persons that will bear the costs of the proposed rulemaking:

There is no cost resulting from this rulemaking.
- Classes of persons that will benefit from the proposed rulemaking:

The enforcing agency will benefit from the absence of superfluous rules.

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

This rulemaking imposes no costs.
- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:
- Implementation and enforcement costs borne by the agency or any other agency:

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

There is no fiscal impact.

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

This rulemaking has the benefit of reducing unnecessary rules.

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

Less costly or intrusive methods do not exist other than rescinding without replacement.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **875—Chapter 67**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 68
"Declaratory Orders by the Elevator Safety Board"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89A.3
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 68 in accordance with the goals and directives of Executive Order 10. This chapter is being rescinded because procedures for declaratory orders by the Elevator Safety Board will now be in a different chapter applicable to programs in the Department of Inspections, Appeals, and Licensing, where the Board is now located.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is no cost resulting from this rulemaking.

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

The enforcing agency will benefit from the absence of superfluous rules.

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

- Quantitative description of impact:

This rulemaking imposes no costs.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

There is no fiscal impact.

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

This rulemaking has the benefit of reducing unnecessary rules.

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

Less costly or intrusive methods do not exist other than rescinding without replacement.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **875—Chapter 68**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 70
"Public Records and Fair Information Practices of the Elevator Safety Board"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89A.3
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 70 in accordance with the goals and directives of Executive Order 10. This chapter is being rescinded because public records and fair information practices of the Elevator Safety Board will now be in a different chapter applicable to programs in the Department of Inspections, Appeals, and Licensing, where the Board is now located.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is no cost resulting from this rulemaking.

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

The enforcing agency will benefit from the absence of superfluous rules.

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

- Quantitative description of impact:

This rulemaking imposes no costs.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

There is no fiscal impact.

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

This rulemaking has the benefit of reducing unnecessary rules.

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

Less costly or intrusive methods do not exist other than rescinding without replacement.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **875—Chapter 70**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 80
"Boiler and Pressure Vessel Board Administrative and Regulatory Authority"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 80 in accordance with the goals and directives of Executive Order 10 and adopts a new Chapter 80. Proposed Chapter 80 describes the authority and conduct of the Boiler and Pressure Vessel Board.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Boiler and Pressure Vessel Board runs at minimal cost to anyone.

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

The public benefits from safe boilers and pressure vessels and from being able to request waivers and other relief from the Board.

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

- Quantitative description of impact:

The Board frequently hears waiver requests.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The Board is a small cost for the agency.

- Anticipated effect on state revenues:

The 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:

Inaction would result in less expertise and longer waits for necessary rule changes and waivers.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

The Board has no negative impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 80 and adopt the following **new** chapter in lieu thereof:

BOILERS AND PRESSURE VESSELS

CHAPTER 80
BOILER AND PRESSURE VESSEL BOARD
ADMINISTRATIVE AND REGULATORY AUTHORITY

875—80.1(89) Definitions. The definitions contained in this rule apply to 875—Chapters 80 through 96.

"Board" means the boiler and pressure vessel board.

"Board office" means the offices of the department of inspections, appeals, and licensing.

"Department" means the department of inspections, appeals, and licensing.

"Director" means the director of the department of inspections, appeals, and licensing or the director's designee.

875—80.2(89) Authority of the board. The authority and responsibilities of the board include but are not limited to the following:

80.2(1) Adopting rules necessary to protect public safety and health and to administer the duties of the board.

80.2(2) Hearing and deciding appeals concerning boiler and pressure vessel inspection reports.

80.2(3) Establishing fees.

80.2(4) Establishing committees of the board.

875—80.3(89) Organization of board officers. The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the commissioner nor the commissioner's designee may serve as chairperson. The chairperson presides at meetings, appoints committees, and performs all duties and exercises all powers of the chairperson. The vice chairperson, in the absence or incapacity of the chairperson, performs all duties and exercises all powers of the chairperson.

875—80.4(21,89) Public meetings.

80.4(1) The board shall hold at least one meeting each calendar quarter.

80.4(2) Board meetings are governed in accordance with Iowa Code chapter 21, and the board's proceedings are conducted in accordance with Robert's Rules of Order.

80.4(3) The chairperson or the chairperson's designee will prepare an agenda listing all matters to be discussed at the meeting.

80.4(4) A majority of the members of the board constitute a quorum, and all final motions and actions must receive a majority of a quorum vote.

80.4(5) Members of the public may be present during board meetings unless the board votes to hold a closed session in accordance with Iowa Code chapter 21. The dates and locations of board meetings may be obtained from the board's website or the board office.

80.4(6) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person when a particular topic comes before the board may be granted at the discretion of the chairperson. The chairperson may limit total public comment time to ten minutes.

80.4(7) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

875—80.5(89) Official communications. All official communications, including submissions and requests, go to the Boiler and Pressure Vessel Board, Department of Inspections, Appeals, and Licensing, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

These rules are intended to implement Iowa Code chapters 21 and 89.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 81
"Boiler and Pressure Vessel Board Waivers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 81 in accordance with the goals and directives of Executive Order 10 and adopts a new Chapter 81. Proposed Chapter 81 sets forth procedures for the Boiler and Pressure Vessel Board to grant waivers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Boiler and Pressure Vessel Board runs at minimal cost to anyone.

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

The public benefits from safe boilers and pressure vessels. Boiler and pressure vessel owners benefit from being able to obtain waivers when warranted.

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

- Quantitative description of impact:

The Board frequently hears waiver requests.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The Board is a small cost for the agency.

- 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:

Inaction would result in less expertise and longer waits for hearing waivers.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

Waivers have no negative impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 81 and adopt the following **new** chapter in lieu thereof:

CHAPTER 81
BOILER AND PRESSURE VESSEL BOARD WAIVERS

875—81.1(17A,89) Criteria for waiver. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

81.1(1) The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

81.1(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

81.1(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

81.1(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

875—81.2(17A,89) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

81.2(1) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding using the caption of the contested case.

81.2(2) *Other.* If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

81.2(3) *Filing petition.* A petition is deemed filed when it is received in the board's office. A petition and related materials for consideration should be sent to the Boiler and Pressure Vessel Board, Department of Inspections, Appeals, and Licensing, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

875—81.3(17A,89) Content of petition. The required form for a petition for waiver is available on the department's website. A petition for waiver shall include the following information where applicable and known to the petitioner:

81.3(1) The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

81.3(2) A description of and citation referencing the specific rule from which a waiver is requested.

81.3(3) The specific waiver requested, including the precise scope and duration.

81.3(4) The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 875—81.1(17A,89). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

81.3(5) A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the boiler or pressure vessel affected by the proposed waiver.

81.3(6) The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.

81.3(7) The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

81.3(8) The state boiler identification number of the relevant object.

875—81.4(17A,89) Notice. The board will acknowledge a petition within 10 days of its receipt in the board office and ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

875—81.5(17A,89) Board review procedures.

81.5(1) Unless the board makes other arrangements, petitions for waiver will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the following meeting.

81.5(2) The petitioner will be provided a reasonable opportunity to make a presentation to the board.

875—81.6(17A,89) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a contested case but otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

875—81.7(17A,89) Ruling. An order granting or denying a waiver will be in writing and contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

81.7(1) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

81.7(2) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

81.7(3) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

81.7(4) *Conditions.* The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

81.7(5) *Time period of waiver.* A waiver will not be permanent unless the petitioner can show that a temporary waiver would be impracticable. A waiver may be renewed if the board finds that grounds for a waiver continue to exist.

81.7(6) *Time for ruling.* The board will grant or deny a petition for a waiver as soon as practical but, in any event, within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

81.7(7) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period will be deemed a denial of that petition by the board.

81.7(8) *Service of order.* Within 14 days of the ruling, any order issued under this rule will be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

81.7(9) *Posting of orders granting waivers.* The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the room where the object is installed.

875—81.8(17A,89) Public availability. All orders granting or denying a waiver petition will be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3.

875—81.9(17A,89) Submission of waiver information. Information about all orders granting or denying a waiver petition will be submitted by the board staff to the legislative services agency through the designated Internet site within 60 days of granting or denying the petition. The information submitted is available to the public via the department's website.

875—81.10(17A,89) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

81.10(1) The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

81.10(2) The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

81.10(3) The subject of the waiver order has failed to comply with all conditions contained in the order.

875—81.11(17A,89) Violations. Violation of a condition in a waiver order is a violation of the particular rule for which the waiver was granted. The recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

875—81.12(17A,89) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 22, and 89.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 82
"Boiler and Pressure Vessel Board Petitions for Rule Making"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 82 in accordance with the goals and directives of Executive Order 10. This chapter is being rescinded because procedures for rulemaking by the Boiler and Pressure Vessel Board will now be in a different chapter applicable to the Department of Inspections, Appeals, and Licensing, where the Board is now located.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is no cost resulting from this rulemaking.

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

The enforcing agency will benefit from the absence of superfluous rules.

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

- Quantitative description of impact:

This rulemaking imposes no costs.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

There is no fiscal impact.

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

This rulemaking has the benefit of reducing unnecessary rules.

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

Less costly or intrusive methods do not exist other than rescinding without replacement.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **875—Chapter 82**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 83
"Declaratory Orders by the Boiler and Pressure Vessel Board"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 83 in accordance with the goals and directives of Executive Order 10. This chapter is being rescinded because procedures for declaratory orders by the Boiler and Pressure Vessel Board will now be in a different chapter applicable to programs in the Department of Inspections, Appeals, and Licensing, where the Board is now located.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is no cost resulting from this rulemaking.

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

The enforcing agency will benefit from the absence of superfluous rules.

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

- Quantitative description of impact:

This rulemaking imposes no costs.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

There is no fiscal impact.

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

This rulemaking has the benefit of reducing unnecessary rules.

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

Less costly or intrusive methods do not exist other than rescinding without replacement.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **875—Chapter 83**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 84
"Contested Cases Before the Boiler and Pressure Vessel Board"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 84 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 84 sets forth procedures for the Boiler and Pressure Vessel Board to conduct contested cases.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Board runs at minimal cost to anyone.

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

Boiler and pressure vessel owners benefit from clarity on how to bring contested cases to the Board.

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:

Contested cases before the Board are rare.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The Board is a small cost for the agency.

- 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:

Inaction would result in uncertainty and confusion about how to assert rights in a contested case to the Board.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

Contested case procedures have no negative impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 84 and adopt the following **new** chapter in lieu thereof:

CHAPTER 84
CONTESTED CASES BEFORE THE BOILER AND PRESSURE VESSEL BOARD

875—84.1(17A,89) Reconsideration of inspection report. The owner or operator of a piece of equipment subject to a written inspection report may petition the director for reconsideration of the report within 30 days of the issuance of the report. Failure to seek timely reconsideration of the inspection report from the director is a waiver of all appeal rights under Iowa Code section 89.14(6). The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and ASME code sections rests upon the petitioning owner or operator.

84.1(1) A petition for reconsideration must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's website. A petition for reconsideration shall specify:

a. The party seeking reconsideration, including mailing address and telephone number;

b. The location of the equipment subject to the challenged inspection report;
c. The inspection date;
d. The inspector who issued the challenged inspection report;
e. The specific findings or conclusions to which exception is taken;
f. The relief sought.

84.1(2) A copy of the challenged inspection report shall be attached to the petition for reconsideration along with all relevant documents that the petitioning party desires the director to consider when evaluating the petition.

84.1(3) The director or a designee of the director is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the director deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the director to discover documents or other information that was not submitted with the petition for reconsideration.

84.1(4) Any petition for reconsideration that is not received by the office of the director within 30 days of the issuance of the challenged inspection report is untimely and will not be considered by the director.

84.1(5) Requests for waivers or variances of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 81.

84.1(6) In ruling on a petition for reconsideration, the director may:
a. Affirm the inspection report as issued;
b. Issue an amended inspection report;
c. Rescind the inspection report;
d. Deny the petition as untimely.

84.1(7) Any petition for reconsideration that is not ruled upon by the director within 20 days of receipt by the office of the director is denied by the director and the challenged inspection report will be considered affirmed as issued.

875—84.2(17A,89) Appeal to the board. The director's ruling on a petition for reconsideration or the director's deemed denial of a petition for reconsideration may be appealed to the board. An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the director's written ruling on a petition for reconsideration or the director's deemed denial of a petition for reconsideration. At a minimum, an appeal includes a short and concise statement of the basis for the appeal. The required form for an appeal is available on the board's website. Consideration of an appeal of a ruling on a petition for reconsideration is a contested case proceeding subject to the provisions of Iowa Code chapter 17A. The director has an automatic right of intervention in any appeal of the ruling on petition for reconsideration and may defend the ruling in a contested case proceeding.

875—84.3(17A,89) Informal review. If the appellant requests an informal review and the director does not object, the board may conduct an informal review of the facts and circumstances subject to the provisions of this rule.

84.3(1) In order to preserve the ability of board members to participate in decision making, parties who desire participation in an informal review must therefore waive their right to seek disqualification of a board member based solely on the board member's participation in the informal review. Parties would not be waiving their right to seek disqualification on any other ground. By electing to participate in informal review, a party accordingly agrees that a participating board member is not disqualified from acting as a presiding officer in a later contested case proceeding.

84.3(2) The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

84.3(3) Rules 875—84.4(17A,89) through 875—84.31(17A,89) do not apply during informal review.

875—84.4(17A,89) Delivery of notice. Delivery of the notice of hearing by the board constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the appellant, the appellant's attorney, if known, and the director.

875—84.5(17A,89) Contents of notice. The notice of hearing will contain a statement of the time, place, and nature of the hearing and a brief statement of the matters asserted. It is the appellant's burden on appeal to prove compliance with all applicable statutory provisions, administrative rules, and ASME code sections. The notice shall contain a reference to the applicable statute and rules.

875—84.6(17A,89) Scope of issues. Only those issues raised before the director in the petition for reconsideration will be considered preserved for appeal to the board.

875—84.7(17A,89) File transmitted to the board. Upon receipt of a notice of hearing issued by the board, the director shall within 30 days forward to the board and all parties of record to the appeal copies of the challenged inspection report, the appellant's petition for reconsideration and all supporting documents, all other documents collected by the director in ruling on the petition for reconsideration, and the director's ruling on the petition for reconsideration.

875—84.8(17A,89) Legal representation. Any private party to a contested case is entitled to legal representation at the discretion and expense of that party.

875—84.9(17A,89) Presiding officer.

84.9(1) The presiding officer in all contested cases is the board, a panel of board members, or an administrative law judge assigned by the department of inspections, appeals, and licensing. When board members act as presiding officer, they conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. The board may be assisted by an administrative law judge when the board acts as presiding officer.

84.9(2) Any party to a contested case that 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 the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision to protect the public health, safety, or welfare.

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 interboard appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

84.9(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and to issue a proposed decision in a contested case will have a J.D. degree unless this requirement is waived by the board.

84.9(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

84.9(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 875—84.26(17A,89) and 875—84.27(17A,89). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

84.9(6) Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

875—84.10(17A,89) Service and filing.

84.10(1) *Service—when required.* Except where otherwise provided by law, when a document is filed in a contested case proceeding, it shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code chapter 17A, the party filing a document is responsible for service on all parties.

84.10(2) *Service—how made.* Service upon a party represented by an attorney is made upon the attorney unless otherwise ordered. Service is made by personal 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.

84.10(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding will be filed with the board office.

84.10(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, 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.

84.10(5) *Proof of mailing.* Proof of mailing includes either:

a. A legible United States Postal Service postmark on the envelope;

b. A certified mail return receipt;

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 Boiler and Pressure Vessel Board, Department of Inspections, Appeals, and Licensing, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.
>
> (Date) (Signature)

875—84.11(17A,89) Time requirements.

84.11(1) Time is be computed as provided in Iowa Code section 4.1(34).

84.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer affords all parties an opportunity to be heard or to file written arguments.

875—84.12(17A,89) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

875—84.13(17A,89) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Any objections are filed with the board and served on all parties at least three business days in advance of hearing.

875—84.14(17A,89) Disqualification.

84.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

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.

84.14(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 84.25(7).

84.14(3) 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 shall submit the relevant information for the record by affidavit and provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

84.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 84.14(1), the party files 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.

84.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

84.14(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 875—84.26(17A,89) and seek a stay under rule 875—84.30(17A,89).

875—84.15(17A,89) Consolidation and severance.

84.15(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

84.15(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

875—84.16(17A,89) Discovery.

84.16(1) Pursuant to Iowa Code chapter 17A, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery are governed by the Iowa Rules of Civil Procedure.

84.16(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the matter with the opposing party. Motions in regard to discovery are 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 by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

875—84.17(17A,89) Subpoenas in a contested case. Pursuant to Iowa Code section 17A.13(1), the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records that are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

84.17(1) Upon the written request of a party, the presiding officer shall issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

84.17(2) A request for a subpoena shall include the following information, as applicable:

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 is directed;

c. The date, time and location at which the person is 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 evidence requested;

f. The date, time and location for production, or inspection and copying.

84.17(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other 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 presiding officer;

j. The date of issuance;

k. A return of service attached to the subpoena.

84.17(4) The presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

84.17(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

84.17(6) Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

84.17(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

84.17(8) If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of 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.

875—84.18(17A,89) Motions.

84.18(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

84.18(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

84.18(3) The presiding officer may schedule oral argument on any motion.

84.18(4) Motions pertaining to the hearing, except motions for summary judgment, 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 board or an order of the presiding officer.

84.18(5) Motions for summary judgment comply with the requirements of Iowa Rule of Civil Procedure 1.981 and are subject to disposition according to the requirements of that rule to the extent

such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion files and serves a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 875—84.29(17A,89) and appeal pursuant to subrule 84.27(3).

875—84.19(17A,89) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless the parties waive this prohibition.

875—84.20(17A,89) Prehearing conference.

84.20(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion is filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference is given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

84.20(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

84.20(3) In addition to the requirements of subrule 84.20(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters that the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters that will expedite the hearing.

84.20(4) Prehearing conferences are conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

875—84.21(17A,89) Continuances. Unless otherwise provided, applications for continuances are made to the presiding officer.

84.21(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must

confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance will be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may waive notice of such requests for a particular case or an entire class of cases.

84.21(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

875—84.22(17A,89) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal is with prejudice.

875—84.23(17A,89) Hearing procedures.

84.23(1) The presiding officer has the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

84.23(2) All objections shall be timely made and stated on the record.

84.23(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.

84.23(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.

84.23(5) The presiding officer maintains the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

84.23(6) Witnesses may be sequestered during the hearing.

84.23(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer gives an opening statement briefly describing the nature of the proceedings.

b. The parties are given an opportunity to present opening statements.

c. The parties present their cases in the sequence determined by the presiding officer.

d. Each witness is sworn or affirmed by the presiding officer or the court reporter, and is 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.

f. The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

84.23(8) The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

84.23(9) The hearing is open to the public, except as otherwise provided by law.

84.23(10) Oral proceedings will be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the

expense of the party making the request. A transcription of the record of the hearing will be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription.

84.23(11) Default.

a. If no continuance was granted and a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 84.27(3). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one attached, sworn affidavit of a person with personal knowledge of the fact.

d. 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.

e. 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.

f. "Good cause" for purposes of this rule has the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

g. 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.

h. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case will proceed accordingly.

i. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

875—84.24(17A,89) Evidence.

84.24(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.

84.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

84.24(3) Evidence in the proceeding shall be confined to the contested issues as identified in the notice of hearing.

84.24(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.

84.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall 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.

84.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it will be marked as part of an offer of proof and inserted in the record.

875—84.25(17A,89) Ex parte communication.

84.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of 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 rule 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.

84.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

84.25(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

84.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided 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.

84.25(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.

84.25(6) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

a. If the presiding officer determines that disqualification is warranted, the following shall be submitted for inclusion in the record under each seal by protective order:

(1) A copy of any prohibited written communication,

(2) All written responses to the communication,

(3) A written summary stating the substance of any prohibited oral or other communication not available in written form and all responses made, and

(4) The identity of each person from whom the presiding officer received a prohibited ex parte communication.

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

84.25(7) 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.

84.25(8) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff will be reported to the board and to the director.

875—84.26(17A,89) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

875—84.27(17A,89) Decisions.

84.27(1) *Proposed decision.* Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

84.27(2) *Final decision.* When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the counsel of record.

84.27(3) *Appeals and review.*

a. Appeal by party. Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

b. Review. The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

c. Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

(1) The parties initiating the appeal;

(2) The proposed decision or order appealed from;

(3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought;

(5) The grounds for relief.

d. Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

e. Scheduling. The board will issue a schedule for consideration of the appeal.

f. Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

g. *Record.* The record on appeal or review will be the entire record made before the hearing panel or administrative law judge.

875—84.28(17A,89) Contested cases with no factual disputes. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

875—84.29(17A,89) Applications for rehearing.

84.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

84.29(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

84.29(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

84.29(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

84.29(5) *Disposition.* The board may meet telephonically to consider an application for rehearing. Any application for a rehearing is denied unless the board grants the application within 20 days after its filing.

875—84.30(17A,89) Stays of board actions.

84.30(1) *When available.*

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

84.30(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

84.30(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

875—84.31(17A,89) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

84.31(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

84.31(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 84.29(5).

These rules are intended to implement Iowa Code chapters 17A and 89.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 85
"Public Records and Fair Information Practices of the Boiler and Pressure Vessel Board"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 85 in accordance with the goals and directives of Executive Order 10. Chapter 85 is proposed to be rescinded because public records and fair information practices of the Boiler and Pressure Vessel Board will be in a different chapter applicable to programs in the Department of Inspections, Appeals, and Licensing, the new location of the board.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is no cost resulting from this rulemaking.

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

The enforcing agency will benefit from the absence of superfluous rules.

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

- Quantitative description of impact:

This rulemaking imposes no costs.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

There is no fiscal impact.

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

This rulemaking has the benefit of reducing unnecessary rules.

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

Less costly or intrusive methods do not exist other than rescinding without replacement.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **875—Chapter 85**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 90
"Administration of the Boiler and Pressure Vessel Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 90 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 90 sets forth the authority of the Elevator, Boiler and Amusements Bureau to inspect, grant permits, enforce safety requirements, and assess fees for covered boilers and pressure vessels.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The boiler and pressure vessel program maintains personnel to inspect boilers and pressure vessels.

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

The public, boiler owners and pressure vessel owners benefit from operating boilers and pressure vessels.

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 are fees that are comparable to fees of other nearby jurisdictions.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The agency hires personnel to inspect.

- Anticipated effect on state revenues:

The level of fees in this new chapter will not change the impact on state revenues.

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

Inaction would result in unsafe boilers and pressure vessels.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

Small businesses can seek a waiver from burdensome requirements.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 90 and adopt the following **new** chapter in lieu thereof:

CHAPTER 90
ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

875—90.1(89) Purpose and scope. These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89. An object is not considered "under pressure" and is not within the scope of Iowa Code chapter 89 when there is clear evidence that the manufacturer did not intend it to be operated at more than 3 psi and the object is operating at 3 psi or less. Jurisdiction is limited to objects, appurtenances, controls, safety devices, and equipment rooms as required by Iowa rules.

875—90.2(89,252J,272D) Definitions. To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule are applicable to the rules contained in 875—Chapters 90 to 96.

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

"ANSI/ASME CSD-1" means Control and Safety Devices for Automatically Fired Boilers.

"Appurtenance" means any item or equipment that is attached to the object and is part of the boiler external piping.

"ASME" means the American Society of Mechanical Engineers.

"Boiler" means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat. "Boiler" includes all temporary boilers.

"Boiler external piping" means all boiler piping and components as set forth in the scope of the edition of ASME B31.1 currently adopted by reference in 875—Chapter 91.

"Certificate of noncompliance" means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J; or
2. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

"CFR" means Code of Federal Regulations.

"Construction or installation code" means the applicable standard for construction or installation in effect at the time of installation.

"CSD-1 report" means Manufacturer's/Installing Contractor's Report for ASME CSD-1.

"Department" means the department of inspections, appeals, and licensing.

"Director" means the director of the department of inspections, appeals, and licensing or the director's designee.

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

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

"External inspection" means a complete examination made of the external surfaces and safety devices while the object is in operation, unless the object is required to be shut down pursuant to 875—subrule 89.3(4).

"High temperature water boiler" means a water boiler intended for operations at pressures in excess of 160 psig or temperatures in excess of 250 degrees F.

"Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and that operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F at the boiler outlet.

"Hot water supply boiler" means a boiler that:

1. Operates at a pressure not exceeding 160 psig;
2. Furnishes hot water to be used externally to itself; and, either:

- Bears a National Board "H" stamp and has a temperature less than or equal to 250 degrees F at or near the boiler outlet, or,
- Bears a National Board "HLW" stamp and has a temperature less than or equal to 210 degrees F at or near the boiler outlet.

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

"Institution of health and custodial care" means any of the following:

1. A health care facility as defined by Iowa Code section 135C.1;
2. An assisted living program as defined by Iowa Code section 231C.2;
3. A boarding home as defined by Iowa Code section 135O.1;
4. A hospice that offers inpatient services in an institutional setting;
5. Any institution or facility in which persons are housed to receive medical, health, or other care or treatment; or
6. Any other institution or facility in which persons are housed to receive assistance with meeting personal needs or activities of daily living.

A facility or office that provides care and services only on an outpatient basis is not an "institution of health and custodial care."

"Internal inspection" means as complete an examination as can be reasonably made of the internal surfaces of an object while it is shut down and access for examination is attained through the removal of any manhole plates, handhole plates, blind flanges, piping spools or fittings attached to the object. A determination that an examination cannot be reasonably made is not based on a failure of the owner or user to provide clearance or on failure of the owner or user to provide for the inspector's safety and health.

"ISO" means International Standards Organization.

"Lap seam crack" means a crack found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

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

"National Board" means the National Board of Boiler and Pressure Vessel Inspectors, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of boiler codes.

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

"Object" means a boiler or pressure vessel.

"OEM" means original equipment manufacturer.

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

"Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch or a water boiler intended for operation at pressures in excess of 160 pounds per square inch or temperatures in excess of 250 degrees F.

"Process steam generator" means a vessel or system of vessels comprised of one or more drums and one or more heat exchange surfaces as used in waste heat or heat recovery type steam boilers.

"Psig" means pounds per square inch gage.

"Relief valve" means an automatic pressure-relieving device actuated by a static pressure upstream of the valve that opens further with the increase in pressure over the opening pressure and that is used primarily for liquid service.

"Repair" means work necessary to return a boiler or pressure vessel to a safe operating condition.

"Rupture disk device" means a nonreclosing pressure-relief device actuated by inlet static pressure and designed to function by the bursting of a pressure-containing disk.

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

"Safety appliance" includes, but not be limited to:

1. Rupture disk device;
2. Safety relief valve;

3. Safety valve;
4. Temperature limit control;
5. Pressure limit control;
6. Gas switch;
7. Air switch; or
8. Any major gas train control.

"Safety relief valve" means an automatic, pressure-actuated relieving device suitable for use as a safety or relief valve, depending on application.

"Safety valve" means an automatic, pressure-relieving device actuated by the static pressure upstream of the valve and characterized by full opening pop action. The safety valve is used for gas or vapor service.

"Special inspection" means an inspection that is not required by Iowa Code chapter 89.

"Temperature and pressure relief valve" means a valve set to relieve at a designated temperature and pressure.

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

"Unfired steam boiler" means a vessel or system of vessels intended for operation at a pressure in excess of 15 psig for the purpose of producing and controlling an output of thermal energy.

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

"U.S. customary units" means feet, pounds, inches and degrees Fahrenheit.

"Water heater supply boiler" means a closed vessel in which water is heated by combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressure not exceeding 160 psig and includes all controls and devices necessary to prevent water temperatures from exceeding 210 degrees F.

875—90.3(89) Iowa identification numbers. All objects shall be identified by an Iowa identification number. State inspectors and special inspectors shall assign identification numbers as directed by the department to all jurisdictional objects that lack numbers. Identification numbers shall be attached in plain view to the object using one of the following methods:

1. A yellow sticker 2 inches by 3 inches affixed to the object and bearing the number.
2. A metal tag 1 inch by 2½ inches affixed to the object and bearing the number.
3. Numbers at least 5/16 of an inch high and stamped directly on the object.

875—90.4(89) Preinspection owner or user preparation.

90.4(1) *Preparation of objects.* Each owner or user shall ensure that each object covered by Iowa Code chapter 89 is prepared for inspection pursuant to this rule.

90.4(2) *Confined space and lockout, tagout procedures.*

a. If an object is a non-permit-required confined space or a permit-required confined space, the owner or user must prepare the object for inspection accordingly. Otherwise the inspector will not enter the space.

b. It is the duty of the owner or user to inform any inspector of the owner's or user's confined space entry and lockout, tagout procedures and supply to the inspector all information necessary to assess whether the confined space is safe for entry. It is the right of an inspector to verify any of the information supplied.

c. The owner or user shall have all objects locked and tagged, as applicable, prior to the inspector's entry for inspection or testing.

d. For entry into a permit-required confined space, the owner or user shall provide the necessary equipment such as air monitors and a qualified attendant who has received all the information relevant to the entry.

90.4(3) *Hydrostatic tests.* The owner or user shall prepare for and apply a hydrostatic test, whenever necessary, on the date specified by the inspector, which date will be not less than seven days after the date of notification.

90.4(4) *Boilers.* A boiler shall be prepared for internal inspection in the following manner:

a. Fluid will be drawn off and the boiler washed thoroughly.

b. Manhole and handhole plates, washout plugs and inspection plugs in water columns will be removed as required by the inspector. The furnace and combustion chambers will be thoroughly cooled and cleaned.

c. All grates of internally fired boilers will be removed.

d. Brickwork will be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

e. Low-water fuel cutoff controls will be opened or removed to allow for visual inspection.

90.4(5) *Pressure vessels.* The extent of inspection preparation for a pressure vessel will vary. If the inspection is to be external only, advance preparation is not required other than to afford reasonable access to the vessel. For combined internal and external inspections of small vessels of simple construction handling air, steam, nontoxic or nonexplosive gases or vapors, minor preparation is required, including affording reasonable means of access and removing manhole plates and inspection openings. In other cases, preparation includes removing the internal fittings and appurtenances to permit satisfactory inspection of the interior of the vessel if required by the inspector.

90.4(6) *Removal of covering or brickwork to permit inspection.* If the object is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of rivets, pitch of the rivets, and other data necessary to determine the safety of the object may be obtained, providing the information cannot be determined by other means. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

90.4(7) *Improper preparation for inspection.* If an object has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for hydrostatic tests as set forth in this chapter, the inspector may decline to make the inspection or test, and the inspection certificate will be withheld until the owner or user complies with the requirements.

875—90.5(89) Inspections.

90.5(1) *General.* All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 are inspected according to the requirements of the National Board Inspection Code (2021), which is hereby adopted by reference. A department inspector or special inspector must perform the inspections.

90.5(2) *Schedule.*

a. All required inspections must be performed according to the schedule set forth in Iowa Code section 89.3, unless an exception is set forth in this rule.

b. Except for inspections of unfired steam pressure vessels operating in excess of 15 pounds per square inch and low pressure steam boilers, each certificate inspection must be performed within a 60-day period prior to the expiration date of the operating certificate. Modification of this 60-day period will be permitted only upon written application showing just cause for waiver of the 60-day period.

c. Special inspections may be conducted when deemed necessary by the department and the object's owner or user.

90.5(3) *Inspections conducted by special inspectors.* Special inspectors shall provide copies of the completed report to the insured and to the department within 14 days of completing the inspection. The reports list all noteworthy conditions that are within the scope of Iowa Code chapter 89, all

recommendations, and all requirements. If the special inspector has not provided the results of the inspection within the time frame identified, the department may conduct the inspection.

90.5(4) *Type of inspection.* The inspection will be an internal inspection when required; otherwise, it shall be as complete an external inspection as possible. Conditions including, but not limited to, the following may also be the basis for an internal inspection:

a. Visible metal or insulation discoloration due to excessive heat.

b. Visible distortion of any part of the pressure vessel.

c. Visible leakage from any pressure-containing boundary.

d. Any operating records or verbal reports of a vessel being subjected to pressure above the nameplate rating or to a temperature above or below the nameplate design temperature.

e. A suspected or known history of internal corrosion or erosion.

f. Evidence or knowledge of a vessel having been subjected to external heat from a fire.

g. A welded repair not documented as required.

h. Evidence of an accident, incident or malfunction that could affect or may have resulted from a problem with the object's integrity.

90.5(5) *Internal inspections for unfired steam pressure vessels operating at more than 15 pounds per square inch.* The director may require an internal inspection of an unfired steam pressure vessel operating in excess of 15 psi when an inspector observes any deviation from these rules, Iowa Code chapter 89, the construction code, the installation code, or the National Board Inspection Code.

90.5(6) *Inspection of inaccessible parts.* When, in the opinion of the inspector, as a result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and thickness measurement of any part of the vessel. Nondestructive examination is acceptable.

90.5(7) *Imminent danger.*

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

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

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

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

90.5(8) *Internal inspections on a four-year cycle based on process safety management compliance.* The owner demonstrates compliance with the requirements set forth in Iowa Code section 89.3(5)*"a"*(4)*"b"* by annually submitting to the director a notarized affidavit. The affidavit shall be in a format approved by the director and signed by the owner or an officer of the company.

90.5(9) *Internal inspection on a four-year cycle for utility objects.* An object that meets the criteria of this subrule will be inspected internally at least once every four years and externally every year. If at any time the object or the owner no longer meets the criteria of this subrule, internal inspections will be performed on a two-year cycle.

a. The object is owned and operated by an electric public utility subject to rate regulation under Iowa Code chapter 476.

b. The object and the owner meet all the requirements for a two-year internal inspection interval.

c. If the object is shut down for a period sufficient to allow safe entry, and more than two years have passed since the last internal inspection, the owner shall notify the director of the outage and will schedule an internal inspection.

d. If the director determines that an earlier inspection is necessary, the owner shall prepare the object for inspection.

90.5(10) *Request for extended inspection interval.*

a. Owners of objects covered under Iowa Code section 89.3(4)*"a"* may apply for an extended internal inspection interval of up to seven years.

b. The application for an extended internal inspection interval includes the following information submitted to the director:

(1) The name and contact information of the requestor.

(2) The state identification number of the object.

(3) The interval requested with supporting reasons.

(4) An affidavit affirming the following:

1. Compliance with the process safety management standard contained in 29 CFR §1910.119.

2. The object is included as process safety management process equipment in the owner's process safety management program.

3. The object meets the requirements contained in the National Board Inspection Code.

4. The object is fit for service based on the year of fabrication and the estimated service life of the object as determined by Part 2 of the National Board Inspection Code.

5. Practices have been implemented for managing consumable items and ancillary equipment of the object.

(5) The following supporting records:

1. Inspection records of the boiler and ancillary equipment for the prior five years.

2. The most recent Report of Fitness for Service Assessment.

3. Every Form R-1 Report of Repair and Form R-2 Report of Alterations for the prior five years.

(6) A request for an informal conference, if desired.

c. The director will consider, among other things, whether the object meets the requirements contained in the National Board Inspection Code, whether the object is fit for service based on the year of fabrication, the estimated service life of the object as determined by Part 2 of the National Board Inspection Code, and whether the owner has implemented practices for managing consumable items and ancillary equipment of the object.

d. The director may grant an extended inspection interval.

(1) An extended inspection interval lasts until the next inspection, at which time the owner of the object may again apply for an extension.

(2) The owner shall promptly report to the department's boiler and pressure vessel unit any unscheduled shutdowns, significant incidents, near misses, and any other occurrences that might reasonably require reinspection before the extended date. Should the occurrence reasonably require it, or if any such event is not reported within ten days of occurrence, the director may revoke the extended inspection interval.

e. If the director does not intend to grant the extension, the director will give the applicant a Notice of Intent to Deny Extended Inspection Interval, granting ten days for the applicant to provide additional reasons and evidence why the interval should be extended.

875—90.6(89) Fees.

90.6(1) *Special inspector commission fee.* A $55 fee shall be paid annually to the director to obtain a special inspector commission pursuant to Iowa Code section 89.7.

90.6(2) *Certificate fee.* A $40 fee shall be paid for each one-year certificate, an $80 fee shall be paid for each two-year certificate, and a $160 fee shall be paid for each four-year certificate.

90.6(3) *Fees for inspection.* An inspection fee for each object inspected by a department inspector shall be paid by the appropriate party as follows:

a. A $55 fee for each water heater supply boiler.

b. A $95 fee for each boiler, other than a water heater supply boiler, having a working pressure up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.

c. A $215 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour.

d. A $55 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure of 15 pounds or more per square inch.

e. An additional fee will be charged if, upon the request of an owner or user, the director agrees to any non-routine schedule for an inspection outside of normal business hours, a special inspection, or a site visit. The additional fee will be calculated at a rate of $200 per hour, including travel time, with a minimum charge of $400.

f. If a boiler or pressure vessel has to be reinspected, there shall be another inspection fee as specified above.

90.6(4) *Fees for attempted inspections.* A $35 fee is charged for each attempt by a department inspector to conduct an inspection that is not completed through no fault of the department.

875—90.7(89) Certificate. No boiler or pressure vessel shall be operated without a current, valid certificate to operate. A certificate to operate will not be issued until the boiler or pressure vessel is in compliance with the applicable rules and all fees have been paid. The current certificate to operate or a copy of the current certificate to operate shall be conspicuously posted in the room where the object is installed.

875—90.8(89,252J,272D) Special inspector commissions.

90.8(1) *Definition of "reputable insurance company."* As used in this rule, "reputable insurance company" means a company recognized by the Iowa insurance division as a licensed insurer, a risk retention group, an alien surplus lines insurer, or a surplus lines insurer.

90.8(2) *Application.*

a. A person applying for a new or renewed commission shall complete, sign, and submit to the department with the required fee the form entitled "Application for Boiler and Pressure Vessel Special Inspector Commission" provided by the department. Additionally, the applicant shall submit a copy of the applicant's current National Board commission/endorsement with each application.

b. An applicant for a new Iowa special inspector commission shall schedule a meeting with the chief boiler inspector to discuss Iowa law and the responsibilities, expectations, and requirements for a special inspector.

90.8(3) *Expiration.*

a. The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the director. Each commission expires no later than December 31 of each year.

90.8(4) *Changes.* The special inspector shall notify the department at the time any of the information on the form or attachments changes.

90.8(5) *Denials.* The director may refuse to issue or renew a special inspector's commission for failure to complete an application package, if the applicant or inspector does not hold a National Board commission, or for any reason listed in subrules 90.8(7) through 90.8(9).

90.8(6) *Investigations.* Investigations will take place at the time and in the places the department directs. The director may investigate for any reasonable cause. The director may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

90.8(7) *Reasons for probation.* The director may issue a notice of commission probation when an investigation reasonably reveals that the special inspector does not represent a reputable insurance company or the special inspector filed inaccurate reports.

90.8(8) *Reasons for suspension.* The director may issue a notice of commission suspension when an investigation reasonably reveals the following:

a. The special inspector failed to submit and report inspections on a timely basis;

b. The special inspector abused the special inspector's authority;

c. The special inspector misrepresented self as a state inspector or a state employee;

d. The special inspector used commission authority for inappropriate personal gain;

e. The special inspector failed to follow the department's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;

f. The special inspector committed numerous violations as described in subrule 90.8(7);

g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

h. The National Board revoked or suspended the special inspector's work card;

i. The department received a certificate of noncompliance;

j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs 90.8(8)*"a"* to *"h;"* or

k. The special inspector does not represent a reputable insurance company.

90.8(9) *Reasons for revocation.* The director may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

a. The special inspector filed a misleading, false or fraudulent report;

b. The special inspector failed to perform a required inspection;

c. The special inspector failed to file a report or filed a report that was not in accordance with the provisions of applicable standards;

d. The special inspector failed to notify the department in writing of any accident involving an object;

e. The special inspector committed repeated violations as described in subrule 90.8(8);

f. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

g. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs 90.8(9)*"a"* to *"f;"*

h. The National Board revoked or suspended the special inspector's commission card;

i. The department received a certificate of noncompliance; or

j. The special inspector does not represent a reputable insurance company.

90.8(10) *Procedures.* The following procedures apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J or 272D apply.

a. Notice of actions. The director shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A. A copy will be sent to the insurance company employing the special inspector.

b. Contested cases. The special inspector has 20 days to file a written notice of contest with the director. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice will automatically be effective.

c. Emergency suspension. Pursuant to Iowa Code section 17A.18A, if the director finds that public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

d. Probation period. A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

e. Suspension period. A special inspector's commission may be suspended up to five years for each incident causing a suspension.

f. Revocation period. A special inspector's commission that has been revoked shall not be reinstated for five years.

g. Concurrent actions. Multiple actions may proceed at the same time against any special inspector.

h. Revoked or suspended commissions. Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall forfeit the special inspector's commission card to the director.

875—90.9(89) Quality reviews, surveys and audits.

90.9(1) An entity that manufactures or repairs boilers, pressure vessels or related equipment may request quality reviews, surveys or audits from certifying organizations such as the ASME or the National Board. The department is authorized to conduct the quality reviews, surveys or audits. If the department performs the service, the manufacturer or repairer shall pay all applicable expenses.

90.9(2) Quality reviews, surveys and audits for certification to the National Board or ASME standards shall be conducted only by a person or organization designated by the director. Any person or organization seeking this designation on behalf of the department shall provide documented evidence of training, examination, experience, and certification for the type of reviews, surveys and audits to be performed. The director has final authority to determine qualifications and designations.

a. Assessing quality programs. The department recognizes the ASME and the National Board as qualified designees for conducting quality reviews, surveys and audits that lead to ASME or National Board program certification.

b. ISO 9000 assessments. The department recognizes the ASME and the National Board:

(1) To be acceptable ISO 9000 registrars of quality systems for boilers and pressure vessels and the related pressure-technology equipment industry;

(2) To certify auditors and lead auditors to the requirements of ISO 10011-2 1991(E), Annex A; and

(3) To conduct ISO 9000 assessments for the boiler, pressure vessel, and related pressure-technology equipment industry.

875—90.10(89) Reporting requirements.

90.10(1) *Control and safety device reports.* Documentation required by this subrule shall be kept on site and be available for inspection by the department or special inspectors. The owner or user shall mail a copy of the documentation required by this subrule to the department.

a. The requirements of this subrule do not apply to:

(1) An object within the scope of 875—Chapter 96;

(2) A hot water supply boiler covered by ASME Section IV, Part HLW; or

(3) A boiler with a fuel input rating greater than or equal to 12,500,000 Btu per hour, falling within the scope of NFPA 85, Boiler and Combustion Systems Hazards Code.

b. The installer shall complete a CSD-1 report for each installed object. For all objects that do not fall under CSD-1, an I-1 report in accordance with NBIC shall be completed.

c. A person who installs a new burner, new gas train, or new controller on an object shall complete a CSD-1 report.

d. A person who replaces a part or component of an object shall complete the relevant portions of the CSD-1 report unless the replacement satisfies the design specifications. A copy of an invoice containing the same information as the relevant portions of the CSD-1 report is an acceptable alternative.

90.10(2) *Reporting repairs and alterations.* If the National Board Inspection Code requires that a report of repair, alteration or other such documentation is required, a copy of that documentation must be simultaneously filed with the director.

90.10(3) *Reporting explosions and other incidents.*

a. The following definitions apply to this subrule.

"Incident" means the explosion of a covered object or other failure of a component of a covered object causing injury or acute illness.

"Injury" means a personal injury requiring professional medical care or causing disability exceeding one day.

b. The owner or user of a covered object shall notify the director of an incident. A special inspector investigating an incident shall notify the owner or user of this reporting requirement.

c. Incident reports are made by calling 515.669.8945 or 515.725.2050. If the incident occurs during normal department operating hours, notification shall occur before close of business on that day. If the incident occurs when the department office is closed, the notification shall occur no later than close of business on the next department business day. Department hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.

d. At the request of the director, a person who submits a report pursuant to this subrule shall also submit a written report that includes the state identification number of the object, name of the owner of the object, and description of the incident.

e. The removal of any part of the damaged object from the premises is forbidden until permission to do so is granted by the state inspector or special inspector who investigated the incident.

f. When an incident involves the failure or destruction of any part of the object, the use of the object is forbidden until it has been made safe and it has passed an inspection by the state inspector or special inspector who investigated the incident.

875—90.11(89) Publications available for review. Pursuant to Iowa Code section 89.5(3), the standards, codes, and publications adopted by reference in these rules are available for review in the office of the department, 6200 Park Avenue, Suite 100, Des Moines, Iowa.

875—90.12(89) Notice prior to installation. Written notice of intent to install objects subject to the jurisdiction of Iowa Code chapter 89 shall be provided to the director at least ten days before installation. Written notice is accomplished by completing and submitting to the director either:

1. The form designated by the director, or
2. The National Board's Boiler Installation Report, I-1.

875—90.13(89) Temporary objects.

90.13(1) *Certificate to operate.* A certificate to operate a temporary object expires one year from the date of issuance or when the temporary object is disconnected.

90.13(2) *Inspections.*

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

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

875—90.14(89) Conversion of a power boiler to a low-pressure boiler. The following requirements apply to the conversion of a power boiler to a low-pressure boiler. The owner shall comply with the requirements of subrule 90.15(1) for each conversion. In addition, the owner shall comply with the requirements of subrule 90.15(2) if the converted object will be located outside of a place of public assembly or with the requirements of subrule 90.15(3) if the converted object will be located in a place of public assembly.

90.14(1) *General requirements.*

a. The owner shall provide to the director written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available on the department's website. At a minimum, the notice shall contain the following:

(1) Address, uses, and owner of the building where the boiler is located.

(2) The Iowa identification number assigned to the boiler.

(3) Name and contact information for the person completing the notice.

(4) Name and contact information for the contractor or other person planning to perform the conversion.

b. Pressure controls shall not exceed 15 pounds per square inch.

c. All boiler controls shall comply with ASME CSD-1.

d. Safety valves and safety relief valves shall be manufactured in accordance with a national or international standard.

e. One or more spring-pop safety valves meeting the following requirements shall be installed on each steam boiler:

(1) The valve shall be adjusted and sealed to discharge at a pressure not to exceed 15 psig.

(2) The valve capacity shall be certified by the National Board.

f. The converted boiler shall be subject to post-conversion external inspection to ensure that the requirements of this rule are met.

90.14(2) *Boilers located outside places of public assembly.* A power boiler that was converted to a low-pressure boiler and that is located outside of a place of public assembly shall not be converted back to a power boiler unless the following requirements are met:

a. The owner shall notify the director at least ten days prior to converting the boiler.

b. The owner shall comply with the editions of ASME Section I and CSD-1 in effect at the time of the second conversion.

c. The owner shall comply with the version of 875—Chapter 92 in effect at the time of the second conversion.

90.14(3) *Boilers located in places of public assembly.* A power boiler converted to a low-pressure boiler that is located in a place of public assembly complies with 875—Chapter 94.

875—90.15(89) Definitions regarding objects. The following definitions govern classification and status of objects in Iowa. To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule are applicable to the rules contained in 875—Chapters 90 through 96.

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

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

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

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

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

These rules are intended to implement Iowa Code chapters 17A, 89, 252J, and 272D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 91
"General Requirements for All Objects"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Division of Labor Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 91 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 91 requires certain design features and other safety measures for boilers and pressure vessels.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of boilers and unfired steam pressure vessels operating in excess of 15 pounds per square inch, all low-pressure heating boilers and unfired steam pressure vessels located in places of public assembly and other appurtenances used in this state for generating or transmitting steam for power, or for using steam under pressure for heating or steaming purposes will bear the costs.

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

The public and anyone potentially in harm's way of a destructive failure of an "object" covered by Iowa Code chapter 89 will benefit.

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

- Quantitative description of impact:

The rulemaking requires certain costs related to inspection and maintenance.

- Qualitative description of impact:

There is no known qualitative impact.

3. Costs to the State:

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

The agency has costs associated with running the Elevator, Boiler, and Amusements section.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of safe boilers and pressure vessels outweigh any costs.

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

The Department has not identified any less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

This chapter adopts consensus standards and time-tested Iowa standards.

Small Business Impact

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

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

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

The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 91 and adopt the following **new** chapter in lieu thereof:

CHAPTER 91
GENERAL REQUIREMENTS FOR ALL OBJECTS

875—91.1(89) Codes and code cases adopted by reference.

91.1(1) *ASME boiler and pressure vessel codes adopted by reference.* The ASME Boiler and Pressure Vessel Code (2021), including Code Cases, is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code (2021) except for objects that meet one of the following criteria:

a. An object with an ASME stamp and National Board Registration that establish compliance with an earlier version of the ASME Boiler and Pressure Vessel Code;

b. A miniature boiler installed before March 31, 1967;

c. A power boiler or unfired steam pressure vessel installed before July 4, 1951; or

d. A steam heating boiler, hot water heating boiler, or hot water supply boiler installed before July 1, 1960.

91.1(2) *Inspection code adopted by reference.* The National Board Inspection Code (2021) is adopted by reference, and installations, alterations, and repairs after February 16, 2022, shall comply with it.

91.1(3) *Electric code adopted by reference.* The National Electrical Code, NFPA 70 (2020), is adopted by reference, and installations after April 15, 2020, shall comply with it.

91.1(4) *Piping codes adopted by reference.* The Power Piping Code, ASME B31.1 (2020), and the Building Services Piping Code, ASME B31.9 (2020), are adopted by reference, and installations after February 16, 2022, shall comply with them up to and including the first valve.

91.1(5) *Control and safety device code adopted by reference.* Controls and Safety Devices for Automatically Fired Boilers (CSD-1) (2021) is adopted by reference, and installations after December 1, 2022, shall comply with it. Reporting requirements concerning CSD-1 are set forth at rule 875—90.11(89).

91.1(6) *Mechanical code adopted by reference.* Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) (2021) are adopted by reference, and installations after February 16, 2022, shall comply with them.

91.1(7) *Oil burning equipment code adopted by reference.* National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (2020), is adopted by reference, and installations after February 16, 2022, shall comply with it.

91.1(8) *Fuel gas code adopted by reference.* National Fire Protection Association National Fuel Gas Code, NFPA 54 (2021), is adopted by reference, and installations after February 16, 2022, shall comply with it.

91.1(9) *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2020), is adopted by reference, and installations after April 15, 2020, shall comply with it.

91.1(10) *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2019), is adopted by reference, and installations after April 15, 2020, shall comply with it.

875—91.2(89) Safety appliance.

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

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

875—91.3(89) Blowoff equipment. The blowdown from an object that enters a sanitary sewer system or blowdown that is considered a hazard to life or property shall pass through blowoff equipment that will reduce pressure and temperature. The temperature of the water leaving the blowoff equipment shall not exceed 150 degrees F. If the local jurisdiction has a temperature limit of less than 150 degrees F, the temperature of the water leaving the blowoff equipment shall comply with the limit set by the local jurisdiction. The pressure of the water leaving the blowoff equipment shall not exceed 5 psig. The blowoff piping and fittings between the object and the blowoff tank shall comply with the construction or installation code. All materials used in the fabrication of object blowoff equipment shall comply with the construction or installation code. All blowoff equipment shall be equipped with openings to facilitate cleaning and inspection.

875—91.4(89) Location of discharge piping outlets. The discharge from safety valves, safety relief valves, blowoff pipes and other outlets shall comply with the following:

91.4(1) The discharge piping terminates at a safe point of discharge.

91.4(2) When the safety valve or temperature and pressure relief valve discharge is piped away from the object to a safe point of discharge, provision is made for properly draining the piping.

91.4(3) The size of the discharge piping is not reduced from the size of the relief valve.

91.4(4) All discharge piping is comprised of appropriate metallic material identified in ASME Section II.

875—91.5(89) Pipe, valve, and fitting requirements. Pipes, valves, and fittings subject to the effects of galvanic action shall not be used on objects covered by these rules. Dielectric fittings shall be used where dissimilar metals are joined.

875—91.6(89) Repairs and alterations to unfired steam pressure vessels. No single repair of an unfired steam pressure vessel shall involve replacement of more than 50 percent of the OEM's pressure-retaining boundary.

875—91.7(89) Plugging boiler tubes. This rule does not apply to tubes in headers of economizers, evaporators, superheaters, or reheaters.

91.7(1) *General requirements.*

a. Leaky tubes are replaced or plugged.

b. Tube plugs are made of a material that is compatible with the material of the boiler tube being plugged and shall be welded into place or manufactured to be expanded into the tube sheet or drum.

c. The maximum number of tubes that may be plugged shall be the lesser number specified by the OEM or an engineer experienced in boiler design.

d. Documentation of the maximum number of tubes that may be plugged are kept on site, and a copy is supplied to the department by either mail or email.

91.7(2) *Fire tube boilers.*

a. A tube that is adjacent to a plugged tube shall not be plugged.

b. All plugged boiler tubes shall be replaced prior to the next required certificate inspection.

91.7(3) *Water tube boilers, unfired boilers, or process steam generators.* Water wall tubes that form a separation wall between products of combustion and the outside atmosphere or a separation of the gas passes in a multiple gas pass boiler shall not be plugged.

875—91.8(89) Equipment room. This rule applies to existing and new installations except as noted in subrule 91.10(1).

91.8(1) *Clearance requirements.*

a. This paragraph applies to objects installed after December 1, 2022. Minimum clearance on all sides of objects will be 36 inches, or the manufacturer's recommended service clearances if they allow sufficient room for inspection. Where a manufacturer identifies in the installation manual or other document that the unit requires more than 36 inches of service clearance, those dimensions will be followed. Manholes will have five feet of clearance between the manhole opening and any wall, ceiling or piping that would hinder entrance or egress from the object.

b. This paragraph applies to all objects installed after December 1, 2021, and before December 1, 2022. All objects will be installed with the clearances identified in NBIC Part 1.

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

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

91.8(2) *Conditions required.*

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

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

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

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

91.8(3) *Exit from equipment room.* This subrule applies to an equipment room exceeding 500 square feet of floor area, containing at least one object, and containing fuel-burning equipment with at least a combined capacity of 1,000,000 Btu per hour or the equivalent electrical heat input. Two means of exit located remotely from one another shall be provided on each elevation for covered equipment rooms. A platform at the top of a single object or other equipment is not considered an elevation.

91.8(4) *Carbon monoxide detector or alarm.* The owner or user shall install and maintain a carbon monoxide detector or alarm in an equipment room where one or more fuel-fired objects are located in accordance with the detector or alarm manufacturer's recommendations.

875—91.9(89) Fall protection. The owner or user shall provide safe access to object parts over four feet high consistent with applicable federal safety regulations.

875—91.10(89) Air and ventilation requirements.

91.10(1) *Notice concerning other rules.* The division and the Iowa department of public safety both enforce requirements concerning air and ventilation. Objects that are covered by both sets of rules must comply with both sets of rules.

91.10(2) *Documentation.* Documentation of compliance with any requirement of this rule will be maintained in the boiler room. However, it is not necessary to maintain documentation of the louvered area.

91.10(3) *National combustion air standards.*

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

b. Existing objects. An adequate supply of combustion air will be maintained for all objects while in operation. Compliance with the current edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC as adopted at rule 875—91.1(89) or with subrule 91.13(4) constitutes compliance with this rule. Compliance with an earlier edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC constitutes compliance with this rule. However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA. Compliance with an earlier version of Iowa's combustion air rule constitutes compliance with this rule. Earlier versions of Iowa's combustion air rule are available from the board's staff upon request.

91.10(4) *Iowa combustion air standard.* A permanent source of outside air will be provided for each room to permit satisfactory combustion of fuel and ventilation if necessary under normal operations. The minimum ventilation for coal, gas, or oil burners in rooms containing objects is based on the Btu per hour, required air, and louvered area. The minimum net louvered area will not be less than 1 square foot. The following table will be used to determine the net louvered area in square feet:

INPUT (Btu per hour)	MINIMUM AIR REQUIRED (cubic feet per minute)	MINIMUM LOUVERED AREA (net square feet)
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5

INPUT (Btu per hour)	MINIMUM AIR REQUIRED (cubic feet per minute)	MINIMUM LOUVERED AREA (net square feet)
4,000,000	1,000	3.3
5,000,000	1,200	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8
8,000,000	2,000	6.6
9,000,000	2,250	7.5
10,000,000	2,500	8.3

When mechanical ventilation is used, the supply of combustion and ventilation air to the objects and the firing device will be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilating fan will not exceed 500 feet per minute, and the total air delivered will be equal to or greater than shown above.

875—91.11(89) Condensate return tank. Condensate return tanks shall be equipped with at least two vents or a vent and overflow pipe to protect against a loose float plugging a single connection.

875—91.12(89) Conditions not covered. Any condition not governed by these rules is governed by the construction or installation code.

875—91.13(89) English language and U.S. customary units required. All documentation supplied for the unit including but not limited to the manufacturers' data report, drawings, parts lists, installation manuals, and operating manuals shall be in English, and all measurements in U.S. customary units. All pressure gages, thermometers and other controls and safety devices shall also be in U.S. customary units.

875—91.14(89) National Board registration. Except for cast iron boilers and cast aluminum boilers, all objects shall be registered with the National Board.

875—91.15(89) ASME stamp. All objects shall bear the appropriate ASME stamp. Objects shall not be utilized in a manner inconsistent with the stamp.

These rules are intended to implement Iowa Code chapter 89.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 92
"Power Boilers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 92 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 92 requires certain design features and certain ways of operating boilers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of power boilers installed on or after September 20, 2006, will bear the costs.

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

The public and anyone potentially in harm's way of a destructive failure of a boiler covered by this chapter will benefit.

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

- Quantitative description of impact:

The rulemaking requires certain costs related to inspection and maintenance.

- Qualitative description of impact:

There is no known qualitative impact.

3. Costs to the State:

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

The agency has costs associated with running the Elevator, Boiler, and Amusements section.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of safe boilers outweighs any costs.

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

The Department has not identified any less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 92 and adopt the following **new** chapter in lieu thereof:

CHAPTER 92
POWER BOILERS

875—92.1(89) Scope. This chapter applies to all power boilers, and it applies to miniature power boilers installed on and after September 20, 2006. 875—Chapter 93 applies to miniature power boilers installed prior to September 20, 2006.

875—92.2(89) Codes adopted by reference. The codes listed in 875—Chapter 91 apply to objects covered by this chapter.

875—92.3(89) Maximum allowable working pressure for steel boilers. This rule applies to power boilers installed prior to July 1, 1983. A boiler constructed with fusion-welded seams and not radiographed and stress relieved during construction shall not be operated at a pressure in excess of 15 pounds per square inch. Boilers with fusion-welded seams that are radiographed and stress relieved

and constructed to ASME Code requirements in effect when the boiler was constructed may be operated at a pressure as established in subrules 92.4(1) and 92.4(2).

92.3(1) *Calculation.* The maximum allowable working pressure on the shell of a boiler is be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the course, and the factor of safety allowed by these rules. The formula for determining the maximum allowable working pressure is:

$$\frac{TStE}{RFS} = \text{Maximum allowable working pressure, psig.}$$

Where:

TS = Ultimate tensile strength of shell plate(s), psig. When the tensile strength of a steel plate(s) is unknown, it shall be taken as 55,000 psig for temperatures not exceeding 650 degrees F.

t = Minimum thickness of shell plates of the weakest course, in inches.

E = Efficiency of longitudinal joint calculated pursuant to construction or installation code.

R = Inside radius of the weakest course of the shell or drum, in inches.

FS = Factor of safety specified in subrule 92.4(2).

92.3(2) *Factor of safety requirements.*

a. The lowest factor of safety on boilers is four, except for horizontal tubular boilers having continuous lap seams more than 12 feet in length where the factor of safety is eight.

b. Boilers that are reinstalled and have lap riveted construction or seams of butt and double strap riveted construction use ASME Code, Section I (1971).

875—92.4(89) Maximum allowable working pressure and temperature for cast iron headers and mud drums. This rule applies to power boilers installed prior to July 1, 1983.

92.4(1) *Tube boiler.* The maximum allowable working pressure on a watertube boiler, the tubes of which are secured in cast iron or malleable iron headers or that have cast iron mud drums, will not exceed 160 psig or a temperature of 250 degrees F.

92.4(2) *Maximum steam pressure.* The maximum steam pressure on any boiler constructed of cast iron in which steam is generated is 15 psig.

875—92.5(89) Rivets. This rule applies to power boilers installed prior to July 1, 1983. When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, shall be selected from ASME Code, Section I (1971).

875—92.6(89) Safety valve requirements. This rule applies to power boilers installed prior to July 1, 1983.

92.6(1) The use of weighted-lever safety valves or safety valves having either the seat or disk of cast iron is prohibited. All power boilers will have direct, springloaded, pop-type safety valves that conform to the construction or installation code.

92.6(2) Each boiler will have at least one safety valve. All boilers with more than 500 square feet of water heating surface or an electric power input of more than 1100 kilowatts will have two or more safety valves.

92.6(3) The safety valve or valves will be connected to the boiler independent of any other steam connection and attached as close as possible to the boiler without unnecessary intervening pipe or fittings.

92.6(4) No valves of any type will be placed between the safety valve and the boiler. If an escape pipe is used, no valve will be placed between the safety valve and the atmosphere. When an escape pipe is used, it will be at least full size of the safety valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or escape pipe. Any elbow on an escape pipe will be located close to the safety valve outlet or the escape pipe and will be anchored and supported securely. All safety valve discharges will be so located or piped as to be carried away from

walkways or platforms. When the safety valve is vented to the outside atmosphere, the second escape pipe will be arranged as shown in Figure 1.

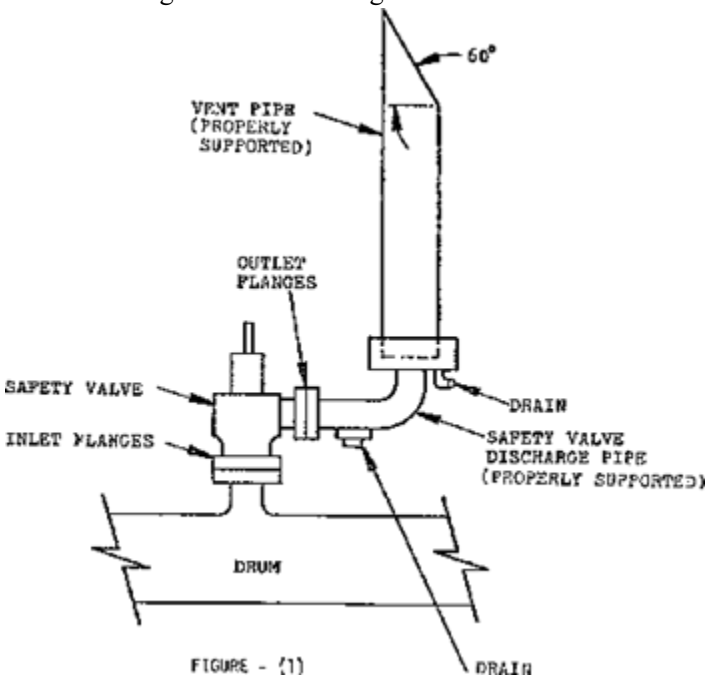


FIGURE - (1)

92.6(5) The safety valve capacity of each boiler will be such that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 5 percent above the highest pressure to which any valve is set and in no case to more than 6 percent above maximum allowable working pressure.

92.6(6) One or more safety valves on every boiler will be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3 percent above the maximum allowable working pressure, but the range setting of all the safety valves on a boiler will not exceed 10 percent of the highest pressure at which any valve is set.

92.6(7) When two or more boilers operating at different pressures and safety valve settings are interconnected, the lowest pressure boilers or interconnected piping will be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

92.6(8) In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not including return traps), safety valves will not be set at a pressure greater than 94 percent of the lowest pressure maintained in the supply main feeding the boiler.

92.6(9) The minimum safety valve relieving capacity will be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface and waterwall heating surface as given in the following table. This method will not be used on electric boilers, waste heat boilers and forced-flow steam generators without a fixed steam and water line.

Minimum Pounds of Steam Per Hour Per Square Foot of Heating Surface

Boiler Heating Surface:	Firetube Boilers	Watertube Boilers
Hand Fired	5	6
Stoker Fired	5	8
Oil, Gas, or Pulverized Fuel Fires	8	10
Waterwall Heating Surface:		
Hand Fired	8	8

Stoker Fired	10	12
Oil, Gas, or Pulverized Fuel Fires	14	16

92.6(10) Safety valve sizing.

a. When a boiler is fired only by a gas having a heat value not in excess of 200 Btu's per cubic feet the minimum safety valve relieving capacity may be based on the value given for hand-fired boilers above.

b. The minimum safety valve relieving capacity for electric boilers will be 3½ pounds per hour per kilowatt input.

c. Maximum steaming capacity for safety valves will be the value stated on design documents or will be calculated by multiplying horsepower by 34.5.

875—92.7(89) Boiler feeding requirements. This rule applies to power boilers installed prior to July 1, 1983.

92.7(1) Each boiler will have a feed supply that will permit it to be fed at any time while under pressure. A boiler having more than 500 square feet of water-heating surface will have at least two means of feeding, one of which will be an approved feed pump, injector, or inspirator. One source of feed is directly from the water main. Boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shutoff of heat input prior to the water level reaching the lowest permissible level. The feedwater will be introduced into the boiler in such a manner that it will not be discharged close to riveted joints of shell or furnace sheets, directly against surfaces exposed to products of combustion, or directed to surfaces subject to radiation from the fire. The feed piping to the boiler will be provided with a check valve near the boiler and a stop valve between the check valve and the boiler.

92.7(2) When two or more boilers are fed from a common source, there will also be a valve on the branch to each boiler between the check valve and source of supply. Whenever a globe valve is used on feed piping, the inlet will be under the disk of the valve. In all cases where returns are fed back to the boiler by gravity, there will be a check valve and stop valve in each return line. The stop valve will be placed between the boiler and the check valve, and both will be located as close to the boiler as is practicable.

875—92.8(89) Water level indicator requirements. This rule applies to power boilers installed prior to July 1, 1983. Outlet connections that allow the escape of an appreciable amount of steam or water will not be placed on the piping. However, this rule does not prohibit the installation of damper regulators, feed water regulators, low-water fuel cutouts, drains, or steam gages. The water column will be provided with a drain of at least ¾-inch piping size. The drain must have a valve and be piped to a safe location. Each boiler will have three or more gage cocks located within the visible length of the water glass, except when the boiler has two water glasses located at the same horizontal lines. Only two gage cocks are required on boilers not over 36 inches in diameter with a heating surface not exceeding 100 square feet. Gage cocks are not required on electric boilers.

875—92.9(89) Pressure gage requirements. This rule applies to power boilers installed prior to July 1, 1983. Each boiler will have a pressure gage so located that the gage is readable. The pressure gage will be installed so that it will at all times indicate the pressure in the boiler. Each steam boiler will have the pressure gage connected to the steam space or to the water column or its steam connection. A valve or cock will be placed in the gage connection adjacent to the gage. An additional valve or cock may be located near the boiler providing it is locked or sealed in the open position. No other shutoff valves will be located between the gage and the boiler. The pipe connection will be of ample size and arranged so that it may be cleared by blowing out. For a steam boiler the gage or connection will contain a siphon or equivalent device that will develop and maintain a water seal that will prevent steam from entering the gage tube. Pressure gage connections will be suitable for the maximum allowable working pressure and temperature, but if the temperature exceeds 406 degrees F, brass or

copper pipe or tubing will not be used. The connections to the boiler, except the siphon, if used, will not be less than ¼-inch standard pipe size, but where steel or wrought-iron pipe or tubing is used, they will not be less than ½-inch inside diameter. The minimum size of a siphon, if used, will be ¼-inch inside diameter. The dial of the pressure gage will be graduated to approximately double the pressure at which the safety valve is set, but in no case to less than 1½ times this pressure.

875—92.10(89) Steam stop valve requirements. This rule applies to power boilers installed prior to July 1, 1983. Each steam outlet from a boiler, except safety valve and water-column connections, will be fitted with a stop valve located as close as practicable to the boiler. When a stop valve is so located that water can accumulate, ample drains will be provided. The drainage will be piped to a safe location and will not be discharged on the top of the boiler or its setting. When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler will be fitted with two stop valves having an ample free-blowing drain between them. The discharge of the drain will be piped clear of the boiler setting. The stop valves will consist of one automatic nonreturn valve next to the boiler and a second valve of the outside screw and yoke type.

875—92.11(89) Blowoff connection requirements. This rule applies to power boilers installed prior to July 1, 1983. Each boiler will have a blowoff pipe fitted with valve or cock, in direct connection with the lowest water space practicable.

92.11(1) When the maximum allowable working pressure exceeds 125 psig, the blowoff pipe will be at least schedule 80 from the boiler to the valve or valves and will run full size without reducers or bushings. Galvanized materials will not be used.

92.11(2) All fittings between the boiler and valve will be steel or at least schedule 80 fittings of bronze, brass, malleable iron, or cast iron, all of which will be suitable for the pressure and temperature. In case of replacement of pipe or fittings in the blowoff lines, as specified in this paragraph, they will be installed in accordance with the rules of new installations.

92.11(3) When the maximum allowable working pressure exceeds 125 psig, each bottom blowoff pipe will be fitted with at least a 250-pound standard valve or cock. Two valves, or a valve and a cock, should be used on each blowoff.

92.11(4) When exposed to direct furnace heat, a bottom blowoff pipe will be protected by firebrick or other heat resisting material so arranged that the pipe may be inspected.

92.11(5) An opening in the boiler setting for a blowoff pipe will be arranged to provide for free expansion and contraction.

These rules are intended to implement Iowa Code chapter 89.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 93
"Miniature Power Boilers Installed Prior to September 20, 2006"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 93 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 93 requires certain design and operation standards for miniature power boilers installed prior to September 20, 2006.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of miniature power boilers installed prior to September 20, 2006 will bear the costs.

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

The public and anyone potentially in harm's way of a destructive failure of a boiler covered by this chapter will benefit.

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

- Quantitative description of impact:

The rulemaking requires certain costs related to inspection and maintenance.

- Qualitative description of impact:

There is no known qualitative impact.

3. Costs to the State:

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

The agency has costs associated with running the Elevator, Boiler, and Amusements section.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of safe boilers outweighs the costs.

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

The Department has not identified any less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 93 and adopt the following **new** chapter in lieu thereof:

CHAPTER 93
MINIATURE POWER BOILERS INSTALLED PRIOR TO SEPTEMBER 20, 2006

875—93.1(89) Scope.

93.1(1) This chapter sets forth requirements in addition to those contained in 875—Chapter 92 for boilers that:

a. Have a heating surface of 20 square feet or less;
b. Have a gross volume of 5 cubic feet or less, excluding casing and insulation;
c. Have an inside shell diameter of 16 inches or less;
d. Have 100 psig maximum allowable working pressure; and
e. Were installed prior to September 20, 2006.

93.1(2) For objects covered by this chapter, if there is a conflict between this chapter and 875—Chapter 92, this chapter shall govern the issue.

875—93.2(89) Code adopted by reference. The current edition of the National Board Inspection Code adopted by reference in rule 875—91.1(89) applies to objects covered by this chapter.

875—93.3(89) Maximum working pressure. The maximum allowed working pressure is to be determined by rule 875—92.3(89).

875—93.4(89) Safety valve requirements. Boilers covered by this chapter will be equipped with a sealed spring-loaded pop safety valve of not less than ½-inch pipe size. The minimum relieving capacity of the safety valve will be determined in accordance with rule 875—92.6(89). In addition to these requirements, the safety valve will have sufficient capacity to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6 percent above maximum allowable working pressure.

875—93.5(89) Steam stop valves. Each steam line from a miniature power boiler shall be provided with a stop valve located as close to the boiler shell or drum as is practicable except when the boiler and steam receiver are operated as a closed system.

875—93.6(89) Water gage requirements.

93.6(1) Miniature power boilers for operation with a definite water level will be equipped with a glass water gage for determining the water level. The lowest permissible water level for vertical boilers will be at a point one-third of the height of the shell above the bottom head or tube sheet. When the boiler is equipped with an internal furnace, the water level will not be less than one-third of the length of the tubes above the top of the furnace tube sheet. In the case of small boilers operated in a closed system where there is insufficient space for the usual glass water gage, water level indicators of the glass bull's eye type may be used.

93.6(2) Miniature power boilers will have the lowest visible part of the water gage glass located at least 1 inch above the lowest permissible water level specified by the manufacturer.

875—93.7(89) Feedwater supply requirements.

93.7(1) Except for miniature power boilers operating without the extraction of steam, miniature power boilers will be provided with at least one feed pump or other feeding device unless the boiler feed line is connected to a water main carrying sufficient pressure to feed the boiler. In the latter case, in lieu of a feeding device, a suitable connection or opening will be provided to fill the boiler when cold. Such connection will be no less than ½-inch pipe size for iron or steel pipe and ¼-inch for brass or copper pipe.

93.7(2) The feed pipe will be provided with a check valve and a stop valve of a size not less than that of the pipe. The feed water may be delivered through the blowoff opening if desired.

875—93.8(89) Blowoff. Miniature power boilers shall be equipped with a blowoff connection, not less than ½-inch pipe size, located to drain from the lowest water space practicable. The blowoff shall be equipped with a valve or cock not less than ½-inch pipe size.

875—93.9(89) Washout opening requirements.

93.9(1) Miniature power boilers exceeding 12 inches internal diameter or having more than ten square feet of heating surface will be fitted with not less than three brass washout plugs of 1-inch pipe size that will be screwed into openings in the shell near the bottom. In miniature power boilers of the closed type system heated by removable internal electric heating elements, the openings for these elements when suitable for cleaning purposes may be substituted for washout openings. Boilers not exceeding 12 inches internal diameter and having less than ten square feet of heating surface need not have more than two 1-inch openings for cleanouts, one of which may be used for the attachment of the blowoff valve; these openings will be opposite each other where possible. All threaded openings will

be opposite each other where possible. All threaded openings in the boiler will be provided with a riveted or welded reinforcement to give four full threads therein.

93.9(2) Electric boilers of a design employing a removable top cover flange for inspection and cleaning need not be fitted with washout openings.

875—93.10(89) Fixtures and fittings. All valves, pipe fittings, and appliances connected to a miniature power boiler shall be equal to at least the minimal requirements of the construction or installation code and shall be rated for not less than the maximum allowable working pressure of the miniature power boiler. In no case shall the rating be for less than 125 pounds.

These rules are intended to implement Iowa Code chapter 89.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 94
"Steam Heating Boilers, Hot Water Heating Boilers, and Hot Water Supply Boilers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 94 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 94 requires certain construction and installation standards for specified boilers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of the covered boilers will bear the costs.

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

The public and anyone potentially in harm's way of a destructive failure of a boiler covered by this chapter will benefit.

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

- Quantitative description of impact:

The rulemaking requires certain costs related to inspection and maintenance.

- Qualitative description of impact:

There is no known qualitative impact.

3. Costs to the State:

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

The agency has costs associated with running the Elevator, Boiler, and Amusements section.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of safe boilers outweighs any costs.

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

The Department has not identified any less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

No alternative methods were seriously considered.

Small Business Impact

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

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

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

The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 94 and adopt the following **new** chapter in lieu thereof:

CHAPTER 94
STEAM HEATING BOILERS, HOT WATER HEATING BOILERS AND
HOT WATER SUPPLY BOILERS

875—94.1(89) Scope. This chapter applies to:

94.1(1) Steam boilers for operation at pressures not exceeding 15 psig;

94.1(2) Hot water heating boilers for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F at or near the boiler outlet;

94.1(3) Hot water supply boilers.

875—94.2(89) Codes adopted by reference. The codes listed in 481—Chapter 91 apply to objects covered by this chapter.

875—94.3(89) General requirements. This rule applies to all objects covered by this chapter and installed prior to September 20, 2006.

94.3(1) *Instruments, fittings and controls mounted inside boiler jackets.* Any or all instruments, fittings and controls required by this chapter may be installed inside of boiler jackets provided the water gage and pressure gage on a steam boiler or the thermometer and pressure gage on a water boiler are visible through an opening or openings at all times.

94.3(2) *Electrical code compliance.*

a. Wiring. All wiring for controls, heat-generating apparatus and other appurtenances necessary for the operation of the boiler or boilers will be in accordance with the National Electric Code (1992). All boilers supplied with factory-mounted and factory-wired controls, heat-generating apparatus and other appurtenances necessary for the operation of the boilers will be installed in accordance with the provisions of nationally recognized standards.

b. Circuitry. The control circuitry will be grounded and will operate at 150 volts or less. One of the two following systems may be employed to provide the control circuit:

(1) Two-wire, nominal 120-volt system with separate equipment ground conductor as follows:

1. This system will consist of the line, neutral and equipment ground conductors. The control panel frame and associated control circuitry metallic enclosures will be electrically continuous and be bonded to the equipment ground conductor.

2. The equipment ground conductor and the neutral conductor will be bonded together at their origin in the electrical system for objects installed prior to September 20, 2006.

3. The line side of the control circuit will be provided with a time delay fuse sized as small as practicable.

(2) Two-wire, nominal 120-volt system obtained by using an isolation transformer as follows:

1. The two-wire control circuit will be obtained from the secondary side of an isolation transformer, will be electrically continuous and will be bonded to a convenient cold water pipe. All metallic enclosures of control components will be securely bonded to this ground control circuit wire. The primary side of the isolation transformer will normally be a two-wire source with a potential 230, 208 or 440 volts.

2. Both sides of the two-wire primary circuit will be fused. The hot leg on the load side of the isolation transformer will be fused as small as practicable, and will not be fused above the rating of the isolation transformer.

94.3(3) *Safety and safety relief valve discharge piping.* When a discharge pipe is used, its internal cross-sectional areas will not be less than the full area of the valve outlet or of the total of the valve outlets discharging therein and will be as short and straight as possible and so arranged as to avoid undue stress on the valve or valves. When an elbow is placed on a safety valve or safety relief valve discharge pipe, the elbow will be located close to the valve outlet.

94.3(4) *Expansion and contraction.* Provisions will be made for the expansion and contraction of steam and hot water mains connected to boilers.

94.3(5) *Return pipe connections.* The return pipe connections of each boiler supplying a gravity-return steam heating system will be so arranged as to form a loop so that the water in each boiler cannot be forced out below the safe water level.

94.3(6) *Feed water connections.*

a. Feed water, makeup water or water treatment will be introduced into a boiler through the return piping system. Alternatively, makeup water or water treatment may be introduced through an independent connection. The water flow from the independent feed water connection will not discharge against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment will not be introduced through openings or connections provided for inspection, cleaning, safety valves, safety-relief valves, blowoffs, water columns, water gage glasses, pressure gages or temperature gages.

b. The makeup water pipe will be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or between the check valve and the return pipe system.

94.3(7) *Oil heaters.*

a. A heater for oil or other liquid harmful to boiler operation will not be installed directly in the steam or water space within a boiler.

b. Where an external-type heater for such service is used, means will be provided to prevent the introduction into the boiler of oil or other liquid harmful to boiler operation.

94.3(8) *Bottom blowoff or drain valve.*

a. Each boiler will have a bottom blowoff or drain pipe connection fitted with a valve or cock connected with the lowest water space practicable, with the minimum size of blowoff piping and valves as specified below:

Minimum Required Safety or Safety-Relief Valve Capacity (Pounds of Steam Per Hour)	Size of Blowoff Valves (Inches)
Up to 500	¾
501 to 1250	1
1251 to 2500	1¼
2501 to 6000	1½
6001 and larger	2

NOTE: Multiply 1,000 by the relieving capacity in pounds of steam per hour to determine the Btu of safety relief valve discharge capacity.

b. Any discharge piping connected to bottom blowoff or bottom drain connections will be full size to the point of discharge.

94.3(9) *Low-water fuel cutoff.*

a. Each automatically fired hot water heating boiler will have an automatic low-water fuel cutoff that has been designed for hot water service, and it will be so located as to automatically cut off the fuel supply when the surface of the water falls to the level established.

b. As there is no normal waterline to be maintained in a hot water heating boiler, any location of the low-water fuel cutoff above the lowest safe permissible water level established by the boiler manufacturer is satisfactory.

c. A coil-type boiler or a watertube boiler requiring forced circulation to prevent overheating of the coils or tubes will have a flow-sensing device installed in the outlet piping in lieu of the low-water fuel cutoff to automatically cut off the fuel supply when the circulating flow is interrupted.

875—94.4(89) Steam heating boilers installed before July 1, 1960—requirements. All steam heating boilers installed before July 1, 1960, shall be constructed and installed in accordance with this rule.

94.4(1) Safety valves.

a. Each steam boiler will have one or more safety valves bearing the National Board "HV" stamp of the spring-pop type adjusted and sealed to discharge at a pressure not to exceed 15 psig. Seals will be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves will be arranged so that they cannot be set to relieve at a higher pressure than the maximum allowable working pressure of the boiler. For iron and steel bodied valves exceeding 2-inch pipe size, the drain hole or holes will be tapped not less than 3/8-inch pipe size.

b. The safety valves will be located in the top or side of the boiler. They will be connected directly to a tapped or flanged opening in the boiler, to a fitting connected to the boiler by a short nipple, to a Y-base, or to a valveless header connecting steam or water outlets on the same boiler. Coil or header type boilers will have the safety valve located on the steam outlet end. Safety valves will be installed with their spindles vertical. The opening or connection between the boiler and any safety valve will have at least the area of the valve inlet.

c. Safety valves ½-inch or more in diameter that are installed on a steam boiler will have a hand-lifted device that will positively lift the disk from its seat at least 1/16 inch when there is no pressure in the boiler. The seats and disks will be of noncorrosive material.

d. Safety valves for a steam boiler will be at least ½ inch unless the boiler and radiating surfaces consist of a self-contained unit. Safety valves will not be larger than 4½ inches. The inlet opening will have an inside diameter equal to or greater than the seat diameter.

e. The minimum relieving capacity of the valve or valves will be governed by the capacity marking on the boiler.

f. The minimum valve capacity in pounds per hour will be equal to the steam generation as specified in 481—subrules 92.6(9) and 92.6(10).

g. The safety valve capacity for each steam boiler will be such that with the fuel burning equipment operated at maximum capacity the pressure will not rise more than 5 percent above the maximum allowable working pressure.

h. When operating conditions are changed or additional boiler heating surface is installed, the valve capacity will meet the new conditions.

94.4(2) Steam gages.

a. Each steam boiler will have a steam gage or a compound steam gage connected to its steam space, its water column, or to its steam connection. The gage or connection will contain a siphon or equivalent device that will develop and maintain a water seal that will prevent steam from entering the gage tube. The connection will be so arranged that the gage cannot be shut off from the boiler except by a cock placed in the pipe at the gage and provided with a tee or lever-handle arranged to be parallel to the pipe in which it is located when the cock is open. The connections to the boiler will be not less than ¼-inch standard pipe size, but where steel or wrought-iron pipe or tubing is used, it will be not less than ½-inch standard pipe size. The minimum size of a siphon, if used, will be ¼-inch inside diameter. Ferrous and nonferrous tubing having inside diameters at least equal to that of standard pipe size listed above may be substituted for pipe.

b. The scale on the dial of a steam boiler gage will be graduated to not less than 30 psig nor more than 60 psig. The travel of the pointer from zero to 30 psig pressure will be at least 3 inches on a compound gage, and effective stops will be set at the limits of the gage readings on both the pressure and vacuum sides of the gage.

94.4(3) Water gage glasses.

a. Each steam boiler will have one or more water gage glasses attached to the water column or boiler by means of valved fittings not less than ½-inch pipe size with the lower fittings provided with a drain valve having an unrestricted drain opening not less than ¼-inch diameter to facilitate cleaning. Gage glass replacement will be possible under pressure. Water gage glass fittings may be attached directly to a boiler.

b. The lowest visible part of the water gage glass will be at least 1 inch above the lowest permissible water level recommended by the boiler manufacturer. With the boiler operating at this lowest permissible water level, there will be no danger of overheating any part of the boiler.

c. Transparent material other than glass may be used for the water gage provided that the material will remain transparent and has proved suitable for the pressure, temperature and corrosive conditions expected in service.

94.4(4) Water column and water level control pipes.

a. The minimum size of ferrous or nonferrous pipes connecting a water column to a steam boiler will be 1 inch. No outlet connections, except for damper regulator, feedwater regulator, steam gages or apparatus that does not permit the escape of any steam or water, except for manually operated blowdowns, will be attached to a water column or the piping connecting a water column to a boiler. If the water column, gage glass, low-water fuel cutoff or other water level control device is connected to the boiler by pipe and fittings, no shutoff valves of any type will be placed in such pipe, and a cross or equivalent fitting to which a drain valve and piping may be attached will be placed in the water piping

connection at every right angle to facilitate cleaning. The water column drainpipe and valve will be not less than ¾-inch pipe size.

b. The steam connections to the water column of a horizontal firetube wrought boiler will be taken from the top of the shell or the upper part of the head, and the water connection will be taken from a point not above the center line of the shell. For a cast iron boiler, the steam connection to the water column will be taken from the top of an end section or the top of the steam header, and the water connections will be made on an end section not less than 6 inches below the bottom connection to the water gage glass.

94.4(5) Pressure control.

a. In addition to the operating control for normal boiler operation, each individual, automatically fired steam heating boiler will have a high-limit, pressure-actuated combustion control that will cut off the fuel supply to prevent the pressure from rising over 15 psig. The separate controls may have a common connection to the boiler. Upon replacement of the high-limit, pressure-actuated combustion control, controls with manual reset will be installed.

b. In a multiple boiler installation where the operating pressure control may be installed in a header or other point common to all boilers and could be isolated from any or all of the boilers, there will be at least one high-limit, pressure-actuated combustion control mounted on each boiler.

c. No shutoff valve of any type will be placed in the connection to the high-limit, pressure-actuated control. The control or connections will contain a siphon or equivalent device that will develop and maintain a water seal that will prevent steam from entering the control. The connections to the boiler will not be less than ¼-inch standard pipe size, but where steel or wrought-iron pipe or tubing is used, the fittings will be not less than ½-inch standard pipe size. The minimum size of a siphon, if used, will be ¼-inch inside diameter. Ferrous and nonferrous tubing having inside diameters at least equal to that of standard pipe size listed above may be substituted for pipe where a manifold is used for a multiple control. The connection to the boiler will not be less than ¼-inch standard pipe size.

94.4(6) Automatic low-water fuel cutoff or water-feeding device.

a. Each automatically fired steam or vapor system boiler will have an automatic low-water fuel cutoff so located as to automatically cut off the fuel supply when the surface of the water falls to the lowest visible part of the water gage glass. If a water-feeding device is installed, it will be so constructed that the water inlet valve cannot feed water into the boiler through the float chamber and so located as to supply requisite feedwater.

b. A fuel cutoff or water-feeding device may be attached directly to a boiler or in the tapped openings available for attaching a water glass directly to a boiler. Connections in the tapped openings will be made to the boiler with nonferrous tees or "Y's" not less than ½-inch pipe size between the boiler and the water glass so that the water glass is attached directly and as closely as possible to the boiler. The run of the tee or "Y" will take the water glass fittings, and the side outlet or branch of the tee or "Y" will take the fuel cutoff or water-feeding device. The ends of all nipples will be reamed to full-size diameter.

c. Fuel cutoffs and water-feeding devices embodying a separate chamber will have a vertical straightway drainpipe and a blowoff valve not less than ¾-inch pipe size located at the lowest point in the water equalizing pipe connections so that the chamber and the equalizing pipe can be flushed and the device tested.

94.4(7) Stop valves for single steam heating boilers. When a stop valve is used in the supply pipe connection of a single steam boiler, there will be one used in the return pipe connection.

94.4(8) Stop valves for multiple steam heating boilers. A stop valve will be used in each supply and return pipe connection of two or more boilers connected to a common system.

875—94.5(89) Hot water heating boilers installed before July 1, 1960—requirements. Hot water heating boilers installed before July 1, 1960, shall be constructed and installed in accordance with this rule.

94.5(1) Safety relief valves.

a. Each hot water heating boiler will have at least one safety relief valve bearing the National Board "HV" stamp of the automatic-resetting type set to relieve at or below the maximum allowable working pressure of the boiler. The safety relief valve will have pop action when tested by steam. When more than one safety relief valve is used on a hot water heating boiler, the additional valve or valves must bear the National Board "HV" stamp and may be set within a range not to exceed 6 psig above the maximum allowable working pressure of the boiler up to and including 60 psig and 5 percent for those having a maximum allowable working pressure exceeding 60 psig. Safety relief valves will be so arranged that they cannot be reset to relieve at a higher pressure.

b. No safety relief valve will be smaller than ¾-inch nor larger than 4½-inch standard pipe size, except those boilers having a heat input not greater than 15,000 Btu per hour may be equipped with a safety relief valve of ½-inch standard pipe size bearing the National Board "HV" stamp. The inlet opening will have an inside diameter equal to or greater than the seat diameter. In no case will the minimum opening through any part of the valve be less than ½-inch diameter.

94.5(2) Temperature and pressure gage.

a. Each hot water boiler will have a temperature and pressure gage properly calibrated to the altitude connected to it or to its flow connection in such a manner that it cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gage. The handle of the cock will be parallel to the pipe in which it is located when the cock is open.

b. The scale on the dial of the temperature and pressure gage will be graduated approximately to not less than one and one-half nor more than three times the pressure at which the safety relief valve is set. The gage will be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point.

c. The temperature gage will be so located and connected that it will be easily readable. The thermometer will be so located that it will at all times indicate the temperature in degrees Fahrenheit of the water in the boiler at or near the outlet.

d. Piping or tubing for temperature and pressure gage connections will be of nonferrous metal when smaller than 1-inch pipe size.

94.5(3) Temperature control.

a. In addition to the operating control used for normal boiler operation, each individual, automatically fired hot water boiler will have a separate high-limit, temperature-actuated combustion control that will cut off the fuel supply to prevent the temperature of the water from rising over 250 degrees F. Separate controls may have a common connection to the boiler.

b. In a multiple boiler installation where the operating temperature actuated control may be installed in a header or other point common to all boilers and can be isolated from any or all of the boilers, there will be at least one high-limit, temperature-actuated combustion control mounted on each boiler.

94.5(4) Stop valves.

a. On single hot water heating boilers, stop valves will be located at an accessible point in the supply and return pipe connections as near the boiler nozzle as is convenient and practicable to permit draining the boiler without emptying the system.

b. Where two or more boilers are connected in a common system, a stop valve will be used in each boiler's supply and return pipe connection.

94.5(5) Provisions for thermal expansion in hot water heating system.

a. All hot water heating systems incorporating hot water tanks or fluid relief columns will be so installed as to prevent freezing under normal operating conditions.

b. Systems with open expansion tanks require an indoor overflow from the upper portion of the expansion tank in addition to an open vent. The indoor overflow is to be carried within the building to a suitable plumbing fixture or to the basement.

c. An expansion tank adequate for the volume and capacity of the system will be installed. If the system is designed for a working pressure of 30 psi or less, the tank will be suitably designed for a

minimum hydrostatic test pressure of 75 psi. Expansion tanks for systems designed to operate above 30 psi will be constructed in accordance with ASME Code, Section VIII, Division I, in effect when installed. Provisions will be made for draining the tank without emptying the system, except for prepressurized tanks.

d. The expansion tank capacities for gravity hot water heating systems will be as follows:

Sq. Ft. of Installed Equivalent Direct Radiation	Tank Capacity, Gallons
Up to 350	18
Up to 450	21
Up to 650	24
Up to 900	30
Up to 1,100	35
Up to 1,400	40
Up to 1,600	2-30
Up to 1,800	2-30
Up to 2,000	2-35
Up to 2,400	2-40
2,400 and up	1 additional gallon per 33 square feet of additional equivalent direction radiation

e. The expansion tank capacities for forced hot water heating systems will be based on an average operating water temperature of 195 degrees F, a fill pressure of 12 psig, and a maximum operating pressure of 30 psig as follows:

System Volume, Gallons	Tank Capacity, Gallons
100	15
200	30
300	45
400	60
500	75
1,000	150
2,000	300

In calculating, include the volume of water in boiler, radiation and piping but not the expansion tank.

875—94.6(89) Hot water supply boilers installed before July 1, 1960—requirements.

94.6(1) *Scope.* This rule establishes minimum requirements for installation, operation, and inspection of hot water supply boilers installed before July 1, 1960, when any of the following limitations are exceeded:

a. Heat input of 200,000 Btu per hour.

b. Water temperature of 210 degrees F.

c. A water containing capacity of 120 gallons.

94.6(2) *Safety relief valves.* Each hot water supply boiler must have at least one pressure and temperature relief valve bearing the National Board "HV" stamp installed on the hot water outlet line.

94.6(3) *Safety valves and safety relief valves for tanks and heat exchangers.*

a. When a hot water supply vessel is heated indirectly by steam in a coil or pipe, the pressure of the steam used will not exceed the safe working pressure of the tank. A safety relief valve at least 1

inch in diameter will be installed on the tank and will be set to relieve at or below the maximum allowable working pressure of the tank.

b. When water over 160 degrees F is circulated through the coils or tubes of a heat exchanger to warm the water for space heating or hot water supply, the heat exchanger will be equipped with one or more safety relief valves bearing the National Board "HV" stamp of sufficient rated capacity to prevent the heat exchanger pressure from rising more than 10 percent above the maximum allowable working pressure of the vessel. The valves will be set to relieve at or below the maximum allowable working pressure of the heat exchanger.

c. When water over 160 degrees F is circulated through the coils or tubes of a heat exchanger to generate low-pressure steam, the heat exchanger will be equipped with one or more safety valves bearing the National Board "HV" stamp of sufficient rated capacity to prevent the heat exchanger pressure from rising more than 5 psig above the maximum allowable working pressure of the vessel. The valves will be set to relieve at a pressure not to exceed 15 psig.

94.6(4) *Gages.* Temperature and pressure gages will be installed in accordance with 94.5(2).

94.6(5) *Temperature controls.* Temperature controls will be installed in accordance with 94.5(3).

94.6(6) *Stop valves.*

a. Stop valves will be placed in the supply and return pipe connections of a single hot water supply boiler installation to permit draining the boiler without emptying the system.

b. Where two or more boilers are connected in a common system, a stop valve will be used in each boiler's supply and return pipe connection.

94.6(7) *Thermal expansion.* If a system is equipped with a check valve or pressure-reducing valve in the cold water inlet line, an airtight expansion tank or other suitable air cushion will be installed. When an expansion tank is provided, it will be constructed in accordance with the ASME Code, Section VIII, Division 1, in effect when installed, for a maximum allowable working pressure equal to or greater than the water heater. Except for prepressurized tanks, provisions will be made for draining the tank without emptying the system.

These rules are intended to implement Iowa Code chapter 89.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 96
"Unfired Steam Pressure Vessels"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 96 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 96 provides the applicable standards and the maximum allowable working pressure for unfired steam pressure vessels installed prior to July 1, 1983.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of the covered steam pressure vessels will bear the costs.

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

The public and anyone potentially in harm's way of a destructive failure of a pressure vessel covered by this chapter will benefit.

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

- Quantitative description of impact:

The rulemaking requires certain costs related to manufacturing standards, inspection and maintenance.

- Qualitative description of impact:

There is no known qualitative impact.

3. Costs to the State:

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

The agency has costs associated with running the Elevator, Boiler, and Amusements section.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of safe pressure vessels outweighs the costs.

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

The Department has not identified any less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 96 and adopt the following **new** chapter in lieu thereof:

CHAPTER 96
UNFIRED STEAM PRESSURE VESSELS

875—96.1(89) Codes adopted by reference. The codes listed in 875—Chapter 91 apply to objects covered by this chapter.

875—96.2(89) Objects installed prior to July 1, 1983—requirements.

96.2(1) *Maximum allowable working pressure.*

a. The maximum allowable working pressure for code-stamped unfired steam pressure vessels will be determined in accordance with the applicable provisions of the ASME Code or American Petroleum Institute Code under which they were constructed and stamped.

b. The maximum allowable working pressure on the shell of unfired steam pressure vessels without a code stamp will be determined by the following equation:

$\frac{TStE}{RFS}$ Maximum allowable working pressure, psig.

Where:

TS = Ultimate tensile strength of shell plate(s), psig. When the tensile strength of a steel plate(s) is unknown, it shall be taken as 55,000 psig for temperatures not exceeding 650 degrees F.

t = Minimum thickness of shell plates of the weakest course, in inches.

E = Efficiency of longitudinal joint. For riveted joints, use ASME Code, Section 1 (1971). For fusion-welded and brazed joints, use the following table:

Single lap welded 40
Double lap welded 60
Single butt welded 60
Double butt welded. 75
Forge welded 70
Brazed steel. 80

R = Inside radius of the weakest course of shell or drum in inches, provided the thickness does not exceed 10 percent of the radius. If the thickness is over 10 percent of the radius, the outer radius shall be used.

FS = Factor of safety shall be four.

c. The maximum allowable working pressure for unfired steam pressure vessels without an ASME stamp subjected to external or collapsing pressure will be determined by the ASME Code, Section VIII.

96.2(2) *End closures.* The maximum allowable working pressure permitted for formed heads under pressure will be determined by using the formulas in ASME Code, Section VIII.

96.2(3) *Safety appliances.* Each unfired steam pressure vessel will be protected by such safety and relief valves and indicating and controlling devices as will ensure its safe operation. Valves will not readily be rendered inoperative. The relieving capacity of safety valves will be such as to prevent a rise of pressure in the vessel of more than 10 percent above maximum allowable working pressure, taking into account the effect of static head. Safety valve discharges will be carried to a safe place.

These rules are intended to implement Iowa Code chapter 89.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 170
"Operations of Advisory Board"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 90A.7
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 24, 2024 10:30 to 11 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 170 in accordance with the goals and directives of Executive Order 10. Chapter 170 is being rescinded because the Advisory Board has not existed for many years and there is no anticipated need for the Advisory Board.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
- Classes of persons that will bear the costs of the proposed rulemaking:

There is no cost resulting from this rulemaking.
- Classes of persons that will benefit from the proposed rulemaking:

The enforcing agency will benefit from the absence of superfluous rules.

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

This rulemaking imposes no costs.
- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:
- Implementation and enforcement costs borne by the agency or any other agency:

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

There is no fiscal impact.

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

This rulemaking has the benefit of reducing unnecessary rules.

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

Less costly or intrusive methods do not exist than rescinding without replacement.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **875—Chapter 170**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 531—Chapters 1, 2, 11 through 14 and 18 through 21
"Agency Reorganization"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.9

State or federal law(s) implemented by the rulemaking: Iowa Code sections 99G.9, 99G.21, 99G.25, 99G.30, 99G.31 and 99G.35

Public Hearing

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

October 8, 2024	Via virtual/videoconference:
2 to 3 p.m.	meet.google.com/nun-pwxd-szf

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 Department of Revenue (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

Chapters 1, 2, 11, 12, 13, 14, 18, 19, 20, and 21 are all chapters dedicated to the operation of the Iowa Lottery. As a part of the government reorganization pursuant to 2023 Iowa Acts, Senate File 514, the Department proposes to rescind the existing chapters under agency [531] and adopt them as new chapters under 701—Chapters 1100 through 1107 in separate proposed rulemakings.

Additionally, Chapter 14 is proposed to be rescinded in its entirety. The statutes that the chapter implemented have been rescinded and the chapter contains obsolete and unnecessary language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No classes of persons have been identified to bear the costs of the proposed rulemaking.

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

All members of the public will benefit from the existing Iowa Lottery Authority chapters being rescinded and updated under the Department's portion of the Iowa Administrative Code.

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:

No economic impact from the proposed rulemaking has been identified.

- Qualitative description of impact:

The Department proposes to rescind the existing Iowa Lottery Authority chapters and replace them with a new set of rules from the Department under agency number [701]. This restructuring will organize all relevant information under one agency number and update the language in accordance with the government reorganization.

3. Costs to the State:

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

There are no costs to the agency in rescinding these chapters.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

There is no benefit to retaining these chapters in their current locations. Doing so would cause confusion. By consolidating and reorganizing the existing Lottery Authority chapters under the Department, the public can interact with the Department in an efficient, effective, and consistent manner.

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 have been identified to exist.

6. Alternative methods considered by the agency:

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

None were identified. The existing chapters under the Iowa Lottery Authority can no longer exist under its own agency number.

- 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?

The proposed rulemaking does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **531—Chapter 1**.

ITEM 2. Rescind and reserve **531—Chapter 2**.

ITEM 3. Rescind and reserve **531—Chapter 11**.

ITEM 4. Rescind and reserve **531—Chapter 12**.

ITEM 5. Rescind and reserve **531—Chapter 13**.

ITEM 6. Rescind and reserve **531—Chapter 14**.

ITEM 7. Rescind and reserve **531—Chapter 18**.

ITEM 8. Rescind and reserve **531—Chapter 19**.

ITEM 9. Rescind and reserve **531—Chapter 20**.

ITEM 10. Rescind and reserve **531—Chapter 21**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 531—Chapters 3 through 6
"Rules on Agency Procedure"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.9, 123.10 and 421.17
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 8, 2024 1 to 2 p.m.	Via video/conference call: meet.google.com/wzj-ksyk-rmg

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 Department of Revenue (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

The Department, Lottery Authority, and Alcoholic Beverages Division all maintained their own set of rules on agency procedure. As a part of the government reorganization, it is the goal of the Department to consolidate all relevant information under one agency number. Existing agency procedure rule chapters:

185—Chapters 1, 2, 3, 10, 18, and 19
531—Chapters 3, 4, 5, and 6
701—Chapters 5, 6, and 7

The Department proposes to rescind all existing agency procedure rules that exist under the Lottery Authority, Alcoholic Beverages Division, and the Department and replace them with a new set of rules from the Department under agency number [701]. This consolidation will reduce the number of chapters and rules overall, and make applicable practices across subject matters as uniform as possible.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No classes of persons have been identified to bear the costs of the proposed rules.

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

All Iowans will benefit from the consolidation and reorganization of agency procedure rules that existed under the Lottery Authority, Alcoholic Beverages Division, and the Department to be consistently applied across the Department.

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

- Quantitative description of impact:

No economic impact from the proposed rulemaking has been identified.

- Qualitative description of impact:

The Department proposes to rescind all existing agency procedure rules that exist under the Lottery Authority, Alcoholic Beverages Division, and the Department and replace them with a new set of rules from the Department under agency number [701]. This structure will consolidate all relevant information under one agency number, reduce the number of chapters and rules overall, and make applicable practices across subject matters as uniform as possible.

3. Costs to the State:

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

There are no costs to the agency of implementing or enforcing these rules beyond those that would otherwise be required to administer the statute. The outlined procedures for administrative implementation and enforcement are incorporated in the standard agency operations and utilize existing staff.

- Anticipated effect on state revenues:

No anticipated effect on state revenues has been identified.

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

By consolidating and reorganizing the existing rules on agency procedure under the Lottery Authority, Alcoholic Beverages Division, and the Department, Iowans can interact with the Department in an efficient, effective, and consistent manner.

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 have been identified to exist.

6. Alternative methods considered by the agency:

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

None were identified. The Department is adopting and implementing the chapters of rules on agency procedures as required by Iowa Code chapter 17A.

- 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?

The rulemaking does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **531—Chapter 3**.

ITEM 2. Rescind and reserve **531—Chapter 4**.

ITEM 3. Rescind and reserve **531—Chapter 5**.

ITEM 4. Rescind and reserve **531—Chapter 6**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 22
"Regulations Applicable to Carriers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.208A, 321.449, 321.450, and 325A.10

State or federal law(s) implemented by the rulemaking: Iowa Code sections 321.1, 321.123, 321.208A, 321.449, and 321.450

Public Hearing

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

October 8, 2024 8:30 to 9 a.m.	First Floor Public Conference Room 125 Oran Pape State Office Building 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 Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Josie Wagler
215 East 7th Street
Des Moines, Iowa 50319
Email: wagler@dps.state.ia.us

Purpose and Summary

The purpose of proposed Chapter 22 is to outline the regulations applicable to commercial motor vehicles (CMVs). These rules largely impose safety requirements and adoption of federal regulations by reference.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

CMV owners and operators transporting loads in Iowa will bear the costs.

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

CMV operators and the motoring public traveling on Iowa's roadways 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:

Outside of normal business-related expenses, there is no additional cost to remain in compliance with this proposed rulemaking.

- Qualitative description of impact:

See above.

3. Costs to the State:

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

None.

- 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:

Failure to adhere to federal regulations could have a negative impact on obtaining future grant funding for which the Iowa State Patrol is eligible.

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

The Department has determined this is the least costly and least intrusive method for achieving the purpose of the proposed rulemaking.

6. Alternative methods considered by the agency:

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

None were identified.

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

Not applicable.

Small Business Impact

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

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

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

This proposed rulemaking will not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
REGULATIONS APPLICABLE TO CARRIERS

661—22.1(321) Safety and hazardous materials regulations.

22.1(1) *Regulations.*

a. Motor carrier safety regulations. The department of public safety adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385, 386 and 390-399 (October 1, 2023).

b. Hazardous materials regulations. The department of public safety adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, 2023).

c. Copies of regulations. Copies of the federal regulations may be reviewed at the state law library or through the Internet at www.fmcsa.dot.gov.

22.1(2) *Carriers subject to regulations.*

a. Operators of commercial vehicles, as defined in Iowa Code section 321.1, are subject to the Federal Motor Carrier Safety Regulations adopted in this rule unless exempted under Iowa Code section 321.449.

b. Operators of vehicles transporting hazardous materials in commerce are subject to the Federal Hazardous Materials Regulations adopted in this rule unless exempted under Iowa Code section 321.450.

c. Operators of vehicles for hire, designed to transport 7 or more persons but fewer than 16, including the driver, must comply with 49 CFR Part 395 of the Federal Motor Carrier Safety Regulations. In addition, operators of vehicles for hire, designed to transport 7 or more persons but fewer than 16, including the driver, are not exempt from logbook requirements afforded the 150-air-mile radius driver under 49 CFR 395.1(e). However, the provisions of 49 CFR Part 395 shall not apply to vehicles offered to the public for hire that are used principally in intracity operation and are regulated by local authorities.

22.1(3) *Declaration of knowledge of regulations.* Operators of commercial vehicles who are subject to the regulations adopted in this rule shall at the time of application for authority to operate in Iowa or upon receipt of their Iowa registration declare knowledge of the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations adopted in this rule.

This rule is intended to implement Iowa Code sections 321.1, 321.449 and 321.450.

661—22.2(321) Definitions. The following definitions apply to the regulations adopted in rule 761—520.1(321):

"Any requirements which impose any restrictions upon a person" as used in Iowa Code section 321.449(6) means the requirements in 49 CFR Parts 391 and 395.

"Driver age qualifications" as used in Iowa Code section 321.449(3) means the age qualifications in 49 CFR 391.11(b)(1).

"Driver qualifications" as used in Iowa Code section 321.449(2) means the driver qualifications in 49 CFR Part 391.

"Farm customer" as used in Iowa Code section 321.450(3) means a retail consumer residing on a farm or in a rural area or city with a population of 3000 or less.

"Hours of service" as used in Iowa Code section 321.449(2) means the hours of service requirements in 49 CFR Part 395.

"Recordkeeping requirements," as used in Iowa Code section 321.449(2), means the recordkeeping requirements in 49 CFR Part 395.

"Rules adopted under this section concerning physical and medical qualifications" as used in Iowa Code sections 321.449(5) and 321.450(2) means the regulations in 49 CFR 391.11(b)(4) and 49 CFR Part 391, Subpart E.

"Rules adopted under this section for a driver of a commercial vehicle," as used in Iowa Code section 321.449(4), means the regulations in 49 CFR Parts 391 and 395.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

661—22.3(321) Motor carrier safety regulations exemptions.

22.3(1) The following intrastate vehicle operations are exempt from the motor carrier safety regulations concerning inspection in 49 CFR 396.17 as adopted in rule 761—520.1(321):

a. Implements of husbandry including nurse tanks as defined in Iowa Code section 321.1.

b. Special mobile equipment (SME) as defined in Iowa Code section 321.1.

c. Unregistered farm trailers as defined in rule 761—400.1(321) pursuant to Iowa Code section 321.123.

d. Motor vehicles registered for a gross weight of five tons or less when used by retail dealers or their employees to deliver hazardous materials, fertilizers, petroleum products and pesticides to farm customers.

22.3(2) Reserved.

This rule is intended to implement Iowa Code sections 321.1, 321.123, 321.449 and 321.450.

661—22.4(321) Hazardous materials exemptions. These exemptions apply to the regulations adopted in rule 761—520.1(321):

22.4(1) Pursuant to Iowa Code section 321.450(3), "retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products, and pesticides to farm customers within a one-hundred-mile radius of their retail place of business" are exempt from 49 CFR 177.804; and, pursuant to Iowa Code section 321.449(4), they are exempt from 49 CFR Parts 391 and 395. However, pursuant to Iowa Code section 321.449, the retail dealers and their employees under the specified conditions are subject to the regulations in 49 CFR Parts 390, 392, 393, 396 and 397.

22.4(2) Reserved.

This rule is intended to implement Iowa Code section 321.450.

661—22.5(321) Safety fitness.

22.5(1) *New motor carrier safety audits.* Peace officers in the commercial motor vehicle unit of the department of public safety will perform safety audits of new motor carriers and have the authority to enter a motor carrier's place of business for the purpose of performing these audits. These audits are performed in compliance with 49 CFR Part 385 and are completed within 18 months from the day the motor carrier commences business.

22.5(2) *Motor carrier compliance reviews.* Peace officers in the commercial motor vehicle unit of the department of public safety will perform compliance reviews of motor carriers and shall have the authority to enter a motor carrier's place of business for the purpose of performing these compliance reviews. These compliance reviews are performed in compliance with 49 CFR Part 385.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

661—22.6(321) Out-of-service order. A person will not operate a commercial vehicle or transport hazardous material in violation of an out-of-service order issued by an Iowa peace officer. An out-of-service order for noncompliance is issued when either the vehicle operator is not qualified to operate the vehicle or the vehicle is unsafe to be operated until required repairs are made. The out-of-service order is consistent with the North American Uniform Out-of-Service Criteria.

This rule is intended to implement Iowa Code sections 321.3, 321.208A, 321.449, and 321.450.

661—22.7(321) Driver's statement. A "driver" as used in Iowa Code sections 321.449(5) and 321.450(2) will carry at all times a notarized statement of employment. The statement includes the following:

1. The driver's name, address and social security number;
2. The name, address and telephone number of the driver's pre-July 29, 1996, employer;
3. A statement, signed by the pre-July 29, 1996, employer or the employer's authorized representative, that the driver was employed to operate a commercial vehicle only in Iowa; and
4. A statement showing the driver's physical or medical condition existed prior to July 29, 1996.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

661—22.8(321) Planting and harvesting period. In accordance with the provisions of 49 CFR 395.1(k), the planting and harvesting period pertaining to agricultural operations is January 1 through December 31.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

661—22.9(325A) Marking of motor vehicles. "Motor vehicle" is defined in Iowa Code chapter 325A. Before placing any motor vehicle in service, the motor vehicle will be clearly marked with letters and figures large enough to be easily read at a distance of 50 feet and in a color in contrast to the background. These markings will be painted on each side of the motor vehicle or may consist of a

removable device that meets identification and legibility requirements and is securely placed on each side of the motor vehicle.

22.9(1) Motor carriers operating intrastate only will display the:

a. Name of motor carrier under whose authority the motor vehicle is being operated.

b. U.S. DOT number followed by the letters "IA" if the motor carrier has been issued a number by the Federal Motor Carrier Safety Administration.

22.9(2) Motor carriers operating both interstate and intrastate will display markings in accordance with 49 CFR 390.21.

This rule is intended to implement Iowa Code section 325A.8.

661—22.10(325A) Bills of lading or freight receipts.

22.10(1) *Requirements.* Every motor carrier operating under a motor carrier permit, except for those motor carriers transporting unprocessed agricultural and horticultural products and livestock, will issue a bill of lading or receipt on the date freight is received for shipment. The bill of lading or receipt shows the following:

a. Name of motor carrier.

b. Date and place received.

c. Name of consignor.

d. Name of consignee.

e. Destination.

f. Description of shipment.

g. Signature of motor carrier or agent issuing the bill of lading or receipt.

h. Freight described in apparent good order unless an exception is noted.

22.10(2) *Retention.* There will be one copy of the bill of lading or receipt for the consignor, one for the consignee and one to be kept by the motor carrier. The copy may be either paper or electronic except that a bill of lading or receipt of freight consisting of hazardous materials must be a paper copy as required in accordance with 49 CFR Part 172. The motor carrier will carry a copy of the bill of lading or receipt with the cargo and shall show the total of all charges made for the movement of freight. The motor carrier will keep the bill of lading or receipt for a period of not less than one year. At any reasonable time, the bill of lading or receipt is subject to inspection by the department's representatives and any peace officer.

This rule is intended to implement Iowa Code section 325A.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 24
"Safety Requirements for Movement of Implements of Husbandry on Roadways"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.383
State or federal law(s) implemented by the rulemaking: Iowa Code section 321.383

Public Hearing

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

October 8, 2024 8 to 8:30 a.m.	First Floor Public Conference Room 125 Oran Pape State Office Building 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 Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Josie Wagler
215 East 7th Street
Des Moines, Iowa 50319
Email: wagler@dps.state.ia.us

Purpose and Summary

The purpose of proposed Chapter 24 is to provide minimum safety standards for the movement of implements of husbandry on roadways.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Operators of implements of husbandry on Iowa roadways will bear the costs.

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

Operators of implements of husbandry and the motoring public traveling on Iowa's roadways 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:

Owners and operators of implements of husbandry will bear the cost of compliance.

- Qualitative description of impact:

See above.

3. Costs to the State:

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

None.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenue.

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

Failure to remain in compliance with federal regulations could jeopardize significant grant opportunities for which the Iowa State Patrol is eligible.

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

The Department of Public Safety has determined that this is the least costly and least intrusive method for achieving the purpose of the proposed rulemaking.

6. Alternative methods considered by the agency:

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

None were identified.

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

Not applicable.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
SAFETY REQUIREMENTS FOR MOVEMENT OF
IMPLEMENTS OF HUSBANDRY ON ROADWAYS

661—24.1(321) Safety rules for the movement of implements of husbandry on a roadway. The following standards are minimum safety requirements for the movement of implements of husbandry on a roadway.

24.1(1) *Towing standard.* No power unit operated by a retail seller or manufacturer shall tow more than one implement of husbandry, except those implements of husbandry that are not self-propelled and are capable of being towed in tandem, from the manufacturer to the retail seller, from the retail seller to the farm purchaser, or from the manufacturer to the farm purchaser.

24.1(2) *Equipment standards.*

a. Braking. Braking equipment of the towing unit or self-propelled implement of husbandry is adequate under Iowa Code section 321.430 when the vehicle is traveling 20 miles per hour and the braking device does either of the following:

(1) Stops the vehicle or vehicles within 30 feet if the gross weight is less than 5,000 pounds.

(2) Stops the vehicle or vehicles within 50 feet if the gross weight is 5,000 pounds or more.

b. Rearview mirror. The rearview mirror equipment standard in Iowa Code section 321.437 may be met by the use and installation of a temporary rearview mirror.

c. Lighting. The requirement in Iowa Code section 321.387 applies to the towing or towed vehicle, the rearmost implement of husbandry being towed in tandem, or a self-propelled implement of husbandry. The rear taillight equipment standard may be met by the use and installation of a temporary rear taillight. If an implement of husbandry is being towed by a vehicle that is equipped with brake lights, the requirements of Iowa Code section 321.404 also apply to the towed unit.

d. Turn signal. The requirements of Iowa Code section 321.317 apply to the towing or towed vehicle, the rearmost implement of husbandry being towed in tandem, or a self-propelled implement of husbandry. The turn-signal device equipment standard may be met by the use and installation of a temporary turn-signal device.

e. Tires. The requirements of Iowa Code section 321.440 apply for pneumatic tires on the towing or towed vehicle, the rearmost implement of husbandry being towed in tandem, or a self-propelled implement of husbandry.

f. Warning devices. The requirements of Iowa Code section 321.383 apply to reflective devices on the self-propelled or towed implement of husbandry.

g. Drawbar and safety chain. The requirements of Iowa Code section 321.462 apply when one vehicle is being towed by another vehicle.

This rule is intended to implement Iowa Code section 321.383.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapters 1, 2, 3, 4, 5, 6, and 7 and subrules 201.10(3) and 201.11(3)
"Rules on Agency Procedure"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.9, 123.10, and 421.17
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 8, 2024 1 to 2 p.m.	Via video/conference call

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: Madelyn.cutler@iowa.gov

Purpose and Summary

The Department, Lottery Authority, and Alcoholic Beverages Division all maintained their own set of rules on agency procedure. As a part of the government realignment, it is the goal of the Department to consolidate all relevant information from the following agency procedure chapters under one agency:

185—Chapters 1, 2, 3, 10, 18, and 19
531—Chapters 1, 3, 4, 5, and 6
701—Chapters 5, 6, and 7

The Department is proposing to rescind all existing agency procedure rules under the Lottery Authority, Alcoholic Beverages Division, and the Department (companion rulemakings published herein, IAB 9/18/24) and replace them with a new set of rules under agency number [701]. This consolidation will reduce the number of chapters and rules overall and make applicable practices across subject matters as uniform as possible. Additionally, appeal language is being proposed in subrules 201.10(3) and 201.11(3) that includes beneficial cross-references. Lastly, proposed subrule 7.18(10) has minimal changes due to ongoing litigation and will be more closely reviewed in a later rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No classes of persons have been identified to bear the costs of the proposed rules.

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

All Iowans will benefit from the consolidation and reorganization of agency procedure rules that existed under the Lottery Authority, Alcoholic Beverages Division, and the Department to be consistently applied across the Department.

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

- Quantitative description of impact:

No economic impact from the proposed rules has been identified.

- Qualitative description of impact:

The Department proposes to rescind all existing agency procedure rules that exist under the Lottery Authority, Alcoholic Beverages Division, and the Department and replace them with a new set of rules under agency number [701]. This will consolidate all relevant information under one agency, reduce the number of chapters and rules overall, and make applicable practices across subject matters as uniform as possible.

3. Costs to the State:

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

There are no costs to the agency of implementing or enforcing these rules beyond those that would otherwise be required to administer the statute. The outlined procedures for administrative implementation and enforcement are incorporated in the standard agency operations and utilize existing staff.

- Anticipated effect on state revenues:

No anticipated effect on state revenues has been identified.

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

By consolidating and reorganizing the existing rules on agency procedure, Iowans can interact with the Department in an efficient, effective, and consistent manner.

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 have been identified to exist.

6. Alternative methods considered by the agency:

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

No alternative methods were identified. The Department is adopting and implementing the chapters of rules on agency procedures as required by Iowa Code chapter 17A.

- 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?

The rulemaking does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 1 and adopt the following **new** chapter in lieu thereof:

TITLE I
ADMINISTRATION

CHAPTER 1
RENUMBERING CONVERSION TABLE

Since 2022, the Iowa department of revenue (department) has made significant changes to the organization of its chapters. Some of these changes were made to generally improve the organization of the rules; others were made to implement Executive Order 10 and 2023 Iowa Acts, Senate File 514. A table with a comprehensive list of all current and updated chapters is available at the department website: revenue.iowa.gov/resources/rules/renumbering-conversion-table.

ITEM 2. Adopt the following **new** 701—Chapter 2:

CHAPTER 2
ORGANIZATION

701—2.1(17A) Establishment of the department. Iowa Code sections 7E.5(1)*"c"* and 421.2 establish a department of revenue to be administered by a director of revenue with primary responsibility for revenue collection and revenue law compliance, as well as administration of the Iowa lottery and alcoholic beverage control.

701—2.2(17A) Mission. The mission of the department is to serve Iowans through the responsible collection and generation of revenue to support the public good.

701—2.3(17A) Offices. The department headquarters is maintained at the seat of state government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50319. Office hours of the department are 8 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays, Sundays, and official state holidays designated in accordance with state laws.

2.3(1) *Regional office of alcohol operations.* The office of alcohol operations is located at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; telephone 515.281.7400 or 1.866.469.2223.

2.3(2) *Offices of lottery operations.* The main office of the Iowa lottery division is located at 13001 University Avenue, Clive, Iowa 50325-8225. The lottery division has regional offices in Cedar Rapids, Mason City, and Storm Lake, which offer some of the services available at the lottery division's main office, and a central warehouse in Ankeny. The Iowa lottery commission may be contacted through the lottery division's main office. Prize-redemption hours at lottery division offices are 8 a.m. to 4 p.m., Monday through Friday, with lottery offices closed on weekends and official state holidays.

701—2.4(17A) Department Internet websites.

2.4(1) *Main website of the department.* The department's main Internet home page is revenue.iowa.gov.

2.4(2) *Website of lottery division.* The lottery division's Internet home page is www.ialottery.com. Information regarding the lottery's main and regional offices can be obtained on the lottery website, on point-of-sale game-play publications, and by contacting the main office of the lottery.

701—2.5(17A) Organization of the department. The department consists of the director, the lottery division, and other such divisions as the director may from time to time establish, abolish, or consolidate.

2.5(1) *The office of the director.* The essential functions of the office of the director include but are not limited to:

a. Overall management of the agency.
b. Review of appeals.
c. Strategic planning and coordination of the future operations and goals of the department.
d. Provision of financial checks and balances within the department.
e. Facilitation of a working relationship between the public sector and the private sector.

2.5(2) *Divisions.* For ease of administration, the director has organized the department into divisions and, in some instances, has organized those divisions into bureaus, sections, subsections, and units. Except for the lottery division, the director may from time to time establish, abolish, or consolidate the department's administrative divisions as the director deems necessary in order to more efficiently and effectively carry out the department's responsibilities. Such divisions may include but are not limited to:

a. Alcohol and tax compliance.
b. Alcohol and tax operations.
c. Financial services.
d. Internal services.
e. Legal services and appeals.
f. Local government services.
g. Lottery.
h. Research and policy.

2.5(3) *Designee.* Unless otherwise delegated in statute, in rule, or otherwise in writing by the director, only the director, deputy director, or chief legal officer may enter into contracts or agreements on behalf of the department.

2.5(4) *Organization of the alcoholic beverages commission.* The alcoholic beverages commission consists of five commission members appointed by the governor and confirmed by the senate.

2.5(5) *Organization of the lottery commission.* The lottery commission consists of five members appointed by the governor and confirmed by the senate.

These rules are intended to implement Iowa Code sections 17A.3, 99G.5, 99G.8, 123.5, 123.6, 123.9, 123.10, 421.2, 421.9, 421.14, 421.17, 422.1 and 422.72.

ITEM 3. Adopt the following **new** 701—Chapter 3:

CHAPTER 3
RULEMAKING AND RULE WAIVER PROCEDURES

701—3.1(99G,123,421,17A) Applicability and scope of rules. These rules implement the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the laws of this state and other activities of the department. These rules govern the practice, procedure, and conduct of the rulemaking and requests for waiver of rules and certain other administrative procedures within the department's jurisdiction. 701—Chapters 6 and 7 contain rules on contested cases for all matters within the department's jurisdiction. 701—Chapter 4 contains rules on declaratory orders for all matters within the department's jurisdiction.

701—3.2(99G,123,421,17A) Definitions. Terms not defined below have the same meaning as defined in Iowa Code chapter 17A. These definitions apply to this chapter unless the text states otherwise:

"Department" means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"GovConnectIowa" means the e-services portal of the department.

701—3.3(99G,123,421,17A) Department procedure for rulemaking.

3.3(1) *Advice on possible rules before notice of proposed rule adoption.* In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rulemaking by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

The department may send notices of proposed rulemaking and a request for comments to any agency, organization, or association known to the department to have a direct interest or expertise pertaining to the substance of the proposed rule.

3.3(2) *Public rulemaking docket.* The department utilizes the public rulemaking docket available to all agencies on the Iowa legislature's website.

3.3(3) *Notice of proposed rulemaking.*

a. Contents. Except for rules filed through emergency rulemaking, at least 35 days before the adoption of a rule, the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

(1) A brief explanation of the purpose of the proposed rule.

(2) The specific legal authority for the proposed rule.

(3) Except to the extent impracticable, the text of the proposed rule.

(4) Where, when, and how persons may present their views on the proposed rules.

(5) Where, when, and how persons may demand an oral proceeding on the proposed rule if the Notice does not already provide for one.

Where the inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the Notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

b. Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements in subrule 3.3(1) applicable to the incorporation by reference of other materials in an adopted rule.

c. Registration for Notices of Intended Action. Any person may register on the department's website to receive announcements related to rules from the department. Persons registered to receive announcements from the department will be notified of the publication of the department's Notices of Intended Action and Adopted and Filed rules. Persons who desire to request a paper copy of any rule filing need to make a request to the department's administrative rules coordinator, in writing or by email. The request must specify the rules requested and specify the number of copies. The requester will reimburse the department for the actual costs incurred in providing copies.

3.3(4) *Public participation.*

a. Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit arguments, proposed alternatives, data, and views, in writing or via email, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the person designated on the Notice of Intended Action, or to the attention of the department's administrative rules coordinator, at the address provided in 701—paragraph 7.3(1)*"c"* or by email to the address provided in 701—paragraph 7.3(1)*"b."*

b. Oral proceedings. The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must contain the following information:

(1) A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

(2) A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

(3) A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing the request.

c. Conduct of oral proceedings.

(1) Applicability. This subrule applies only to those oral rulemaking proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* or this chapter.

(2) Scheduling and notice. An oral proceeding on a proposed rule may be held in person, virtually, or both, as decided by the department. The proceeding shall not be held earlier than 20 days after the related Notice of Intended Action is published in the Iowa Administrative Bulletin.

(3) Presiding officer. An employee of the department shall preside at the oral proceeding on a proposed rule.

(4) Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include arguments, proposed alternatives, data, and views concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

1. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of both themselves and other individuals.

2. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.

3. To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

4. The presiding officer has the authority to take any reasonable action necessary for the orderly conduct of the meeting.

5. Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the department.

6. The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

7. Participants in an oral proceeding do not need to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rulemaking proceeding, including any prior written submissions made by those participants in that proceeding. No participant is required to answer any question.

8. The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

d. Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

e. Accessibility. The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person listed on the Notice of Intended Action or the department's administrative rules coordinator in advance to arrange access or other needed services.

3.3(5) *Regulatory analysis.*

a. Submission. The department shall issue a regulatory analysis of a proposed rule prior to submitting a notice of intended action to the governor's administrative rules coordinator and the administrative code editor pursuant to Iowa Code section 17A.4(1).

b. Contents. An issued regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)*"a."*

c. Public participation. For at least 20 days after publication of the regulatory analysis, persons may submit arguments, proposed alternatives, data, and views, on the regulatory analysis. The regulatory analysis shall state the time when, the place where, and the manner in which interested persons may do provide written comment or oral presentation.

3.3(6) *Fiscal impact statement.* A rule that mandates additional combined expenditures exceeding $100,000 or combined expenditures of at least $500,000 within five years, by all affected political subdivisions, or by agencies and entities which contract with political subdivisions to provide services, must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

3.3(7) *Time and manner of rule adoption.*

a. Time of adoption. The department may only adopt a rule once the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings, the department shall adopt a rule pursuant to the rulemaking proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

b. Consideration of public comment. Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rulemaking proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rulemaking proceeding.

c. Reliance on department expertise. Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

3.3(8) *Variance between adopted rule and published notice of proposed rule adoption.*

a. Allowable variances. The department may only adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based if:

(1) The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that Notice; and

(2) The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and

(3) The Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.

b. Fair warning. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question, the department shall consider the following factors:

(1) The extent to which persons who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interests.

(2) The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.

(3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

c. Petition for rulemaking. The department shall commence a rulemaking proceeding within 60 days of its receipt of a petition for rulemaking seeking the amendment or rescission of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rulemaking proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the governor's administrative rules coordinator, and the administrative rules review committee within three days of its issuance.

d. Concurrent rulemaking proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rulemaking proceedings on the same subject with several different published Notices of Intended Action.

3.3(9) *Exemptions from public rulemaking procedures, emergency rulemaking.*

a. Omission of notice and comment. To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, and with the prior approval of the administrative rules review committee and governor's administrative rules coordinator, or if a statute so provides, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. Public proceedings on rules adopted without them. The department may, at any time, commence a standard rulemaking proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon paragraph 3.3(9)*"a."* After a standard rulemaking proceeding commenced pursuant to this subrule, the department may take any other lawful action, including the amendment or rescission of the rule in question, with whatever further proceedings are appropriate.

3.3(10) *Concise statement of reasons.*

a. General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered by mail to the address listed in paragraph 7.3(1)*"c"* or by email to the person listed on the adopted rule filing or to the department's administrative rules coordinator at the address provided in paragraph 7.3(1)*"b."* The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received in accordance with rule 701—7.4(17A).

b. Contents. The concise statement of reasons shall contain:

(1) The reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change;

(3) The principal reasons urged in the rulemaking proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

c. Time of issuance. After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

3.3(11) *Contents, style, and form of rule.*

a. Contents. Each rule adopted by the department shall contain the text of the rule and, in addition:

(1) The date the department adopted the rule;

(2) A brief explanation of the principal reasons for the rulemaking action if the reasons are required by Iowa Code section 17A.4(2) or the department in its discretion decides to include the reasons;

(3) A reference to all rules rescinded, amended, or suspended by the rule;

(4) A reference to the specific statutory or other authority authorizing adoption of the rule;

(5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

(6) A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons; and

(7) The effective date of the rule.

b. Incorporation by reference. The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, as applicable. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department. If the department adopts standards by reference to another publication, it shall post the publication containing the standards on the department's website.

c. References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department shall post the full text available for review on the department's website. At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

3.3(12) *Filing of rules.* The department shall file each rule it adopts in the office of the governor's administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have included with it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative code editor.

3.3(13) *Effectiveness of rules prior to publication, emergency rulemaking.*

a. Grounds. The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. Special notice. When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b,"* the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"* shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of paragraph 3.3(13)*"b."*

3.3(14) *Review of rules by department.* Over each five-year period of time, the department shall perform a retrospective analysis pursuant to Iowa Code section 17A.7(2) that includes a comprehensive evaluation and rigorous cost-benefit analysis of each existing chapter of rules to determine whether the benefits the rules are intended to achieve are being realized, whether those benefits justify the costs imposed by the rules, and whether there are less restrictive alternatives to accomplish those benefits. When the department's five-year review of its rules is completed, the department shall summarize the results and provide the written summary to the governor's administrative rules coordinator and the administrative rules review committee.

This rule is intended to implement Iowa Code chapter 17A and sections 123.10 and 421.14.

701—3.4(99G,123,421,17A) Docket. All review requests, public inquiries, petitions, and waivers coming within the purview of this chapter are assigned a docket number that is the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding.

701—3.5(99G,123,421,17A) Public inquiries on rulemaking and the rulemaking records. The department maintains records in accordance with the State Records Manual and agency retention schedule described in rule 671—2.2(305).

This rule is intended to implement Iowa Code section 17A.3.

701—3.6(99G,123,421,17A) Petition for rulemaking.

3.6(1) *Filing, form, and contents of petition.*

a. Filing. Any person or agency may file a petition for rulemaking using one of the methods described in subrule 7.3(1).

b. Department forms. A petition may be filed using the form available on GovConnectIowa. Alternatively, a petition may be filed using the form or the GovConnectIowa petition link found on the department's website, revenue.iowa.gov.

c. Manually created petitions.

(1) Persons that do not use the filing methods outlined in paragraph 3.6(1)*"b"* shall use the following format to submit a petition for rulemaking:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for the (adoption, amendment, or	*	RULEMAKING

rescission) of rules relating to (state subject matter).	* *

(2) The petition must provide the following information:

1. A statement of the specific rulemaking action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or rescind a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or rescinded.

2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.

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

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

5. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed rulemaking, including audits, notices of assessment, refund claims, appeals, contested case hearings, or investigative reports relating to the activity within the last five years.

6. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by or interested in the proposed action which is the subject of the petition.

7. Any request by the petitioner for a meeting.

8. Any other matters deemed relevant that are not covered by the above requirements.

d. File-stamped copy. The department will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose.

3.6(2) *Form signed and dated.* The petition must be signed and dated by the petitioner or the petitioner's representative. It must also include the name, mailing address, telephone number, and email address of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

3.6(3) *Denial by department.* The department may deny a petition because it does not substantially conform to the required form or because all the required information has not been provided.

3.6(4) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

3.6(5) *Status of petition.* Inquiries concerning the status of a petition for rulemaking may be made to the department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1)*"c"* or by email to the address provided in paragraph 7.3(1)*"b."*

3.6(6) *Informal meeting.* If requested in the petition by the petitioner, the department may schedule an informal meeting between the petitioner and the department, or a member of the staff of the department, to discuss the petition. The department may request that the petitioner submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

3.6(7) *Action required.* Within 60 days after the filing of the petition, or within an extended period as agreed to by the petitioner, the department must, in writing, either (a) deny the petition and notify the petitioner of the department's action and the specific grounds for the denial or (b) grant the petition and notify the petitioner that the department has instituted rulemaking proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial of the petition or the granting of the petition on the date that the department mails or delivers the required notification to the petitioner. All orders granting or denying a petition shall be submitted to the administrative rules review committee.

3.6(8) *New petition.* Denial of a petition because the petition does not substantially conform to the required form does not preclude the filing of a new petition on the same subject when the new petition contains the required information that was the basis for the original denial.

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

701—3.7(99G,123,421,17A) Waiver of certain department rules. All discretionary rules or discretionary provisions in a rule over which the department has jurisdiction, in whole or in part, may be subject to waiver.

3.7(1) *Definitions.* The following terms apply to the interpretation and application of this rule:

"Discretionary rule" or *"discretionary provisions in a rule"* means rules or provisions in rules resulting from a delegation by the legislature to the department to create a binding rule to govern a given issue or area. The department is not interpreting any statutory provision of the law promulgated by the legislature in a discretionary rule. Instead, a discretionary rule is authorized by the legislature when the legislature has delegated the creation of binding rules to the department and the contents of such rules are at the discretion of the department. A rule that contains both discretionary and interpretive provisions is deemed to be a discretionary rule to the extent of the discretionary provisions in the rule.

"Interpretive rules" or *"interpretive provisions in a rule"* means rules or provisions in rules that define the meaning of a statute or other provision of law or precedent where the department does not possess the delegated authority to bind the courts to any extent with its definition.

"Waiver" means a department action that suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

3.7(2) *Scope of rule.*

a. This rule creates generally applicable standards and a generally applicable process for granting individual waivers from the discretionary rules or discretionary provisions in rules adopted by the department in situations where no other specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this rule with respect to any waiver from that rule.

b. The waiver provisions set forth in this rule do not apply to rules over which the department does not have jurisdiction or when issuance of the waiver would be inconsistent with any applicable statute, constitutional provision, or other provision of law.

3.7(3) *Applicability of this rule.*

a. This rule applies only to waiver of those rules that are within the exclusive rulemaking authority of the department. This rule shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver rule applies to discretionary rules and discretionary provisions in rules and not to interpretive rules.

b. The application of this rule is strictly limited to petitions for waiver filed outside of a contested case proceeding. Petitions for waiver from a discretionary rule or discretionary provisions in a rule filed after the commencement of a contested case as provided in rule 701—7.15(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

3.7(4) *Authority to grant a waiver.* The director may not issue a waiver under this rule unless:

a. The legislature has delegated authority sufficient to justify the action; and

b. The waiver is consistent with statutes and other provisions of law. No waiver from any mandatory requirement imposed by statute may be granted under this rule.

3.7(5) *Criteria for waiver.* In response to a petition, the director may, in the director's sole discretion, issue an order granting a waiver from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified

person, if the director finds that the waiver is consistent with subrules 3.7(3) and 3.7(4) and if all of the following criteria are also met:

a. The waiver would not prejudice the substantial legal rights of any person;

b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;

c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver is requested.

3.7(6) *Director's discretion.* The final decision to grant or deny a waiver shall be vested in the director. This decision shall be made at the sole discretion of the director based upon consideration of relevant facts.

3.7(7) *Burden of persuasion.* The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant the petitioner a waiver based upon the criteria contained in subrule 3.7(5).

3.7(8) *Form and contents of petition.*

a. Department forms. A petition for waiver may be filed using the form available on GovConnectIowa. Alternatively, a petition for waiver may be filed using the form or the GovConnectIowa petition link found on the department's website, revenue.iowa.gov.

b. Manually created petitions.

(1) Persons that do not use the filing methods outlined in paragraph 3.7(8)*"a"* shall use the following format to submit a petition for waiver:

DEPARTMENT OF REVENUE

Name of Petitioner	*	PETITION FOR
Address of Petitioner	*	WAIVER
	*	Docket No. _____
	*	

(2) A manually created petition for waiver must contain all of the following, where applicable and known to the petitioner:

1. The name, address, email address, telephone number, and case number or state identification number of the entity or person for whom a waiver is being requested;
2. A description and citation of the specific rule or rule provisions from which a waiver is being requested;
3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend;
4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition and a statement of reasons that the petitioner believes will justify a waiver;
5. A complete history of any prior contacts between the petitioner and the department relating to the activity or license affected by the proposed waiver, including audits, notices of assessment, refund claims, appeals, a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years;
6. Any information known to the petitioner relating to the department's treatment of similar cases;
7. The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver;
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver;

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver;

10. Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver; and

11. Signature by the petitioner at the conclusion of the petition attesting to the accuracy and truthfulness of the information set forth in the petition.

3.7(9) *Filing of petition.* A petition for waiver must be filed using one of the methods described in subrule 7.3(1).

3.7(10) *Additional information.* Prior to issuing an order granting or denying a waiver, the director may request additional information from the petitioner relating to the petition and surrounding circumstances. The director may, on the director's own motion, or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner or the petitioner's representative, or both, and the director to discuss the petition and surrounding circumstances.

3.7(11) *Notice of petition for waiver.* If notice to others is required by law, the petitioner shall provide, within 30 days of filing the petition for waiver, a notice consisting of a concise summary of the contents of the petition for waiver and stating that the petition is pending. Such notice shall be mailed by the petitioner to all persons entitled to such notice. Such persons to whom notice must be mailed include, but are not limited to, the director and all parties to the petition for waiver, or the parties' representatives. The petitioner must then file written notice to the department's legal services section by mail to the address listed in paragraph 7.3(1)*"c"* or by email to the address provided in paragraph 7.3(1)*"b,"* attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

3.7(12) *Ruling on a petition for waiver.* An order granting or denying a waiver must conform to the following:

a. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or rule provision to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the narrow and precise scope and operative time period of a waiver, if one is issued.

b. Conditions. The director may condition the grant of a waiver on any conditions which the director deems to be reasonable and appropriate in order to protect the public health, safety, and welfare.

3.7(13) *Time period for waiver; extension.* Unless otherwise provided, an order granting a petition for waiver will be effective for 12 months from the date the order granting the waiver is issued. Renewal of a granted waiver is not automatic. To renew the waiver beyond the 12-month period, the petitioner must file a new petition requesting a waiver. The renewal petition will be governed by the provisions in this rule and must be filed prior to the expiration date of the previously issued waiver or extension of waiver. Even if the order granting the waiver was issued in a contested case proceeding, any request for an extension shall be filed with and acted upon by the director. However, renewal petitions must request an extension of a previously issued waiver. Granting the extension of the waiver is at the director's sole discretion and must be based upon whether the factors set out in subrules 3.7(4) and 3.7(5) remain valid.

3.7(14) *Time for ruling.* The director shall grant or deny a petition for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees in writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

3.7(15) *When deemed denied.* Failure of the director to grant or deny a waiver within the 120-day period or the extended time period shall be deemed a denial of that petition.

3.7(16) *Service of orders.* Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

3.7(17) *Recordkeeping.* The department is required to maintain a record of all petitions for waiver and rulings granting or denying petitions for waiver.

a. Petitions for waiver. The department shall maintain a record of all petitions for waiver available for public inspection. Such records will be indexed and filed and made available for public inspection.

b. Report of orders granting or denying a waiver. All orders granting or denying a waiver shall be submitted on the Internet site as prescribed in Iowa Code section 17A.9A.

3.7(18) *Cancellation of waiver.* A waiver issued pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the director issues an order finding any of the following:

a. The person who obtained the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient, and no other means exist to protect the substantial legal rights of any person; or

c. The person who obtained the waiver has failed to comply with all of the conditions in the waiver order.

3.7(19) *Violations.* A violation of a condition in a waiver order shall be treated as a violation of the particular rule or rule provision for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule or rule provision at issue.

3.7(20) *Defense.* After an order granting a waiver is issued, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked unless subrules 3.7(18) and 3.7(19) are applicable.

3.7(21) *Hearing and appeals.*

a. Appeals from a decision granting or denying a waiver in a contested case proceeding shall be in accordance with the rules governing hearings and appeals from decisions in contested cases. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (more information is contained in rule 701—7.26(17A)).

b. The provisions of Iowa Code sections 17A.10 through 17A.18A and rule 701—7.18(17A) regarding contested case proceedings shall apply to any petition for waiver of a rule or provisions in a rule filed within a contested case proceeding. A petition for waiver of a provision in a rule outside of a contested case proceeding will not be considered under the statutes or rule 701—7.18(17A). Instead, the director's decision on the petition for waiver is considered to be "other agency action."

This rule is intended to implement Iowa Code section 17A.9A.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 4. Adopt the following **new** 701—Chapter 4:

CHAPTER 4
DECLARATORY ORDERS

701—4.1(99G,123,421,17A) Applicability and scope of rules. These rules implement the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the tax laws of this state and other activities of the department. These rules govern declaratory orders involving all areas within the department's jurisdiction. The rules in this chapter apply to all declaratory orders pending or commenced on or after their effective date. 701—Chapters 6 and 7

contain rules on contested cases within the department's jurisdiction. 701—Chapter 3 contains rules on rulemaking and rule waivers for all matters within the department's jurisdiction.

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

701—4.2(99G,123,421,17A) Definitions. These definitions and the definitions provided in Iowa Code chapter 17A apply to this chapter unless the text states otherwise:

"Declaratory order" means an order issued pursuant to Iowa Code section 17A.9 and these rules.

"Department" or *"IDR"* means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"Entity" means any person other than an individual or sole proprietorship.

"GovConnectIowa" means the e-services portal of the department.

"Intervene" means to file with the department a petition requesting that the petitioner be allowed to intervene in the proceedings for a declaratory order currently under the department's consideration.

"Issuance" means the date specified in the decision or order, the date of mailing of a decision, or order or date of delivery of the decision or order if service is by other means.

"Person" means the same as defined in Iowa Code section 17A.2. "Public or private organization of any character or any other person covered by the Iowa administrative procedure Act other than an agency" as used in that definition includes estates, trusts, or fiduciaries.

"Petition" means an application for declaratory order or request to intervene in a declaratory order under consideration.

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

701—4.3(99G,123,421,17A) How to submit declaratory orders or related documents; service. A person shall submit declaratory orders and related documents in accordance with 701—7.3(17A).

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

701—4.4(99G,123,421,17A) Time requirements for filings. Time filing procedures are set forth in rule 701—7.4(17A).

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

701—4.5(99G,123,421,17A) Form and style of documents. Requirements for filings are set forth in rule 701—7.5(17A).

This rule is intended to implement Iowa Code chapters 17A and 554D and sections 421.17 and 421.27A.

701—4.6(99G,123,421,17A) Docket. Every matter coming within the purview of this chapter is assigned a docket number that is the official identification number of the matter. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding.

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

701—4.7(99G,123,421,17A) Declaratory order—in general. Any oral or written advice or opinion rendered to members of the public by department personnel not pursuant to a petition for declaratory order is not binding upon the department.

4.7(1) *Filing a petition for declaratory order.*

a. When a petition is considered filed. A petition is deemed filed when it is received by the department as described in rule 701—7.4(17A). The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department with an extra copy for this purpose.

b. Department forms. A petition for declaratory order may be filed using the form available on GovConnectIowa. Alternatively, a petition for declaratory order may be filed using the form or the GovConnectIowa petition link found on the department's website, revenue.iowa.gov.

c. Manually created petitions.

(1) Persons that do not use the filing methods outlined in paragraph 4.7(1)*"b"* shall use the following format to submit a petition for declaratory order:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	* * * *	PETITION FOR DECLARATORY ORDER Docket No. _____

(2) The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested;
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, the applicability of which is questioned, and any other relevant law;
3. The questions the petitioner wants answered, stated clearly and concisely;
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers;
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome;
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity;
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition;
8. Any request by the petitioner for a meeting provided for by this rule;
9. Whether the petitioner is presently under audit or investigation by the department; and
10. The signature of the petitioner or the petitioner's representative and date of signature. It must also include the name, mailing address, and telephone number of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed. Petitions submitted by a representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—8.8(17A), on file with the department.

d. Standing. The petitioner must be potentially aggrieved or adversely affected by the department action or failure to act.

e. Associations. An association or a representative group is not considered to be an entity qualifying for filing a petition requesting a declaratory order on behalf of all of the association or group members. Each member of an association may not be similarly situated or represented by the factual scenario set forth in such a petition.

4.7(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The department may also give notice to any other persons.

4.7(3) *Intervention.*

a. Nondiscretionary intervention. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. Discretionary intervention. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

c. Filing and form of petition for intervention. A petition for intervention shall be filed in accordance with 701—paragraph 7.3(1)*"b," "c,"* or *"d."* Such a petition is deemed filed when it is

received in accordance with rule 701—7.4(17A). The department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following format:

DEPARTMENT OF REVENUE

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original Petition).	* * * *	PETITION FOR INTERVENTION Docket No. _____

d. *Contents.* The petition for intervention must provide the following information:

(1) Facts supporting the intervenor's standing and qualifications for intervention;

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers;

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome;

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity;

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented;

(6) Whether the intervenor is presently under audit or investigation by the department;

(7) A statement that the intervenor understands that if the department allows the intervention, the intervenor will be bound by the declaratory order; and

(8) The signature of the intervenor or the intervenor's representative and date of signature. It must also include the name, mailing address, and telephone number of the intervenor and of the intervenor's representative and a statement indicating the person to whom communications should be directed. Petitions for intervention submitted by a representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—8.8(17A), on file with the department.

e. *Standing.* For a petition for intervention to be allowed, the petitioner must have consented to be bound by the declaratory order and the petitioner must have standing regarding the issues raised in the petition for declaratory order. Facts described in the petition for intervention must be those supporting intervention, not related to the substantive issues in the petition. The petition for intervention must not correct facts that are in the petition for declaratory order or raise any additional facts. To have standing, the intervenor must show that the intervenor is potentially aggrieved or adversely affected by the department action or failure to act on the interest at stake in the petition for declaratory order.

f. *Factually distinct matters.* If a party seeks to have an issue determined by intervening in a declaratory order proceeding, but the facts are different from those in a petition for declaratory order that is currently under consideration by the director, the interested party should not petition as an intervenor in the petition for declaratory order currently under the director's consideration. Instead, the party should file a separate petition for declaratory order, and the petition should include all of the relevant facts. The director may deny a petition for intervention without denying the underlying petition for declaratory order that is involved.

4.7(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

4.7(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the Legal Services and Appeals Division, Iowa Department of Revenue, P.O. Box 14457, Des Moines, Iowa 50306-3457; or by email to the address provided in 701—paragraph 7.3(1)*"b."*

4.7(6) *Service and filing of petitions and other papers.*

a. When service is required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed in the same manner described in rule 701—7.3(17A). All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided in rules 701—7.3(17A) and 701—7.4(17A).

4.7(7) *Department consideration.*

a. Informal meetings. Upon request by the petitioner in the petition, the department may schedule a brief and informal meeting between the original petitioner; all intervenors; and the department, a member of the department, or a member of the staff of the department to discuss the questions raised.

b. Requests for additional information. The department may solicit additional information from the petitioner and establish a time frame for response. The department may also solicit comments or information from any other person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.

4.7(8) *Withdrawal of the petition.* The petitioner may voluntarily withdraw its petition by notifying the department in writing at any time before the order is issued. The petitioner may not withdraw the petition after the order is issued.

4.7(9) *Action on petition.*

a. Within 30 days after receipt of a petition for a declaratory order, the director shall take action on the petition. That action may include issuing an order, issuing a refusal, scheduling the issuance of a decision for a later date, or any other action described in Iowa Code section 17A.9(5).

b. The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means.

4.7(10) *Refusal to issue order.*

a. Reasons for refusal to issue order. The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for any of the following reasons:

(1) The petition does not substantially comply with the required form;

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;

(3) The department does not have jurisdiction over the questions presented in the petition;

(4) Questions or issues presented by the petition are also presented in a current audit or investigation, rulemaking, contested case, litigation, or other department or judicial proceeding that may definitively resolve them;

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter;

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order;

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances;

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made;

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner; or

(10) The petitioner requests the department to determine whether a statute is unconstitutional on its face.

b. Action on refusal. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

c. Filing of new petition. Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

4.7(11) *Contents of declaratory order, refusal; effective date.*

a. In addition to the ruling itself, a declaratory order or refusal must contain the date of its issuance, the name of the petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

b. A declaratory order is effective on the date of issuance.

4.7(12) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be delivered promptly to the original petitioner and all intervenors or otherwise served in accordance with rule 701—7.3(17A).

4.7(13) *Effect of a declaratory order.* A declaratory order is binding on the department, the petitioner, and any intervenors. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition. A declaratory order, once issued, will not be rescinded by the department and cannot be withdrawn by the petitioner.

This rule is intended to implement Iowa Code section 17A.9.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 5. Rescind 701—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

701—5.1(17A,22,99G,123,421-454) Definitions. As used in this chapter:

"Confidential record" means a record that is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include but are not limited to records or information contained in records that the department is prohibited by law from making available for examination by members of the public; records or information contained in records that are specified as confidential by Iowa Code section 22.7, 99G.34, or 123.38A, or other provision of law but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record; and confidential state tax information and federal tax information. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Confidential state tax information" means information that is protected from disclosure by Iowa Code sections 422.20, 422.72, 437A.14, 437B.10, 453B.10, 450.68, and 452A.63. Confidential state tax information includes but is not limited to state tax returns and return information. Confidential state tax information does not include federal tax information (FTI). If confidential state tax information is contained in a record, that record may also be considered a confidential record protected by Iowa Code chapter 22.

"Custodian" means the department, the director of revenue, the department's public information officer, or a person lawfully delegated authority by the department to act for the department in implementing Iowa Code chapter 22.

"Department" means the Iowa department of revenue.

"Federal tax information" or *"FTI"* means return or return information received directly from the IRS or obtained through an authorized secondary source acting on behalf of the IRS pursuant to an IRC §6103(p)(2)(B) agreement. Copies of tax returns or return information provided to the department directly by a taxpayer or the taxpayer's representative, including but not limited to tax returns or return information provided to the department through electronic filing as defined in 701—subrule 8.5(1), or obtained from public information files (e.g., federal tax liens on file with the county clerk, Offers in Compromise available for public inspection, and court records) are not considered FTI.

"GovConnectIowa" means the e-services portal of the department.

"IRC" means the Internal Revenue Code.

"IRS" means the Internal Revenue Service.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record that identifies the individual and that is contained in a record system. The term "personally identifiable information" includes "personal information" as defined in Iowa Code section 715C.1.

"Record" means the whole or a part of a "public record" as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department. Records include confidential records.

"Record system" means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual. A record system is a "system," as defined below.

"Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose that is compatible with the purpose for which the record was collected. "Routine use" includes disclosures required by statute other than the public records laws codified at Iowa Code chapter 22.

"System" means any of the following:

1. Computer hardware or software;
2. Computerized processes and procedures;
3. Noncomputerized processes and procedures.

"Tax administration" means the administration, management, conduct, direction, and supervision of the execution and application of the state tax laws; means the development and formulation of state tax policy; and includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.2(17A,22,99G,123,421-454) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and to facilitate sound department determinations with respect to the handling of confidential records and the implementation of Iowa Code section 22.11.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.3(17A,22,99G,123,421-454) Requests for public records.

5.3(1) *Availability of records.* Department records are open for public inspection and copying unless they are confidential or otherwise not subject to public inspection by rule or law. The department is not obligated to create a record if a requested record does not exist.

5.3(2) *Methods for submitting a records request.* Record requests shall be submitted using one of the following methods:

a. Mail. Requests by mail should be addressed to: Public Information Officer, Iowa Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306.

b. Electronic submission. Instructions for submitting requests electronically can be found on the department's website: revenue.iowa.gov.

c. Hand delivery. Requests should be hand-delivered to the department of revenue office on the first floor of the Hoover State Office Building, 1305 East Walnut St., Des Moines, Iowa.

d. Telephone. Instructions for submitting requests by telephone can be found on the department's websites: revenue.iowa.gov or ialottery.com.

5.3(3) *Content of a records request.*

a. Requests shall identify the particular records sought by name or description and include the name, address, email, and telephone number of the person requesting the records.

b. No reason need be given for requesting an open record. Department staff may request additional information from the requester for the purposes of clarification or identification of responsive records.

5.3(4) *Response to requests.* Records will be provided as soon as feasible. The custodian will promptly give notice to the requester of the reason for any delay in providing an open record and an estimate of the length of that delay and, upon request, will promptly provide that notice to the requester in writing. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 701—5.4(17A,22,99G,123,421-454) and other applicable provisions of law.

5.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records will be supervised by the custodian or a designee of the custodian. Records will be protected from damage and disorganization.

5.3(6) *Fees.*

a. When charged. The department may charge fees in connection with the search, retrieval, examination, and copying of requested records.

b. Copying and postage fees. Price schedules for published materials and for photocopies of records supplied by the department will be posted on the department's websites. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Search, retrieval, and examination fee. An hourly fee may be charged for actual department expenses associated with the search, retrieval, and examination of requested records. The fee is based upon the pay scale of the employee involved and other actual costs incurred. The department provides the first two hours of search, retrieval, and examination of responsive records free of charge.

d. Estimated fee. Within a reasonable time after a request is made, the department will provide to the requester an estimated fee of the actual costs expected to be incurred by the department in fulfilling the request.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

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

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.4(17A,22,99G,123,421-454) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons.

5.4(1) *Procedure.* In requesting the custodian to permit the examination and copying of such confidential records, the following procedures apply and are in addition to those specified for requests for access to records in rule 701—5.3(17A,22,99G,123,421-454).

a. Form of request. A person requesting access to confidential records shall submit the request in writing. The department may require the requester to provide additional documentation, including but not limited to proof of identity and authority to secure access to the record. The department may also require the requester to sign a certified statement or affidavit listing the specific reasons justifying access to the record and provide any proof necessary to establish relevant facts.

b. Response to request. The department will notify the requester of approval or denial of the request for access. The notice will include:

(1) The name and title or position of the person responding on behalf of the department; and

(2) If the request for access is denied, a brief statement of the grounds for denial including a citation to the applicable statute or other provision of law.

c. Request granted. When the department grants a request for access to a confidential record to a particular person, the department will notify that person and indicate any lawful restrictions imposed by the department on that person's inspection and copying of the record.

d. Reconsideration of denial. A requester whose request is denied by the department may apply to the director for reconsideration of the request.

5.4(2) *Notice to subject of record and opportunity to obtain an injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, or whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8 and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

5.4(3) *Requesting a copy of a return.* A taxpayer requesting a copy of the taxpayer's own tax return must do so via GovConnectIowa. There will be a $5 charge for each return requested. Payment will be received prior to release of the return.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.5(17A,22,99G,123,421-454) Requests for treatment of a record as a confidential record and its withholding from examination. The department may treat a record as confidential and withhold it from examination only as authorized by Iowa Code sections 22.7, 99G.34, 123.38A, 422.20, and 422.72; other applicable provisions of law; or an order.

5.5(1) *Requests related to records submitted as part of an appeal or contested case.* Any person who seeks to request confidential treatment for any document submitted as part of an appeal or contested case filed under 701—Chapters 6 and 7 must file a motion for redaction as described in rule 701—7.8(17A).

5.5(2) *Requests for confidential treatment of any other record.* Any person who seeks to request confidential treatment of any record that has not been submitted as part of an appeal or contested case filed under 701—Chapters 6 and 7 must follow the following procedure:

a. Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

b. Request. A request that a record be treated as a confidential record and be withheld from public inspection shall:

(1) Be in writing;

(2) Be filed with the department using the one of the methods in subrule 5.3(2), excluding submission by telephone;

(3) Set forth the legal and factual basis justifying such confidential record treatment for that record;

(4) Include the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request;

(5) Include a signed certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts;

(6) Specify the precise period of time for which that treatment is requested;

(7) If possible, include a copy of the record for which confidential record treatment is being sought with the request.

c. Failure to request. Failure to request confidential treatment for a record does not preclude the custodian from treating it as a confidential record unless otherwise provided by law. However, absent a request as outlined in this rule, the custodian of records may proceed as if there is no objection to the record's disclosure.

d. Timing of decision. The custodian may decide whether to disclose a record or a portion of a record to members of the public when a request for confidential record treatment is filed or when the custodian receives a request for access to the record by a member of the public.

e. Request granted or deferred. If a request for confidential record treatment is granted, or if action on a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record.

f. Request denied and opportunity to seek an injunction. If a request for confidential record treatment is denied, the custodian will notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8 or other applicable provision of law. However, such a record will not be withheld from public inspection for any period of time if the custodian determines that the requester has no reasonable grounds to justify the treatment of that record as a confidential record. The custodian will notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.6(17A,22,99G,123,421-454) Consensual disclosure of confidential records.

5.6(1) *Consent to disclosure by a subject.* To the extent permitted by law, the subject may consent in writing to department disclosure of confidential records as provided in rules 701—5.7(17A,22,421,422) and 701—7.6(17A,22,421,422).

5.6(2) *Complaints to public officials not an authorization—separate authorization required.* A letter from the subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the department is not, to the extent permitted by law, treated as an authorization to release sufficient information about the subject to the official to resolve the matter. The subject of a confidential record filing a complaint needs to submit a disclosure authorization as provided in rules 701—5.7(17A,22,421,422) and 701—8.8(17A,22,421,422).

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.7(17A,22,99G,123,421-454) Tax information disclosure designation.

5.7(1) *Powers authorized.* A taxpayer may designate an individual to receive, inspect, and discuss the taxpayer's confidential state tax information from the department. Such designation does not authorize the designee to act or authorize any action on the taxpayer's behalf in any way other than to receive information and communicate with the department. Information about transfers of decision-making authority is contained in Iowa Code section 421.59 and rule 701—8.8(17A,22,421,422).

5.7(2) *Contents of the tax information disclosure designation form.* A taxpayer must use the department's tax information disclosure designation form, or other designated method authorized by the department, to designate an individual to receive, inspect, and discuss confidential state tax information. A tax information disclosure designation form must contain the following information to be valid:

a. Legal name and address of the taxpayer;

b. Identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or any federal- or Iowa-issued tax identification number);

c. The designee's name, mailing address, and identification number (i.e., preparer's tax identification number (PTIN), FEIN, SSN, individual taxpayer identification number (ITIN), or Iowa department of revenue-issued account number (IAN)). In lieu of a designee's identification number, a taxpayer may indicate that an IAN is being requested for the designee;

d. Description of the matter(s) for which disclosure is authorized, which may include:

(1) The type of tax(es) involved or an indication that all tax types are within the scope of disclosure;

(2) The specific year(s) or period(s) involved or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date); and

(3) Business tax permit number or an indication that all tax types are within the scope of authority;

e. A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 5.7(1);

f. An authorized signature of an individual listed in subrule 5.7(4) meeting the requirements of rule 701—8.2(17A,421);

g. Any other information required by the department.

5.7(3) *Authorization period for a tax information disclosure designation.*

a. A tax information disclosure designation may not be used to authorize disclosure for tax periods that end more than three years after the date on which the tax information disclosure designation is signed by the taxpayer. A tax information disclosure designation may concern an unlimited number of tax periods that have ended prior to the date on which the tax information disclosure designation is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax periods section is left blank, all tax periods, including those ending up to three years in the future, are included.

b. A tax information disclosure designation continues to be effective for tax periods as defined in paragraph 5.7(3)*"a"* until revocation by the taxpayer; incapacity of the taxpayer; death of the taxpayer; or withdrawal, death, or incapacity of the tax information disclosure designee.

5.7(4) *Individuals who may execute a tax information disclosure designation.* The individual(s) who may execute a tax information disclosure designation depends on the type of taxpayer involved:

a. Individual. In matters involving an individual taxpayer, a tax information disclosure designation must be signed by the individual.

b. Joint or combined returns. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return, each taxpayer must complete and submit a tax information disclosure designation form for the joint return.

c. Third parties. The tax information disclosure designation form may be signed by an individual who has been authorized to act on behalf of the taxpayer under Iowa Code section 421.59.

5.7(5) *Revocation and withdrawal.*

a. Revocation by the taxpayer.

(1) By written statement. By filing a statement of revocation with the department, a taxpayer may revoke a tax information disclosure designation without authorizing a new representative. The statement of revocation must include the following:

1. Name, address, and identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number);

2. Name, address, and identification number (i.e., PTIN, FEIN, SSN, ITIN, or IAN) of the designee whose designation is to be revoked;

3. A clear statement to revoke the designee's disclosure designation; and

4. Signature of an authorized signatory as described in subrule 5.7(4).

(2) Does not automatically revoke. A new tax information disclosure designation for a particular tax type(s) and tax period(s) does not revoke a prior tax information disclosure designation for any tax type(s) and tax period(s) unless the taxpayer has indicated in a written submission to the department that a prior tax information disclosure designation is to be revoked.

b. Withdrawal by the designee. By filing a statement with the department, a designee may withdraw from the designation in a matter in which a tax information disclosure designation has been filed. The statement must include the following:

(1) Name, address, and identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number);

(2) Name, address, and tax identification number (i.e., PTIN, FEIN, SSN, ITIN, or IAN) of the designee whose designation is to be withdrawn;

(3) A clear statement that the designee wishes to withdraw;

(4) Signature of withdrawing designee and signature date.

5.7(6) *Submitting a form.*

a. Submit separately. A tax information disclosure designation form may not be submitted as an attachment to a tax return except as provided by these rules. A tax information disclosure designation must be submitted separately to the department in accordance with the submission instructions on the form. However, the department may, at its discretion, provide a method for authorizing disclosure on the face of a tax return as defined in Iowa Code section 421.6.

b. Original or electronic forms accepted. The department will accept either the original, a copy, or an electronically scanned and transmitted form. A copy received by facsimile transmission (fax) or email will be accepted. All forms, whether original copy, received via fax, or electronically scanned and transmitted forms must include a valid signature meeting the requirements of rule 701—8.2(17A,421) of the taxpayer to be represented.

c. Timely submission. If the form is not submitted within six months of the date it is signed, it will be considered invalid.

d. Evaluation of documentation provided. The department will evaluate the tax information disclosure designation form and any additional documentation to confirm authorization. Authorization to receive, inspect, and discuss confidential state tax information from the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authorization to receive, inspect, and discuss confidential state tax information from the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authorization.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.8(17A,22,99G,123,421-454) Disclosures without the consent of the subject. Open records and certain confidential records may be disclosed by the department without the consent of the subject.

5.8(1) *Disclosure of nonconfidential records.* All nonconfidential records may be disclosed without the consent of the subject.

5.8(2) *Disclosure of confidential records that do not contain confidential state tax information.* Certain confidential records that do not contain confidential state tax information may be disclosed without the consent of the subject. The following disclosures will generally occur without notice to the subject:

a. For routine use. The following nonexclusive list of uses are considered routine:

(1) Disclosure to those officers, employees, and agents of the department who have a legitimate need for the record in the performance of their duties. The custodian of the record may, upon the request of any officer or employee, or upon the custodian's own initiative, determine what constitutes a legitimate need;

(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory action;

(3) Information released to federal and state entities for audit purposes for purposes of determining whether the department is operating lawfully;

(4) Any disclosure specifically authorized by statute.

b. To a recipient who has provided the department with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request pursuant to rule 701—5.4(17A,22,99G,123,421-454) to the department specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual. Confidential information will be disclosed pursuant to this paragraph only after notice is sent by the department to the last-known address of the subject of the confidential information.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a lawful court order or subpoena.

5.8(3) *Disclosure of confidential state tax information.*

a. Permitted disclosures. Confidential state tax information may be disclosed without the consent of the subject only to the extent that it is expressly permitted by law. The following is a nonexclusive list of permitted disclosures:

(1) Disclosures to other agencies, employees, or officials of this state to the extent necessary for the performance of their official duties and responsibilities pursuant to Iowa Code section 422.72(1) *"b."* Such information will only be disclosed upon the express written approval of the director of revenue or the director's designee. Written approval will be granted in only those situations where the information obtained is used for a tax administrative purpose and will cover the conditions and procedures under which specific information will be released.

(2) Disclosures permitted by statute for purposes other than tax administration. Such disclosures may be made without a tax administrative purpose unless the authorizing statute provides otherwise.

(3) Disclosures to the federal government and agencies of other states so long as the disclosures are made for a tax administrative purpose and are made only to officers of those jurisdictions which by agreement limit the disclosure of the information as strictly as the laws of Iowa protecting the confidentiality of returns and return information.

(4) Disclosure pursuant to subpoena as outlined in Iowa Code section 422.72(7).

(5) Disclosure pursuant to Iowa Code section 421.19 regardless of whether such disclosure is made for a tax administration purpose.

b. Penalties for unlawful disclosure of confidential state tax information. Any officer, employee, agent, former officer, former employee, or former agent of the state of Iowa who engages in any of the following activities commits a serious misdemeanor:

(1) Knowingly files a false affidavit with the department to secure confidential state tax information;

(2) Willfully or recklessly divulges, prints, publishes, inspects or permits unauthorized examination of confidential state tax information in violation of Iowa Code sections 422.20 and 422.72 or divulges information received under this rule in any manner prohibited by this rule.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.9(17A,22,99G,123,421-454) Release to subject or owner of record.

5.9(1) The subject of a record may request to review the subject's own records by following the procedures in rules 701—5.3(17A,22,99G,123,421-454) and 701—5.4(17A,22,99G,123,421-454). However, the department need not release the following records to the subject:

a. Communications to the department that are protected from disclosure under Iowa Code section 22.7(18). Such protected communications include responses to questionnaires solicited by the department that relate to tax administration.

b. Records that are work product of an attorney or are otherwise privileged.

c. Peace officer's investigative reports, except when disclosure is required by law.

d. Any other records that may be withheld by law.

5.9(2) Where a requested record contains information on multiple subjects, the department may take reasonable steps to protect confidential information relating to the subject or subjects that did not make the request when releasing the record to the requesting subject.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.10(17A,22,99G,123,421-454) Personally identifiable information collected and stored by the department. The department collects and maintains both open records and confidential records that contain personally identifiable information. This rule describes the nature, extent, retrieval, storage, and processing of personally identifiable information within the department's record systems.

5.10(1) *Nature and extent.* All record systems maintained by the department may contain personally identifiable information concerning matters such as income, property holdings, exchanges, financial transactions, licensing, contested case matters, waivers of rule and declaratory rulings, procurement and leases, bailment shipments, lottery prize claims, lottery sales commission payments, audit and examination, litigation, personnel, and demographic information such as address and number of dependents.

5.10(2) *Retrieval.* Personal identifiers are used to retrieve information from any of the record systems that the department maintains that contain personally identifiable information.

5.10(3) *Means of storage.* Paper, microform, and various electronic means of storage are used to store records containing personally identifiable information.

5.10(4) *Comparison.* Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

5.10(5) *Comparison with data from outside the department.* Personally identifiable information in systems of records maintained by the department may be compared with information from outside the department when specified by law. Permitted comparisons include but are not limited to comparisons for the purpose of setoffs.

5.10(6) *Records containing personally identifiable information.*

a. Personally identifiable information is collected from documents, returns, and any other record filed with the department, as well as from outside sources, including state and federal agencies. Authority to collect this information is found throughout Iowa Code chapters 8A, 17A, 19G, and 123, as well as Title X of the Iowa Code. The chart below describes department records that contain

personally identifiable information and identifies which records are open records, confidential records, partially open or partially confidential. A single record may contain information from several categories in the chart. This information is compiled for the purposes of Iowa Code section 22.11.

Code……Meaning

O……The records are open for public inspection.

C……The records are confidential and are not open to public inspection.

O/C…….The record is partly open and partly confidential.

Description of Record	Type of Record	Legal Authority for Confidentiality
State tax returns, return information, permit records, tax liability and penalty records, tax policy, tax research records, and all related records	O/C	Iowa Code Title X, including Iowa Code sections 422.20 and 422.72
Nontax collection records	O/C	Iowa Code Title X, including Iowa Code sections 422.20 and 422.72, and contractual authority
Federal tax returns and return information	C	26 U.S.C. Section 6103
Department personnel records, communication records, budget records, and payroll records	O/C	Iowa Code sections 22.7 and 99G.34(2)
Minutes of closed meetings of a government body	C	Iowa Code section 21.5(4)
Records that constitute attorney work product or attorney-client communications or are otherwise privileged	C	Iowa Code section 22.7(4), Iowa Rule of Civil Procedure 1.503, Federal Rule of Civil Procedure 26(b)(3), and case law
Sealed bids	O/C	Iowa Code section 72.3
Final orders, decisions, and opinions	O/C	Iowa Code section 17A.3(1)*"d"*
License and permit records	O/C	Iowa Code section 99G.24, chapter 123, and Title X
Investigation, audit, and examination records	O/C	Iowa Code sections 99G.34(4), 99G.35, 123.38A, 422.20, and 422.72
Lottery player and winner lists	O/C	Iowa Code sections 99G.34(2), 99G.34(5), and 99G.41(3)
Lottery retailer compensation payments	O/C	Iowa Code sections 99G.24(2), 99G.34(2), and 99G.41(5)

b. The procedure for public records request may be found in rule 701—5.3(17A,22,99G,123,421-454).

c. The procedure for allowing a person to have additions, dissents, or objections entered in the record will be determined on a case-by-case basis.

d. The subject of the confidential record may either request the record independently and give it to the named third party or authorize the third party to request the subject's confidential information under Iowa Code section 421.59, 422.20(7), or 422.72(9).

e. The department will utilize information, including confidential information, in executing its duties under the Iowa Code. Subjects of the information will not be notified when the information is used. Persons outside of the department receiving confidential information are held to the same confidentiality standard as departmental employees. Whether information is required or optional will

be indicated along with the request for information. Failing to provide required information may result in penalties or interest being charged.

f. The department utilizes more than one data processing system, and information is matched between systems.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.11(17A,22,99G,123,421-454) Retention of submitted documents. When the subject or owner of a record has submitted a document to the department, the department will store the document in the same manner that it stores other records of a similar nature. Documents submitted to the department may be destroyed by the department at the conclusion of the applicable time period detailed in the department's record retention schedules unless destruction is otherwise prohibited by law. The department discourages submitting original documents in situations where an original is not required. If an original document must be submitted, the person submitting the document shall indicate conspicuously that the document is an original and shall also indicate whether that person requests that the original be returned at the conclusion of its use by the department.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.12(17A,22,99G,123,421-454) Limited applicability. This chapter does not:

1. Mandate that the department index or retrieve records that contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records that would otherwise not be available under Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in possession of the department that are governed by regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs unless otherwise provided by law or agreement.
5. Make available records compiled by the department in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings are be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the department.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

ITEM 6. Rescind 701—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
CONTESTED CASES RELATED TO ALCOHOL AND LOTTERY PROCEEDINGS

701—6.1(99G,123,17A) Scope and applicability. This chapter applies to contested case proceedings conducted pursuant to the department's authority under Iowa Code chapter 99G or 123.

701—6.2(99G,123,17A) 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 pursuant to Iowa Code section 17A.10A.

"Department" means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"Hearing complaint" means a statement in writing filed by, or on behalf of, the department; a local authority having jurisdiction; or the department of public safety that sets forth the acts or omissions with which the respondent is charged, including the statute(s) and rule(s) that are alleged to have been violated under Iowa Code chapter 123. The hearing complaint shall be in sufficient detail to enable the preparation of the respondent's defense.

"Issuance" means the date of mailing or otherwise electronically providing a copy of a decision or order, or the date of delivery if service is by other means, unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Pleadings" means appeal, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

"Presiding officer" means the director, the director's designee, or an administrative law judge from the department of inspections, appeals, and licensing.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the director did not preside.

701—6.3(99G,123,17A) Time requirements. Time requirements for the department are provided in rule 701—7.4(17A).

701—6.4(99G,123,17A) Requests for a contested case proceeding.

6.4(1) Any person claiming an entitlement to a contested case proceeding shall file a written request within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

6.4(2) The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action that is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

701—6.5(99G,123,17A) Notice of hearing.

6.5(1) *Delivery.* Delivery of the 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. Certified mail, return receipt requested; or

c. Publication, as provided in the Iowa Rules of Civil Procedure.

d. In accordance with rules provide by the department of inspections, appeals, and licensing, as provided for by Iowa Code section 10A.802(4).

6.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the department or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding.

701—6.6(99G,123,17A) Presiding officer.

6.6(1) *Administrative law judge.* The director may appoint an administrative law judge as presiding officer in all contested case hearings pursuant to Iowa Code chapter 99G or 123.

6.6(2) *Appeal.* Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the director. A party must seek any available intra-agency appeal to exhaust adequate administrative remedies.

6.6(3) *Director's review.* Unless otherwise provided by law, the director, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of, and shall comply with the provisions of, this chapter that apply to presiding officers.

701—6.7(99G,123,17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the department in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

701—6.8(99G,123,17A) Telephone or video proceedings. The presiding officer may resolve preliminary procedural motions by telephone or videoconference in which all parties have an opportunity to participate. Other telephone or video proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or video hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

701—6.9(99G,123,17A) Consolidation—severance. Consolidation and severance procedures for the department are provided in 701—subrule 7.18(12).

701—6.10(99G,123,17A) Pleadings.

6.10(1) *Pleadings.* Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.10(2) *Alcohol-related hearing complaint.*

a. The department, a local authority having jurisdiction, or the department of public safety may give written notice of the cause for action in the form of a hearing complaint and an opportunity for a hearing to a licensee, permittee, or holder of a certificate of compliance for any of the following:

(1) A violation of Iowa Code chapter 123.

(2) A violation of the department's administrative rules.

(3) Failure to comply with an order issued by the department.

(4) Failure to fully cooperate during an investigation, audit, or inspection of the licensee; permittee; or certificate holder, including failure to respond to an inquiry within ten business days of the date of mailing by certified mail, return receipt requested, of a written request for information or records directed to the licensee's, permittee's, or certificate holder's last address on file with the agency.

b. A hearing complaint shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the hearing complaint is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address, and telephone number of the petitioner and the petitioner's attorney, if any.

c. A hearing complaint alleging a violation of Iowa Code chapter 123 must be filed with the department or the local authority within three years from the date of the alleged violation or the date of conviction for the violation, whichever is later.

6.10(3) *Answer.*

a. An answer shall be filed within 20 days of service of the hearing complaint unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

b. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

c. An answer shall state the name, address, and telephone number of the person filing the answer; the person or entity on whose behalf it is filed; and the attorney representing that person, if any.

d. Any allegation in the hearing complaint not denied in the answer is considered admitted. 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.

6.10(4) *Amendment.* Any notice of hearing, hearing complaint, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

701—6.11(99G,123,17A) Service and filing of pleadings and other papers.

6.11(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original 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.

6.11(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address or by electronic service as permitted by the presiding officer and the Iowa Rules of Civil Procedure. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order, so long as there is proof of mailing.

6.11(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the presiding officer.

6.11(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the presiding officer, delivered to an established courier service for immediate delivery to the presiding officer, or mailed by first-class mail or state interoffice mail to the presiding officer, so long as there is proof of mailing. Parties may file documents by electronic transmission. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the presiding officer.

6.11(5) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (department or presiding officer and address), 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)

701—6.12(99G,123,17A) Discovery.

6.12(1) *Discovery procedures.* Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

6.12(2) *Discovery motions.* Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Discovery motions shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is

shortened as provided in this chapter. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

6.12(3) *Evidence.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

701—6.13(99G,123,17A) Subpoenas.

6.13(1) *Issuance.*

a. Department subpoenas. A department subpoena shall be issued to a party on request. Subpoenas may compel the attendance of witnesses at deposition or hearing and the production of books, papers, records, and other real evidence unless they are otherwise expressly exempt from disclosure by law. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the presiding officer upon a written request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Service of subpoenas. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

6.13(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

701—6.14(99G,123,17A) Motions.

6.14(1) *Prehearing motions.* No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.14(2) *Written responses.* 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 applicable administrative rules or by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.14(3) *Oral argument.* The presiding officer may schedule oral argument on any motion.

6.14(4) *Service.* Motions pertaining to the hearing, except motions for summary judgment, 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 an applicable rule of the department or an order of the presiding officer.

6.14(5) *Motions for summary judgment.*

a. Motions for summary judgment are subject to Iowa Rules of Civil Procedure 1.981, 1.982, and 1.983 but only to the extent consistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

b. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date or other time period determined by the presiding officer. Any party resisting the motion may file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission will be at least 20 days after the filing of the motion unless the presiding officer orders a shorter time.

c. A summary judgment order rendered on all issues in a contested case is subject to rehearing and appeal in accordance with this chapter.

701—6.15(99G,123,17A) Prehearing conference. Requirements are set forth in 701—7.17(17A).

701—6.16(99G,123,17A) Continuances. Unless otherwise provided, applications for continuances are made to the presiding officer.

6.16(1) *Application for continuance.* A written application for a continuance should:

a. Be made at the earliest possible time and no less than three days before the hearing, except for a good cause showing;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless the presiding officer waives that requirement. No application for continuance may be made or granted without notice to all parties except in an emergency where notice is not feasible. The department may waive notice of such requests for a particular case or an entire class of cases.

6.16(2) *Issuing of continuance.* In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance. Notwithstanding the foregoing, each party is entitled to one continuance without the need of a good cause showing unless a continuance would cause the contested case proceeding to exceed a time limit set forth in another applicable statute or rule.

701—6.17(99G,123,17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing.

701—6.18(99G,123,17A) Intervention.

6.18(1) *Motion.* A motion for leave to intervene in a contested case proceeding states the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.18(2) *When filed.* Motion for leave to intervene should be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor is bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the proceeding will ordinarily be denied.

6.18(3) *Grounds for intervention.* The movant should demonstrate that:

a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

b. The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and

c. The interests of the movant are not adequately represented by existing parties.

6.18(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the

number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

701—6.19(99G,123,17A) Hearing procedures.

6.19(1) *Role of presiding officer.* The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

6.19(2) *Objections.* All objections shall be timely made and stated on the record.

6.19(3) *Representative of parties.* Parties have the right to participate or to be represented in all hearings related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

6.19(4) *Role of parties.* 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.

6.19(5) *Decorum of hearing.* The presiding officer maintains the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

6.19(6) *Sequestering of witnesses.* Witnesses may be sequestered during the hearing.

6.19(7) *Conduct of hearing.* The presiding officer conducts the hearing in the following manner:

a. The presiding officer gives an opening statement briefly describing the nature of the proceedings;

b. The parties are given an opportunity to present opening statements;

c. Parties present their cases in the sequence determined by the presiding officer;

d. Each witness is sworn or affirmed by the presiding officer or the court reporter and is 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, parties may be given the opportunity to present final arguments.

701—6.20(99G,123,17A) Evidence.

6.20(1) *Admissibility.* The presiding officer rules on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

6.20(2) *Stipulation of facts.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.20(3) *Scope of evidence.* Evidence in the proceeding should be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

6.20(4) *Admission and examination.* 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 be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

6.20(5) *Objection.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall 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 shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.20(6) *Offer of service.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

701—6.21(99G,123,17A) Default. Default procedures for the department are set forth in 701—subrule 7.18(7).

701—6.22(99G,123,17A) Ex parte communication and disqualification. Ex parte communication and disqualification matters requirements are set forth in rule 701—7.22(17A).

701—6.23(99G,123,17A) Recording costs. Recording cost requirements are provided in rule 701—7.20(17A).

701—6.24(99G,123,17A) Interlocutory appeals. Interlocutory appeal procedures for the department are set forth in 701—subrule 7.18(11).

701—6.25(99G,123,17A) Final decision.

6.25(1) *Director's final decision.* When the director presides over the reception of evidence at the hearing, the director's decision is a final decision.

6.25(2) *Proposed decision.* When the director does not preside at the reception of evidence, the presiding officer makes a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the director within the time provided in rule 701—6.26(99G,123,17A).

701—6.26(99G,123,17A) Appeals and review.

6.26(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the director within 30 days after issuance of the proposed decision.

6.26(2) *Review.* The director may initiate review of a proposed decision on the director's own motion at any time within 30 days following the issuance of such a decision.

6.26(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

6.26(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The director may remand a case to the presiding officer for further hearing or the director may preside at the taking of additional evidence.

6.26(5) *Scheduling.* The director shall issue a schedule for consideration of the appeal.

6.26(6) *Briefs and arguments.* Unless otherwise ordered, within 30 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 30 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be

filed with the briefs. The director may resolve the appeal on the briefs or provide an opportunity for oral argument. The director may shorten or extend the briefing period as appropriate.

701—6.27(99G,123,17A) Applications for rehearing. Procedures to apply for rehearing for the department are set forth in rule 701—7.21(17A).

701—6.28(99G,123,17A) Stays of agency actions.

6.28(1) *When available.*

a. *Department appeal.* Any party to a contested case proceeding may petition the department for a stay of an order issued in that proceeding or for other temporary remedies, pending review. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The director may rule on the stay or authorize the presiding officer to do so.

b. *Stay or temporary remedy.* Any party to a contested case proceeding may petition the department for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

6.28(2) *When granted.* In determining whether to grant a stay, the director shall consider the following factors:

a. The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

b. The extent to which the applicant will suffer irreparable injury if relief is not granted.

c. The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

d. The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

6.28(3) *Vacation.* A stay may be vacated by the issuing authority upon application of any party.

701—6.29(99G,123,17A) 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 of an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions found under subrule 6.14(5).

701—6.30(99G,123,17A) Emergency adjudicative proceedings.

6.30(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 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 department by emergency adjudicative order. Before issuing an emergency adjudicative order the department shall consider factors, including but not limited to the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency 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 is necessary to avoid the immediate danger.

6.30(2) *Issuance of order.*

a. Contents. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

b. Service. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery; or

(2) Certified mail, return receipt requested, to the last address on file with the agency.

c. Delivery. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.30(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.30(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger. After issuance of an emergency adjudicative order, continuance of further agency proceedings will be granted only in compelling circumstances upon application in writing.

701—6.31(99G,123,17A) Informal settlement. A party to a controversy that may culminate or has culminated in contested case proceedings may attempt informal settlement by complying with the procedures set forth in this rule. No party is required to settle the controversy or contested case by submitting to informal settlement procedures.

6.31(1) Parties desiring informal settlement are to set forth in writing the various points of a proposed settlement, including findings of facts.

6.31(2) When signed by the parties and approved by the director, a settlement shall represent final disposition of the matter.

6.31(3) A proposed settlement that is not accepted or signed by the parties and the director shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

This rule is intended to implement Iowa Code section 17A.10.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 7. Rescind 701—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
TAX APPEALS, TAXPAYER REPRESENTATION, AND OTHER ADMINISTRATIVE PROCEDURES

701—7.1(421,17A) Applicability and scope of rules. These rules implement the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the laws of this state and other activities of the department. These rules govern the practice, procedure, and conduct of the informal proceedings, contested case proceedings, and certain other administrative procedures within the department's jurisdiction. The rules in this chapter apply to all informal proceedings, contested case proceedings, licensing proceedings pending or commenced on or after their effective date; however, 701—Chapter 6 applies to appeals and contested case proceedings for matters under Iowa Code chapters 123 and 99G. 701—Chapter 3 contains rules on rulemaking for all matters within the department's jurisdiction. 701—Chapter 4 contains rules on declaratory order for all matters within the department's jurisdiction.

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

701—7.2(421,17A) Definitions. Terms not defined below have the same meaning as defined in Iowa Code chapter 17A. Unless otherwise specifically stated, the terms used in these rules promulgated by the department have the meanings defined by the Act. These definitions apply to this chapter unless the text states otherwise:

"Act" means the Iowa administrative procedure Act.

"Appeal" means a dispute of a notice of assessment, refund denial, or other department action that may culminate in a contested case proceeding. "Protest" has the same meaning as appeal.

"Appeals section" means the section of the department designated by the director to administer the informal stage of the tax appeals process and participate in contested case proceedings for appeals before the department.

"Clerk" means the clerk of the legal services and appeals division or the clerk's designee.

"Department" or *"IDR"* means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"Division of administrative hearings" means the division of the department of inspections, appeals, and licensing responsible for holding contested case proceedings pursuant to Iowa Code chapter 10A.

"Entity" means any taxpayer other than an individual or sole proprietorship.

"GovConnectIowa" means the e-services portal of the department.

"Informal stage" means the procedures of the appeals process described in rule 701—7.10(17A).

"Issuance" means the date specified in the decision or order, the date of mailing of a decision, or order or date of delivery of the decision or order if service is by other means.

"Last-known address" means the last address associated with a taxpayer by tax type, as determined pursuant to rule 701—7.23(421).

"Motion" means the same as defined in Iowa Rule of Civil Procedure 1.431.

"Party" means the same as defined in Iowa Code section 17A.2(8) and includes intervenors.

"Person" means the same as defined in Iowa Code section 17A.2. "Public or private organization of any character or any other person covered by the Act other than an agency" as used in that definition includes estates, trusts, or fiduciary.

"Petition" means application for declaratory order; request to intervene in a declaratory order under consideration; or application for initiation of proceedings to adopt, amend or rescind a rule or document filed in licensing.

"Pleadings" means appeal, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

"Presiding officer" means the person designated to preside over a proceeding involving the department. A presiding officer of a contested case involving the department will be either the director or a qualified administrative law judge appointed, pursuant to Iowa Code chapter 17A, by the division of administrative hearings established pursuant to Iowa Code section 10A.801. In cases in which the department is not a party, at the director's discretion, the presiding officer may be the director or the director's designee. The presiding officer of an administrative appeal is the director of the department.

"Proceeding" means informal, formal, and contested case proceedings.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the director did not preside, as described in Iowa Code section 17A.15.

"Review unit" means the unit composed of the appeals section of the department and any of the attorney general's staff who have been assigned to review appeals filed by taxpayers.

"Taxpayer interview" means any in-person contact between an employee of the department and a taxpayer or a taxpayer's representative that has been initiated by a department employee.

"Taxpayer's representative" or *"taxpayer's authorized representative"* means an individual authorized to practice before the department on behalf of a taxpayer under Iowa Code section 421.59;

an individual who has been named as an authorized representative on a fiduciary return of income form filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450 or 450B; or for proceedings before the department, any other individual the taxpayer designates who is named on a valid power of attorney if appearing on behalf of another.

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

701—7.3(17A) How to submit an appeal, petition or related documents; service. Appeals, petitions, and other documents governed by this chapter may be filed electronically, by mail, or in person, in accordance with the limits described below. The headquarters of the department in the Hoover State Office Building in Des Moines, Iowa, will generally be open between the hours of 8 a.m. and 4:30 p.m. daily, except Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A.

7.3(1) *Ways to submit an appeal, petition, or related document.* Unless otherwise specified in another rule in this chapter, a person may submit an appeal, petition, related document, or document filed during an appeal or pending petition:

a. By submitting through GovConnectIowa. As of November 12, 2024, GovConnectIowa is available for filing petitions for declaratory order, petitions for rulemaking, and petitions for rule waiver for all tax types as well as for lottery and alcohol matters but is only available for filing appeals for the following tax types: sales, use, E911, withholding, motor vehicle fee for new registration, vehicle lease, cigarette, tobacco products, alternative nicotine, vapor device, vapor products, drug stamp, utility replacement, central assessments, statewide property, motor fuel, hotel/motel, local option sales, automobile rental, water service excise, individual income, fiduciary income, corporation income, S corporation income, partnership income, composite, franchise, inheritance, moneys and credits, and tax credits and distributions associated with these tax types.

b. By email to idrhearings@iowa.gov.

c. By mail to Legal Services and Appeals Division, Iowa Department of Revenue, P.O. Box 14457, Des Moines, Iowa 50306-3457.

d. By hand delivery to the department's customer service desk in the Hoover State Office Building, First Floor, 1305 East Walnut Street, Des Moines, Iowa 50319, during regular business hours.

7.3(2) *Filings with the division of administrative hearings and service upon the department during contested case proceedings.* All documents or papers required or permitted to be filed with an administrative law judge appointed by the division of administrative hearings to be a presiding officer in a contested case shall be filed in accordance with rule 481—10.12(17A). All papers or documents required or permitted by this chapter to be filed with the department or the director and served upon the opposing party or other person in a contested case shall be served by ordinary mail unless another rule specifically refers to another method.

7.3(3) *Service by the department.* All notices or documents required or permitted by this chapter to be served on parties or persons by the department or presiding officer that are not currently pending before an administrative law judge shall be served by ordinary mail unless the taxpayer has elected to receive communications exclusively through GovConnectIowa, pursuant to rule 701—8.6(421). For taxpayers registered in GovConnectIowa, posting the document in the taxpayer's GovConnectIowa account constitutes service or notice of the document. For taxpayer representatives registered in GovConnectIowa, posting the document in the taxpayer representative's GovConnectIowa account constitutes service or notice of the document. For nonregistered taxpayers or nonregistered taxpayer representatives, documents will be served by ordinary mail. When this nonregistered mailing is required, however, the department may note on the docket the parties served and the method of service instead of filing a certificate of service. With respect to any notice, correspondence, or communication served electronically, response deadlines shall be calculated from the date the taxpayer is notified electronically of the correspondence or the item is mailed, whichever is earlier.

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

701—7.4(17A) Time requirements for filings.

7.4(1) *Computing time.* Time shall be computed in accordance with Iowa Code section 421.9A. For electronic submissions, in addition to the requirements described in Iowa Code section 421.9A, local time for the state of Iowa applies. In computing time in accordance with Iowa Code section 421.9A, the first day shall be excluded and the last included.

7.4(2) *Date of filing.* The date of filing for appeal requests, petitions, or other related documents shall be:

a. If sent electronically either through GovConnectIowa or as described on the department's website, determined by the date on which the electronic submission was completed.

b. If sent by regular mail, the date postmarked on the envelope sent to the department's principal office or, if the postmark is not available, the date the appeal is stamped as received by the department.

c. If hand delivered, the date the appeal is stamped as received by the department.

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

701—7.5(17A) Form and style of documents.

7.5(1) *Requirements applicable to all filings under this chapter.*

a. Signatures. Signatures must meet the requirements of 701—subrule 8.2(6). The signature shall constitute a certification that the signer has read the document; that, under penalty of perjury, the signer declares that to the best of the signer's knowledge and belief, the information contained in the document is true, correct, and complete; and that no statement contained in the document is misleading.

b. Citations. Citations may be italicized or underlined.

7.5(2) *Paper.* Any paper documents that are allowed or required to be submitted by this chapter must:

a. Be clear and legible.

b. Be on white paper.

c. Be on the applicable department appeal, application for reinstatement, or petition form available on the department's forms website revenue.iowa.gov/forms under the category "Applications and Other" or, if not on the department's form, include a proper caption on the first page.

d. Include a signature.

e. Include copies as herein provided or as specified in other applicable rules.

7.5(3) *Email.* Any documents allowed or required to be filed by email under this chapter must be:

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2), or

b. The body of an email that meets all of the requirements of subrules 7.5(1) and 7.5(2).

7.5(4) *GovConnectIowa.* Any documents allowed or required to be filed through GovConnectIowa under this chapter must be:

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2) that is properly uploaded and properly submitted through GovConnectIowa.

b. Completed and submitted on the applicable GovConnectIowa form.

This rule is intended to implement Iowa Code chapters 17A and 554D and sections 421.17 and 421.27A.

701—7.6(17A) Docket. Every matter coming within the purview of this chapter is assigned a docket number that is the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding. After the transfer of a case to the division of administrative hearings for contested case proceedings, that division may assign another docket number to the case and, in that event, both docket numbers will be placed by the parties on all documents thereafter filed in the proceeding.

701—7.7(17A) Identifying details, requests for redaction.

7.7(1) *Information redacted by the department, subject to certain exceptions.* Prior to being made available for public inspection, the department will redact from an appeal or contested case the information required by Iowa Code sections 422.20(5) and 422.72(8). "Make available for public inspection" means disclosure to the public by the department pursuant to Iowa Code section 17A.3 or chapter 22.

7.7(2) *Process for requesting redaction of other details from a pleading, exhibit, attachment, motion, or written evidence.* If a taxpayer desires information contained in a record, other than the information described in Iowa Code sections 422.20(5)*"a"* and 422.72(8)*"a,"* to be redacted prior to public inspection, the taxpayer must file a motion and affidavit meeting the requirements below.

a. Process for filing a motion for redaction of other details during a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed after the notice of hearing is issued in a contested case must comply with subrule 7.17(5).

b. Process for filing a motion for redaction of other details prior to the commencement of a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed prior to a contested case must be filed with the clerk of the hearings section of the department. The motion must be filed separately from the appeal described in subrule 7.9(6).

c. Contents of motion. Motions filed under this rule, including those filed during contested cases, shall contain the following:

(1) The name of the person requesting redaction and the docket number of the proceeding.

(2) Clear and convincing evidence that the disclosure would reveal a trade secret or would constitute a clear, unwarranted invasion of personal privacy. Corporations, limited liability companies, other business entities (including but not limited to partnerships and joint ventures), and trusts do not have protectible personal privacy interests.

(3) An unredacted copy of the document containing the information at issue and also a copy of the document with the desired redaction made. If a copy of the document is not in the possession of the taxpayer, the motion must contain a precise description of the document in the possession of the department from which the redaction is sought and a precise description of the information to be redacted. If redaction is sought from more than one document, each document and the information sought to be redacted shall be listed in separate paragraphs.

(4) For each item for which redaction is requested, an explanation of the legal basis for the redaction requested, including an explanation of why the release of the information sought to be redacted is a clear, unwarranted invasion of personal privacy or a trade secret.

(5) An affidavit in support of redaction. The affidavit must:

1. Be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying redaction, not merely the legal basis for redaction or conclusory allegations.

2. Contain a general and truthful statement that the information sought to be redacted is not available to the public from any source or combination of sources, direct or indirect, and a general statement that the release would serve no public purpose.

d. Burden of proof. The burden of showing that redaction is justified is on the movant. The burden is not carried by mere conclusory statements or allegations, for example, that the release of the material would be a clear, unwarranted invasion of personal privacy or that the material is a trade secret.

e. Contested case proceeding. That the information sought to be redacted is part of the pleadings, motions, evidence, and the record in a contested case proceeding otherwise open for public inspection and that the matter would otherwise constitute confidential tax information is not grounds for redaction.

7.7(3) *Process for requesting redaction of other details in a final order, decision, or ruling.* Motions to redact information from a final order, decision, or ruling cannot be made until the order is issued and must be made within 30 days of the date of the order, decision, or ruling. The taxpayer

must follow the requirements in paragraph 7.8(2)*"c"* and subrule 7.19(5). The department has 30 days to respond to the motion from the date the department's representatives receive notice from the presiding officer unless otherwise ordered by the presiding officer.

7.7(4) *Rulings.* Motions filed with the clerk of the hearings section will be ruled on by the director or may be referred by the director to an administrative law judge. Motions filed with the administrative law judge will be ruled on by the administrative law judge. In the case of motions before the director prior to contested case proceedings, the department may respond in writing to a motion on the request of the director or upon the initiative by department staff. Oral argument, including a hearing, may be held at the discretion of the presiding officer. The presiding officer may choose to close a hearing or other proceeding that may otherwise be open to the public due to the confidential nature of information covered by the motion during the pending motion.

7.7(5) *Limitation on motions.* If the motion or request is denied, the movant may not submit a motion to redact the same identifying details unless the movant is in possession of new information that may support the requested redaction(s) that the movant was not or could not have been aware of at the time of the original motion.

7.7(6) *Handling of the file while the motion is pending.* While a motion is pending, unless otherwise required or permitted by law, the department will treat the motion as if it has been granted and will not publicly release any information pursuant to Iowa Code chapter 22 or 17A sought to be kept confidential by the taxpayer.

This rule is intended to implement Iowa Code chapter 17A and sections 422.20(5) and 422.72(8).

701—7.8(17A) Tax appeals. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file an appeal, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The appeal must be filed as described in rule 701—7.3(17A).

7.8(1) *Deadlines.* The period for appealing department action relating to refund claims is the same statutory period as that for contesting an assessment. Failure to timely file a proper appeal will be construed as a waiver of opposition to the matter involved unless, on the director's own motion, pursuant to statutory authority, the powers of abatement or settlement are exercised.

7.8(2) *Paying an assessment that is divisible.* When an assessment involves divisible taxes that are not timely appealed, namely, an assessment that is divisible into a tax on each transaction or event, the taxpayer may contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment attributable to that specific type of transaction would be canceled. Any such appeal filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. If the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file an appeal as authorized by this rule.

7.8(3) *Types of divisible taxes.* All of the taxes administered and collected by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, franchise tax, partnership income, S corporation income, composite, and statewide property tax. The following noninclusive examples illustrate the application of the divisible tax concept.

EXAMPLE A: As a responsible party, X is assessed withholding income taxes, penalty, and interest on eight employees. X fails to timely appeal the assessment. X contends that X is not a responsible party. If X is a responsible party, X is required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X may pay an amount of tax, penalty, and interest attributable to one employee for one month and file a refund claim within the time period

provided by law since, if X is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B: Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely appeal the assessment. Y was billed monthly for electricity by the power company to which Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y may pay an amount of tax, penalty, and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since, if Y is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

7.8(4) *Who may be named in an appeal.* The appeal shall be brought in the name of the aggrieved taxpayer. Each aggrieved taxpayer may protest more than one agency action in a single appeal, subject to the applicable statutory appeal period for each protested agency action. Individuals or entities required to file separate tax returns or those choosing to file separate tax returns may not combine appeals with any other individual or entity. Taxpayers who are not named in the department action under appeal are not aggrieved taxpayers and may not be included in the appeal. The appeal may be filed by and in the name of the aggrieved taxpayer or by the authorized representative described in Iowa Code section 421.59(2), Iowa Code chapter 633B, or subrule 8.8(6) legally entitled to institute a proceeding on behalf of the person or by an intervenor in contested case proceedings. In the event of a discrepancy between the name set forth in the appeal and the correct name, a statement of the reason for the discrepancy shall be set forth in the appeal.

7.8(5) *Form and content of the appeal.*

a. Department forms. Appeals may be filed using the form available on GovConnectIowa or the form available on the department's website: revenue.iowa.gov/forms.

b. Manually created appeals. Persons who do not use GovConnectIowa or the form available on the department's website shall use the following format:

(1) The appeal shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	
_____		
(state taxpayer's name and address and	*	APPEAL
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	(filled in by Department)

(2) The appeal shall substantially state in separate numbered paragraphs the following:

1. Proper allegations showing:

- Date of department action, such as the notice of assessment or refund denial;
- Whether the taxpayer failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
- Whether the appeal involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;
- Copies of the documented department action, such as the notice of assessment, refund claim, and refund denial letter;
- Other items that the taxpayer wishes to bring to the attention of the department; and

- A request for attorney fees, if applicable.

2. The type of tax, the taxable period or periods involved, and the amount in controversy.

3. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided. A taxpayer may only allege errors related to specific audit determinations made by the department or related to issues presented for audit determinations by the department. If a taxpayer did not present for a determination by the department a particular exemption claim in the taxpayer's sales tax refund return, the taxpayer may not allege error related to such exemption claim when the taxpayer appeals the denial of the requested refund.

4. Reference to any particular statute or statutes and any rule or rules involved, if known.

5. Description of records or documents that were not available or were not presented to department personnel prior to the filing of the appeal, if any. Copies of any records or documents that were not previously presented to the department shall be provided.

6. Any other matters deemed relevant and not covered in the above paragraphs.

7. The desire of the taxpayer to expedite proceedings. Rule 701—7.12(17A,421) contains more details on expedited proceedings.

8. A statement setting forth the relief sought by the taxpayer.

9. The signature of the taxpayer or the authorized representative. If the appeal is signed by the taxpayer, the address and telephone number of the taxpayer is to be included in the signature block. If the appeal is signed by an authorized representative, the address and telephone number of the authorized representative is to be included in the signature block. Appeals submitted by an authorized representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—8.8(17A,22,421,422), on file with the department, or one should be included with the appeal.

c. Spouses. If an appeal involves an assessment or a refund denial to a married couple and both spouses intend to appeal, both spouses must sign the document as drafted under paragraph 7.8(5)*"a"* or *"b."* Appeals submitted by an authorized representative must include an executed IA 2848 power of attorney form or representative certification form, as applicable, for each spouse unless an IA 2848 power of attorney form or representative certification form is on file with the department.

7.8(6) *Amendments.*

a. Subject to the statutory appeal period, the taxpayer may amend the appeal at any time before a responsive pleading is filed. Amendments to the appeal after a responsive pleading has been filed may be allowed by the presiding officer, subject to the statutory appeal period, with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

b. The department may request that the taxpayer amend the appeal for purposes of clarification or to comply with format requirements. If the taxpayer fails to amend the appeal within the time provided for in the department's request, the department may move to dismiss the appeal under paragraph 7.11(3)*"a."* Requests by the department to the taxpayer to amend the appeal after a responsive pleading has been filed may be allowed by the presiding officer, subject to the statutory appeal period, with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

7.8(7) *Alcohol and lottery appeals.* This chapter does not apply to appeals and contested case proceedings for matters under the Iowa alcoholic beverage control Act (Iowa Code chapter 123) or the Iowa lottery act (Iowa Code chapter 99G). Information about appeals under those chapters is contained in 701—Chapter 6.

701—7.9(17A) Resolution of tax liability. In the event that a proper appeal has been filed, other department personnel, when authorized by the appeals section, have the authority to discuss the resolution of any matter in the appeal either with the taxpayer or the taxpayer's representative. The personnel shall report their activities in this regard to the appeals section, and the section shall be

authorized to approve or reject any recommendations made by the appropriate personnel to resolve an appeal.

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

701—7.10(17A) Informal stage of the tax appeals process. When an appeal is filed, the parties are encouraged to utilize the informal procedures described in this rule to reach a resolution between the parties without the necessity of initiating contested case proceedings. That resolution may be the granting of the appeal in full or in part, the denial of the appeal in full or in part, or an agreement to settle the matter. Unless, in accordance with rule 701—7.12(17A,421), the taxpayer demands a contested case proceeding or an expedited hearing is agreed to or the department waives informal procedures upon notification to the taxpayer, such informal procedures will be initiated as herein provided upon the filing of a proper appeal.

7.10(1) *Appeals section review.* After an appeal is filed, the review unit, subject to the control of the director or the division administrator of the legal services and appeals division, will:

a. Review and evaluate the validity of the appeal.

b. Determine the correct amount of tax owing or refund due.

c. Determine the best method of resolving the dispute between the taxpayer and the department.

d. Take further action regarding the appeal, including any additions to and deletions from the audit, as may be warranted by the circumstances to resolve the appeal, including a request for an informal conference.

e. Determine whether the appeal complies with rule 701—7.8(17A) and request any amendments to the appeal or additional information.

7.10(2) *Determinations, conferences.* The review unit may concede any items contained in the appeal that it determines should not be controverted by the department. If the taxpayer has not waived informal procedures, the review unit may request that the taxpayer and the taxpayer's representative, if any, attend an informal conference with the review unit to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or the possibility of narrowing the issues presented in the appeal if no settlement can be made. The review unit may request clarification of the issues from the taxpayer or further information from the taxpayer or third persons.

7.10(3) *Findings.* A position letter addressing the issues raised in the appeal may be issued to the taxpayer or taxpayer's representative unless the issues may be more expeditiously determined in another manner or it is determined that such a letter is unnecessary.

7.10(4) *Format of review.* Nothing herein will prevent the review unit and the taxpayer from mutually agreeing on the manner in which the appeal will be informally reviewed.

7.10(5) *Settlements.* Only the director, a deputy director, the division administrator of the legal services and appeals division, or another person designated in writing by the director may approve and sign settlements of appeals. If a settlement is reached during informal procedures, a closing order stating that a settlement was reached by the parties and that the case is terminated shall be issued by the director and provided to all parties.

This rule is intended to implement Iowa Code section 17A.10.

701—7.11(17A,421) Dismissal of tax appeals.

7.11(1) *Appeals filed after expiration of statutory deadline.* Appeals that are not filed by the applicable statutory deadline shall be dismissed by the director or the director's designee in accordance with the procedure outlined in paragraph 7.11(1)*"a."*

a. Procedures for motions to dismiss. The department shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion in writing within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the appeal. Once such dismissal order is entered, the director or the director's designee shall close the appeal. If a resistance is filed,

the department has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.15(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal was filed within the statutory appeal period. Thereafter, rule 701—7.18(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for denying the department's motion. The department's motion shall be granted unless the taxpayer can prove that it filed the appeal prior to the expiration of the statutory appeal deadline because the department failed to:

(1) Mail or personally deliver the notice of assessment, refund denial, or other notice of department action to the taxpayer's last-known address; or

(2) If applicable, also mail the notice of assessment, refund denial, or other notice of department action to the taxpayer's authorized representative; or

(3) Comply with the requirements of Iowa Code section 421.60(2)*"b."*

For purposes of this rule, "last-known address" and "personal delivery" mean the same as described in rule 701—7.23(421).

7.11(2) *Appeals not authorized by statute.* Appeals that are not authorized by statute or otherwise are inconsistent with the statutory requirements for an appeal shall be dismissed by the director in accordance with the procedure outlined in paragraph 7.11(1)*"a,"* except that the issue shall be limited to the question of whether the appeal is authorized by statute and consistent with statutory appeal requirements.

7.11(3) *Failure to pursue the appeal at the informal stage.* If the appeal was filed timely and informal procedures were initiated, the failure of the taxpayer to provide documents or information requested by the department, including the failure to respond to a position letter or an information request, shall constitute failure to pursue the appeal and is grounds for the department to dismiss the appeal in accordance with the procedure outlined in paragraph 7.11(3)*"a."* For purposes of this subrule, an evasive or an incomplete response will be treated as a failure to pursue the appeal.

a. Procedures for motions to dismiss. If the department seeks to dismiss the appeal, the department shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the appeal. If a resistance is filed, the department has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.15(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer failed to pursue the appeal, as that term is defined in this subrule. Thereafter, rule 701—7.18(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for reinstatement of dismissed appeals. If a motion to dismiss is filed and is unresisted, the appeal that was dismissed may be reinstated by the director or the director's designee for good cause if an application for reinstatement is filed with the clerk within 30 days of the date the appeal was dismissed. For purposes of this rule, "good cause" means the same as "good cause" in Iowa Rule of Civil Procedure 1.977.

c. Content and review of the application for reinstatement. The application shall set forth all reasons and facts upon which the taxpayer relies in seeking reinstatement of the appeal. Supporting documentation must be supplied. The department shall review and notify the taxpayer whether the application is granted or denied.

d. Denial of the application. If the department denies the application to reinstate the appeal, the taxpayer has 30 days from the date the application for reinstatement was denied in which to request, in

writing, a formal hearing on the reinstatement. The taxpayer shall send the written request to the clerk. When a written request for formal hearing is received, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice as prescribed in rule 701—7.15(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer has good cause to reinstate the dismissed appeal. Thereafter, rule 701—7.18(17A) pertaining to contested case proceedings shall apply in such reinstatement proceedings. If the taxpayer does not respond to a denial of the application for reinstatement within 30 days of the denial, the director or the director's designee will issue an order closing the appeal.

e. Failure to file timely application for reinstatement. If an application for reinstatement is filed after the 30-day deadline, the application shall not be accepted by the director or director's designee.

7.11(4) *Dismissal of appeals during contested case proceedings.* Once contested case proceedings have been commenced, it shall be grounds for a motion to dismiss that a taxpayer has either failed to diligently pursue the appeal or has refused to comply with requests for discovery set forth in rule 701—7.16(17A). Such a motion must be filed with the presiding officer.

This rule is intended to implement Iowa Code sections 17A.12, 421.10, 421.60, and 422.28.

701—7.12(17A,421) Demand for contested case proceeding. Pursuant to Iowa Code section 421.60(2)*"g,"* a taxpayer may make a written demand for a contested case proceeding after a period of six months from the filing of a proper appeal. Demands made prior to six months will be treated as premature and must be resubmitted six months or later from the filing of the appeal. Upon receipt of a timely written demand, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be applied in the manner described in the introductory paragraph of rule 701—7.13(17A).

This rule is intended to implement Iowa Code sections 17A.12 and 421.60.

701—7.13(17A) Answer. If the parties are unable to resolve the appeal informally, or if the parties waive informal proceedings as described in rule 701—7.12(17A,421), the department shall file an answer to the appeal with the clerk. Subject to the limitations in rule 701—7.12(17A,421), the department will file an answer within 30 days of receipt of written demand for a contested case hearing from the taxpayer. In the case of an appeal of an assessment, failure to answer within the 30-day time period and after a demand for hearing has been made shall result in the suspension of interest from the time that the department was required to answer until the date that the department files its answer. In the case of an appeal of a refund denial, failure to answer within the 30-day time period after a demand for hearing has been made shall result in the accrual of interest payable to the taxpayer at double the rate in effect under Iowa Code section 421.7 from the time the department was required to answer until the date that the department files its answer. Failure to file an answer within 30 days after the demand for contested case will not result in a default judgment for the taxpayer.

7.13(1) The answer of the department shall be drawn in a manner as provided by the Iowa Rules of Civil Procedure for answers filed in Iowa district courts.

7.13(2) Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the appeal. The answer shall be signed by the department's counsel or representative.

7.13(3) The department shall promptly serve a copy of the answer upon the representative of record or, if there is no representative of record, upon the taxpayer. The department may amend its answer at any time prior to the commencement of the evidentiary hearing in response to the filing of an amended appeal or to assert a new matter or an affirmative defense. The presiding officer has discretion to grant a continuance to avoid prejudice to the taxpayer or the department.

7.13(4) The provisions of this rule shall be considered as a part of the informal procedures since a contested case proceeding, at the time of the filing of the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the taxpayer or the department.

7.13(5) The department's answer may contain a statement setting forth whether the case should be transferred to the division of administrative hearings or the director should retain the case for hearing.

7.13(6) The department's answer should set forth the basis for retention of the case by the director as provided in subrule 7.18(1). If the answer fails to allege that the case should be retained by the director, the case should be transferred to the division of administrative hearings for contested case proceedings unless the director determines on the director's own motion that the case should be retained by the director.

7.13(7) Upon the filing of an answer, the clerk will transfer the appeal file to the division of administrative hearings within 30 days of the date of the filing of the answer unless the director determines not to transfer the case. If a party objects to a determination under rule 701—7.18(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

This rule is intended to implement Iowa Code chapter 17A and section 421.60.

701—7.14(17A) Subpoenas. Prior to the commencement of a contested case, the department has the authority to subpoena books, papers, and records and has all other subpoena powers conferred upon it by law. Subpoenas in this case shall be issued by the director or the director's designee. Once a contested case is commenced, subpoenas must be issued by the presiding officer.

This rule is intended to implement Iowa Code sections 17A.13, 421.9, 421.17, and 422.70.

701—7.15(17A) Commencement of contested case. A demand or request by the taxpayer for the commencement of contested case proceedings must be in writing and filed with the clerk by email to the address provided in paragraph 7.3(1)*"b"*; by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk to the address listed in paragraph 7.3(1)*"c"*; or by personal service to the department's customer service desk as described in paragraph 7.3(1)*"d."* Alternatively, a taxpayer that has a GovConnectIowa account may notify the clerk by using the Manage Appeal option in GovConnectIowa. The demand must be made no sooner than six months after the filing of the appeal. If the demand or request does not indicate a postmark date, then the date of receipt or the date personal service is made is considered the date of filing. Iowa Code section 622.105 describes the evidence necessary to establish proof of mailing.

7.15(1) When requesting a contested case hearing with the division of administrative hearings, the department shall complete a transmittal form consistent with rule 481—10.4(10A). The transmittal form is merely an administrative tool intended to facilitate the issuance of the notice of hearing.

7.15(2) At the request of a party or the presiding officer made prior to the issuance of the hearing notice, the presiding officer shall hold a telephone conference with the parties for the purpose of identifying the issues within the scope of the contested case, scheduling the hearing date, establishing discovery or other deadlines, and other procedural matters to be addressed in the notice of hearing. The notice of hearing shall be issued by the later of the following: within 30 days of the transmittal of the case from the department to the division of administrative hearings or one week after a telephone conference held under this subrule.

7.15(3) A contested case commences when the presiding officer delivers the notice of hearing by ordinary mail or electronic mail to the parties.

7.15(4) Any party may apply to the presiding officer for a continuance or a specific date for the hearing. The presiding officer may grant or deny such requests.

a. The notice of hearing shall include:

(1) A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is held;

(3) A reference to the particular sections of the statutes and rules involved; and

(4) A short and plain statement of the matters asserted, including the issues.

b. The statement of the issues in the notice of hearing shall not include issues that are not presented in the appeal or the answer.

7.15(5) After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings in accordance with this chapter.

This rule is intended to implement Iowa Code section 17A.12.

701—7.16(17A) Discovery.

7.16(1) The rules of the supreme court of the state of Iowa applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested cases.

7.16(2) Disputes concerning discovery shall be resolved by the presiding officer. If necessary, a hearing shall be scheduled, with reasonable notice to the parties, and, upon hearing, an appropriate order shall be issued by the presiding officer.

7.16(3) When the department relies on a witness in a contested case, whether or not the witness is a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, the department shall, on request, make such statements or reports available to a party for use on cross-examination unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute.

7.16(4) Identifiable department records that are relevant to disputed material facts involved in a contested case shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

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

701—7.17(17A) Prehearing conference.

7.17(1) Following the commencement of the contested case and upon the motion of the presiding officer, or upon the written request of a party, the presiding officer shall direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

a. The possibility or desirability of waiving any provisions of the Act relating to contested cases by written stipulation representing an informed mutual consent;

b. The necessity or desirability of setting a new date for hearing;

c. The simplification of issues;

d. The necessity or desirability of amending the pleadings, subject to the applicable statute of limitations and the applicable statutory appeal period;

e. The possibility of agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of proof;

f. The procedure at the hearing;

g. Limiting the number of witnesses;

h. The names and identification of witnesses and the facts each party will attempt to prove at the hearing;

i. Conduct or schedule of discovery; and

j. Such other matters as may aid, expedite or simplify the disposition of the proceeding.

7.17(2) Any action taken at the prehearing conference shall be recorded in an order unless the parties enter into a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

7.17(3) When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed for the parties to present objections on the grounds that the order does not fully or correctly embody the agreements made at such conference. Thereafter, the terms of the order or

modification thereof shall determine the subsequent course of the proceedings relative to matters the order includes unless modified to prevent manifest injustice.

7.17(4) If either party to the contested case fails to appear at the prehearing conference without requesting a continuance and without submitting evidence or arguments that the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.18(5).

This rule is intended to implement Iowa Code section 17A.12.

701—7.18(17A) Contested case procedures.

7.18(1) *Evidentiary hearing.* Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested cases shall culminate in an evidentiary hearing open to the public.

a. Evidentiary hearings in which the presiding officer is an administrative law judge employed by the division of administrative hearings shall be held at the location designated in the notice of evidentiary hearing.

b. If the director retains a contested case, the location for the evidentiary hearing will generally be at the main office of the department at the Hoover State Office Building, First Floor, Des Moines, Iowa 50319. However, the department retains the discretion to change the location of the evidentiary hearing if necessary. The location of the evidentiary hearing will be designated in the notice of hearing issued by the director.

7.18(2) *Determination of presiding officer.* If the director retains a contested case for evidentiary hearing and the department is a party, the initial presiding officer will be the director. Upon determining that a case will be retained and not transferred to the division of administrative hearings, the director shall issue to the parties a written notification of the determination that states the basis for retaining the case for evidentiary hearing.

a. The director may determine to retain a contested case for evidentiary hearing and decision upon the filing by the department of its answer under rule 701—7.13(17A). If the answer failed to allege that the case should be retained by the director and the case was transferred to the division of administrative hearings for contested case proceedings, either party may, within a reasonable time after the issuance of the hearing notice provided in rule 701—7.15(17A), make application to the director to recall and retain the case for hearing and decision. Any such application shall be served upon the assigned administrative law judge or presiding officer.

b. A taxpayer may file a written objection to the director's determination to retain the case for evidentiary hearing and may request that the contested case be heard by an administrative law judge or presiding officer and request a hearing on the objection. Such an objection must be filed with the clerk by email to the address provided in paragraph 7.3(1)*"b,"* by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk to the address listed in paragraph 7.3(1)*"c,"* or by personal service to the department's customer service desk as described in paragraph 7.3(1)*"d"* within 20 days of the notice issued by the director of the director's determination to retain the case.

c. The director may retain the case only upon a finding that one or more of the following apply:

(1) One of the reasons listed in Iowa Code section 17A.11(1)*"a."*

(2) The case involves an issue or issues the resolution of which would create important precedent;

(3) The case involves complex or extraordinary questions of law or fact;

(4) The case involves issues or questions of law or fact that, based on the director's discretion, should be retained by the director;

(5) The request is not consistent with a specified statute; or

(6) Assignment of an administrative law judge will result in lengthening the time for issuance of a proposed decision, after the case is submitted, beyond a reasonable time as provided in subrule 7.18(8). In making this determination, the director shall consider whether the assigned administrative

law judge has a current backlog of submitted cases for which decisions have not been issued for one year after submission.

d. The director shall issue a written order specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If a party objects to the director's determination to retain a case for evidentiary hearing, transfer of the appeal file, if any, will be made after the director makes a final determination on the objection. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to the hearing whether a qualified administrative law judge will be available.

e. If there is no factual conflict or credibility of evidence offered in issue, either party, after the contested case has been heard and a proposed decision is pending with a presiding officer other than the director for at least one year, may make application to the director to transfer the case to the director for decision. In addition, if one or more criteria listed in paragraph 7.18(2)*"c"* exist, the director, on the director's own motion, may issue a notice to the parties of the director's intention to transfer the case to the director for decision. The opposing party may file, within 20 days after service of such application or notice by the director, a resistance setting forth in detail why the case should not be transferred. If the director approves the transfer of the case, the director shall issue a final contested case decision. The director or a party may request that the parties be allowed to submit proposed findings of fact and conclusions of law.

f. The director has the right to require that any presiding officer, other than the director, be a licensed attorney in the state of Iowa unless the contested case only involves licensing. In addition, any presiding officer must possess, upon determination by the director, sufficient technical expertise and experience in the areas of taxation and presiding over proceedings to effectively determine the issues involved in the proceeding.

g. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the director.

7.18(3) *Conduct of proceedings.*

a. A proceeding shall be conducted by a presiding officer who shall:

(1) Open the record and receive appearances;

(2) Administer oaths and issue subpoenas;

(3) Enter the notice of hearing into the record;

(4) Receive testimony and exhibits presented by the parties;

(5) In the presiding officer's discretion, interrogate witnesses;

(6) Rule on objections and motions;

(7) Close the hearing; and

(8) Issue an order containing findings of fact and conclusions of law.

b. The presiding officer may resolve preliminary procedural motions by telephone or videoconference in which all parties have an opportunity to participate. Other telephone or video proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or video hearing. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

c. Evidentiary proceedings shall be oral, open to the public, and recorded either by electronic means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters bear the costs of reporting. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the department for at least five years from the date of the decision. An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order:

(1) Taxpayer,

(2) Intervenor (if applicable),

(3) Department,

(4) Rebuttal by taxpayer,

(5) Oral argument by parties (if necessary).

d. If the taxpayer or the department appears without counsel or other representative who can reasonably be expected to be familiar with these rules, the presiding officer shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have counsel or representation. It should be the purpose of the presiding officer to assist any party appearing without such representative to the extent necessary to allow the party to present evidence, testimony, and argument on the issues. The presiding officer shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

e. If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

f. The presiding officer may enter a default decision as described in subrule 7.18(7).

g. Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the presiding officer.

7.18(4) *Rules of evidence.*

a. Oath. All testimony presented before the presiding officer shall be given under oath, which the presiding officer has authority to administer.

b. Production of evidence and testimony. The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records, or other real evidence.

c. Subpoena. When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the presiding officer the name of the case, the docket number, and the last-known mailing addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the presiding officer, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case that the witness is required to attend. No costs for serving a subpoena will be allowed if the subpoena is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the presiding officer.

d. Admissibility of evidence.

(1) Evidence having probative value.

1. Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, substantially any part of the evidence may be required to be submitted in verified written form by the presiding officer.

2. Objections to evidentiary offers may be made at the hearing, and the presiding officer's ruling thereon shall be noted in the record.

(2) Evidence of a federal determination of the taxpayer's liability. Evidence of a federal determination of the taxpayer's liability such as a treasury department ruling, regulation or determination letter issued to the taxpayer; a taxpayer's federal court decision; or an Internal Revenue Service assessment issued to the taxpayer relating to issues raised in the proceeding are admissible,

and the taxpayer is presumed to have conceded the accuracy of the federal determination unless the taxpayer specifically states wherein it is erroneous.

(3) Copies of evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) Stipulations. Approval of the presiding officer is not required for stipulations of fact to be used in contested case proceedings. In the event the parties file stipulations of fact in the proceedings, the stipulation is binding on the parties and the presiding officer.

e. Identification of exhibits. Exhibits that are offered by taxpayers and attached to a stipulation or entered in evidence shall be numbered serially, e.g., 1, 2, 3; exhibits offered by the department shall be lettered serially, e.g., A, B, C; and those offered jointly shall be numbered and lettered, e.g., 1-A, 2-B, 3-C.

f. Official notice. The official notice provisions of Iowa Code section 17A.14(4) apply to contested cases of the department.

g. Evidence outside the record. Except as provided by these rules, the presiding officer shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

h. Presentation of evidence and testimony. In any hearing, each party in attendance shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. A person whose testimony has been submitted in written form shall, if available, also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for re-direct examination and re-cross-examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

i. Offer of proof. An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

7.18(5) *Motions.*

a. Filing of motions after commencement of contested case proceedings. After commencement of contested case proceedings, appropriate motions may be filed with the presiding officer by any party when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the motions are based.

b. Service, rulings. Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. The presiding officer will rule on such motions by issuing a written order. A copy of the order containing the ruling on the motion shall be served on the parties and authorized representatives. A motion may be made orally during the course of a hearing; however, the presiding officer may request that the motion be reduced to writing and filed with the presiding officer.

c. Consent of the opposing party, burden. To avoid a hearing on a motion, it is advisable to secure the consent of the opposing party prior to filing the motion. If consent of the opposing party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause as to why the motion should be granted.

d. Affidavits. The party making the motion may affix thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposing party may reply with counter affidavits.

e. Resistance. The party opposing a motion, except in the case of motions for summary judgment, must file its resistance within ten days of the date of filing of the motion unless a presiding officer otherwise orders a different deadline to file the resistance.

f. Reply. The movant may file a reply within seven days of the date of filing of the resistance to the motion.

g. Types of motions. Types of motions include but are not limited to:

(1) Motion for continuance. Motions for continuance should be filed no later than ten days before the scheduled date of the contested case hearing unless the grounds for the motion are first known to the moving party within ten days of the hearing, in which case the motion shall be promptly filed and shall set forth why it could not be filed at least ten days prior to the hearing. Grounds for motion for continuance include, but are not limited to, the unavailability of a party, a party's representative, or a witness; the incompletion of discovery; and the possibility of settlement of the case.

(2) Motion for dismissal.

(3) Motion for summary judgment.

(4) Motion for redaction of identifying details in the decision. More information is contained in rule 701—7.7(17A).

(5) Motion for default.

(6) Motion to vacate default.

h. Summary judgment procedure. Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may move, with or without supporting affidavits, for summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 60 days prior to the date set for the contested case hearing unless otherwise ordered by the presiding officer. Any party resisting the motion shall file the following within 30 days of the date of filing of the motion: a resistance; a statement of disputed facts, if any; and a memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The movant may reply to the resistance within 15 days of the date of filing of the resistance.

(3) Upon any motion for summary judgment pursuant to this rule, there shall be affixed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits that support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleading but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the presiding officer at the hearing of the motion, by examining the pleadings and the evidence before the presiding officer and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The presiding officer shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot present, by affidavit, facts essential to justify the party's opposition, the presiding officer may refuse the application for judgment, may order a continuance to permit affidavits to be obtained, may order depositions be taken or discovery be completed, or may make any other order appropriate.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule 7.18(8).

7.18(6) *Briefs and oral argument.*

a. At any time, upon the request of any party or in the presiding officer's discretion, the presiding officer may require the filing of briefs on any of the issues before the presiding officer prior to or at the time of hearing, or at a subsequent time. At the conclusion of hearing, the parties should be prepared to make oral arguments as to the facts and law if directed by the presiding officer.

b. A copy of all briefs shall be filed. Filed briefs shall conform to the requirements of subrules 7.5(1) and 7.5(2).

c. The parties may agree to a briefing schedule. If the parties agree to a briefing schedule and if the presiding offer adopts the agreed-upon briefing schedule by issuing an order to that effect, the schedule is binding on the parties and the presiding officer except that, for good cause shown, the time may be extended upon application of a party.

7.18(7) *Defaults.* 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.

a. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading or has failed to appear after proper service.

b. A default decision or a decision rendered on the merits after a party failed to appear or participate in a contested case proceeding becomes a final department action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided in subrule 7.18(8). 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, and such affidavit(s) must be attached to the motion.

c. 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.

d. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

e. For purposes of this rule, "good cause" means the same as "good cause" in Iowa Rule of Civil Procedure 1.977.

f. 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 adversely affected party as provided in subrule 7.18(11).

g. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

h. A default decision may award any relief consistent with the request for relief by the party in whose favor the default decision is made and embraced in the contested case issues, but unless the defaulting party has appeared, the relief awarded cannot exceed the relief demanded.

i. 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 a stay.

7.18(8) *Orders.*

a. Proposed decisions submitted by parties. At the conclusion of the hearing, the presiding officer, in the presiding officer's discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the presiding officer shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law. In addition to or in lieu of

the filing of briefs, upon the request of all of the parties waiving any contrary contested case provisions of law or of these rules, the presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law, and the presiding officer may sign and adopt as the decision or proposed decision one of such proposed findings of fact and conclusions of law without any changes or with such changes that are supported by the record and law.

b. Preparing the proposed decision. The decision in a contested case is an order that shall be in writing or stated in the record. The order shall include findings of fact prepared by the presiding officer, unless the presiding officer is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of the taxpayer, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of the amount of such award unless the parties agree otherwise. All decisions and orders in a contested case proceeding shall be based solely on the legal bases and arguments presented by the parties. In the event that the presiding officer believes that a legal basis or argument for a decision or order exists, but has not been presented by the parties, the presiding officer shall notify the parties and give them an opportunity to file a brief that addresses such legal basis or argument.

c. Decision on motions to redact identifying details. When a motion has been made to redact identifying details in an order on the basis of personal privacy or trade secrets, the justification for such redaction or refusal to redact shall be made by the moving party and shall appear in the order.

d. Proposed and final decisions. When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes final and not subject to judicial review unless there is an appeal to or review on motion of the director within 30 days of the date of the order, including Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, or 10 days, excluding Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, for a revocation order pursuant to rule 701—7.26(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director's motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal to or review by the director within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become final and not subject to judicial review. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues presented at the hearing before the presiding officer or raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

e. Application to review interlocutory decisions. Notwithstanding this rule, where a presiding officer other than the director issues an interlocutory decision or ruling which does not dispose of all the issues, except reasonable litigation costs, in the contested case proceeding, the party adversely affected by the interlocutory decision or ruling may apply to the director within 20 days (10 days for a revocation proceeding) of the date of issuance of the interlocutory decision or ruling to grant an appeal

in advance of the proposed decision. The application shall be served on the parties and the presiding officer. The party opposing the application shall file any resistance within 15 days of the service of the application unless, for good cause, the director extends the time for such filing. The director, in the exercise of discretion, may grant the application on finding that such interlocutory decision or ruling involves substantial rights and will materially affect the proposed decision and that a determination of its correctness before hearing on the merits will better serve the interests of justice. The order of the director granting the appeal may be on terms setting forth the course of proceedings on appeal, including advancing the appeal for prompt submission, and the order shall stay further proceedings below. The presiding officer, at the request of the director, shall promptly forward to the director all or a portion of the file or record in the contested case proceeding.

f. Appeals to and reviews by director—notice to administrative hearings division. In the event of an appeal to or review of the proposed order by the director, the administrative hearings division shall be promptly notified of the appeal or review by the director. The administrative hearings division shall, upon such notice, promptly forward the record of the contested case proceeding and all other papers associated with the case to the director.

g. Director's authority in appeals and review of proposed decisions. On an appeal or review of a proposed decision, the director has all the power which the director would have in initially making the final decision except as it may limit the issues on notice to the parties. A decision by the director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding of fact or may reverse or modify any conclusion of law that the director finds to be in error.

h. Issuing orders. Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service, regular mail, certified mail, return receipt requested, AEDMS as described in 481—Chapter 16, or any other method to which the parties may agree. For example, a copy of the order can be submitted by electronic mail if both parties agree.

i. Cross-appeals. A cross-appeal may be taken within the 30-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 701—7.26(17A), the cross-appeal may be taken within the ten-day period for taking an appeal to the director or in any event within five days after the appeal to the director is taken.

j. Transmission of case from administrative hearings division back to the department. Upon issuance of a closing order or the proposed decision by a presiding officer other than the director, such presiding officer no longer has authority over the contested case, except to resolve taxpayer requests for awards of reasonable litigation costs. Thereafter, any further proceedings associated with or related to the contested case must occur before the director.

k. Exhaustion of administrative remedies required. A party may not seek judicial review until the director has issued a final decision of the agency. If a party seeks judicial review of a proposed decision of an administrative law judge without appealing to the director or without review of the proposed decision by the director, the party is deemed to have failed to exhaust adequate administrative remedies.

7.18(9) *Stays.*

a. During the pendency of judicial review of the final contested case order of the department, the party seeking judicial review may file with the director an application for a stay. The application shall set forth in detail the reasons why the applicant is entitled to a stay and shall specifically address the following four factors:

(1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter;

(2) The extent to which the applicant will suffer irreparable injury if the stay is not granted;

(3) The extent to which the granting of a stay to the applicant will substantially harm the other parties to the proceedings; and

(4) The extent to which the public interest relied on by the department is sufficient to justify the department's actions in the circumstances.

b. The director shall consider and balance the previously mentioned four factors and may consult with department personnel and the department's representatives in the judicial review proceeding. The director shall expeditiously grant or deny the stay.

7.18(10) *Costs.*

a. A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded by the department reasonable litigation costs incurred subsequent to the issuance of the notice of assessment or refund denial that are based upon the following:

(1) The reasonable expenses of expert witnesses.

(2) The reasonable costs of studies, reports, and tests.

(3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer. No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

b. An award for reasonable litigation costs shall not exceed $25,000 per case.

c. No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

d. For purposes of this subrule, "prevailing taxpayer" means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy, or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department in issuance of the assessment or refund denial was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

e. The definition of "prevailing taxpayer" is taken from the definition of "prevailing party" in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service's position was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

f. The taxpayer has the burden of establishing the unreasonableness of the department's position.

g. Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not, per se, either authorize an award of reasonable litigation costs or preclude such award.

h. If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

i. The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the appeal, or the request for award will not be considered.

j. A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding, or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

k. At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:

(1) Whether the department's position was substantially justified;

(2) Whether the taxpayer is the prevailing taxpayer;

(3) Whether the taxpayer has established how the alleged reasonable litigation costs were incurred. The burden is upon the taxpayer to establish how the alleged reasonable litigation costs were

incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;

(4) Whether alleged litigation costs are reasonable or necessary;

(5) Whether the taxpayer has met the taxpayer's burden of demonstrating all of these points.

7.18(11) *Interlocutory appeals.* Upon written request of a party or on the director's own motion, the director may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the director at the time of the review of the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

7.18(12) *Consolidation and severance.*

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. Severance. On motion by a party, the presiding officer may, for good cause shown, order any contested case or portions thereof severed. If the presiding officer severs one or more issues from the remaining issues in the contested case, the contested case proceeds only on the issues that the presiding officer ordered for resolution. Once the decision on the issues that the presiding officer ordered for resolution becomes final and is not subject to further appeals, the parties may proceed, if necessary, with contested case on the issues that the presiding officer severed.

c. Stipulations. Stipulations of fact are encouraged, but no party can be required to stipulate to any facts. Stipulations as to the law are invalid.

d. Informal disposition. Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, or consent order or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the presiding officer that the case has been settled. Upon request, the presiding officer shall issue a closing order to reflect such a disposition. The contested case is terminated upon issuance of a closing order.

e. Mutual waivers. Unless otherwise precluded by law, the parties in a contested case proceeding may mutually agree to waive any provision under this rule governing contested case proceedings.

This rule is intended to implement Iowa Code sections 17A.12, 17A.14, 17A.15, 421.60 and 452A.68.

701—7.19(17A) Interventions. Interventions are governed by the Iowa Rules of Civil Procedure.

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

701—7.20(17A) Record and transcript.

7.20(1) The record in a contested case shall include:

a. All pleadings, motions, and rulings;

b. All evidence received or considered and all other submissions;

c. A statement of all matters officially noticed;

d. All questions and offers of proof, objections, and rulings thereon;

e. All proposed findings and exceptions;

f. All orders of the presiding officer; and

g. The order of the director on appeal or review.

7.20(2) Oral hearings regarding proceedings on appeal to or considered on motion of the director that are recorded by electronic means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. Such a request must be filed with the clerk who will be responsible for making the transcript. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review if so requested and if no objection is made by any other party to the proceeding or the director.

7.20(3) Upon request, the department shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means bear the cost of that recording unless otherwise provided by law.

7.20(4) Upon issuance of a proposed decision that leaves no issues open for further consideration or upon issuance of a closing order, the administrative hearings division shall promptly forward the record of a contested case proceeding to the director. However, the administrative hearings division may keep the tapes of any evidentiary proceeding in case a transcript of the proceeding is required and, if one is required, the administrative hearings division shall make the transcription and promptly forward the tapes and the transcription to the director.

This rule is intended to implement Iowa Code section 17A.12.

701—7.21(17A) Application for rehearing. Any party to a contested case may file an application with the director for a rehearing in the contested case with the clerk in one of the manners described in subrule 7.3(1), stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the final order is issued. A copy of such application shall be timely served by the applicant on all parties in conformity with rule 701—7.3(17A). The director shall have 20 days from the filing of the application for rehearing to grant or deny the application. If the application for rehearing is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing is deemed denied if not granted by the director within 20 days after filing.

7.21(1) The application for rehearing shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	
_____		
(state taxpayer's name and address and	*	APPLICATION FOR REHEARING
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	

7.21(2) The application for rehearing shall substantially state in separate numbered paragraphs the following:

a. Clear and concise statements of the reasons for requesting a rehearing and each and every error that the party alleges to have been committed during the contested case proceedings;

b. Clear and concise statements of all relevant facts upon which the party relies;

c. Reference to any particular statute or statutes and any rule or rules involved;

d. The signature of the party or that of the party's representative, the address of the party or of the party's representative, and the telephone number of the party or the party's representative.

7.21(3) No applications for rehearing shall be filed with or entertained by an administrative law judge.

This rule is intended to implement Iowa Code section 17A.16.

701—7.22(17A) Ex parte communications and disqualification.

7.22(1) *Ex parte communication.* A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk. The clerk will transfer to the presiding officer the filed copy of the prohibited communication.

a. Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in this rule, 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. Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

b. "Ex parte" communication defined. Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

c. How to avoid prohibited communications. To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with this chapter and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. Where permitted, oral communications may be initiated through conference telephone calls including all parties or their representatives.

d. Joint presiding officers. 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.

e. Advice to presiding officer. Persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the parties are not disqualified from participating in the making of a proposed or final decision under any provision of law and the parties comply with these rules.

f. Procedural communications. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines.

g. Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be

allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

h. Disclosure by presiding officer. Promptly after receiving the communication or 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.

7.22(2) *Disqualification of a presiding officer.* Request for disqualification of a presiding officer must be filed in the form of a motion supported by an affidavit asserting an appropriate ground for disqualification. A substitute presiding officer may be appointed by the division of administrative hearings if the disqualified presiding officer is an administrative law judge. If the disqualified presiding officer is the director, the governor must appoint a substitute presiding officer.

a. Grounds for disqualification. A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) 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;

(3) 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;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) 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;

(6) 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 to the case;
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

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

b. Personally investigated. "Personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other department functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and these rules.

c. Disqualification and the record. In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record

by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

d. Motion asserting disqualification.

(1) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

(2) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and seek a stay as provided under this chapter.

This rule is intended to implement Iowa Code sections 17A.17 and 11.

701—7.23(421) Mailing to the last-known address or personal delivery of notices of assessment and refund denial letters.

7.23(1) *Failure by department to mail to last-known address or personally deliver.*

a. If the department fails to either mail a notice of assessment to the taxpayer's last-known address or personally deliver the notice to the taxpayer, interest is waived for the month the failure occurs through the month of correct mailing or personal delivery.

b. In addition, if the department fails to either mail to the taxpayer's last-known address or personally deliver to the taxpayer a notice of assessment or denial of a claim for refund or fails to mail or personally deliver a copy of the notice to the taxpayer's authorized representative, if applicable, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered or for a period not to exceed one year, whichever is the lesser period.

c. Collection activities, except in the case of a jeopardy assessment, shall be suspended and the statute of limitations for assessment and collection of the tax shall be tolled during the period in which interest is waived.

7.23(2) *Determination of last-known address.*

a. A taxpayer's last-known address for a particular tax type shall be one of the following most recently updated in the department's records:

(1) The address provided in an application to register or receive a permit for a particular tax type;

(2) The address used on the most recent filed and processed Iowa tax return of a particular tax type;

(3) The address received by the department in a written, concise statement the taxpayer mailed to: Changes in Name or Address, Iowa Department of Revenue, P.O. Box 10465, Des Moines, Iowa 50306;

(4) The address provided by the taxpayer in GovConnectIowa;

(5) The address provided by the taxpayer in any correspondence to the department;

(6) The address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

b. While the determination of last-known address may differ by tax type, a notice of assessment or refund claim denial will be considered to be mailed to the last-known address if it is mailed to the taxpayer's last-known address used for another tax type.

7.23(3) *Mail or personal delivery to a taxpayer.* The following shall constitute personal delivery to a taxpayer:

a. Personal service upon a taxpayer by any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure.

b. Providing a notice of assessment or refund claim denial to the taxpayer by electronic means based on the taxpayer's election to receive electronic communications in GovConnectIowa.

c. Mailing to an address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

d. By any other method that is reasonably calculated to result in the taxpayer's actually receiving the notice, if the taxpayer actually receives the notice.

7.23(4) *Mail or personal delivery to authorized representatives.* The department may mail or personally deliver a copy of a notice to an authorized representative by one of the following methods:

a. Mailing to the address used on the most recently filed and processed written authorization as described in rule 701—8.8(17A,22,421,422) for the taxpayer the authorized representative is representing, or the most recent address on file;

b. In the case of fiduciary or inheritance tax matters, mailing to the address for the authorized representative contained on the most recently filed and processed return;

c. By providing the notice electronically through GovConnectIowa or similar method of electronic service;

d. By any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure;

e. By any other method that is reasonably calculated to result in the authorized representative's actually receiving a copy of the notice if the authorized representative actually receives a copy of the notice.

This rule is intended to implement Iowa Code section 421.60.

701—7.24(441) Appeals of director's rejection of assessor appointment or reappointment.

7.24(1) *Written request for appeal.* Any assessor or conference board wishing to contest the director's rejection of the conference board's appointment of an assessor under 701—subrule 10.15(4) or reappointment of an assessor under 701—subrule 103.16(3) shall file an appeal, in writing, within 30 days of the director's notice of decision. Any person who does not seek an appeal within 30 days of the director's notice shall be precluded from challenging the director's decision.

7.24(2) *Procedures.* Appeals will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

a. Subrules 7.3(2) and 7.3(3);

b. Rule 701—7.7(17A);

c. The introductory paragraph of rule 701—7.8(17A) and subrule 7.8(6);

d. Subrules 7.11(1), 7.11(2), and 7.11(4);

e. Rule 701—7.12(17A,421);

f. Subrules 7.13(1) to 7.13(3);

g. Rule 701—7.14(17A);

h. Rule 701—7.15(17A);

i. Rule 701—7.16(17A);

j. Rule 701—7.17(17A);

k. Subrule 7.18(1); subrules 7.18(3) through 7.18(7); subrule 7.18(8), except paragraph 7.18(8)*"b"* related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.18(9) and 7.18(12);

l. Rule 701—7.19(17A);

m. Rule 701—7.20(17A);

n. Rule 701—7.21(17A);

o. Rule 701—7.22(17A); and

p. Rule 701—8.8(17A,22,421,422).

7.24(3) *Presiding officer.* The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any

matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.24(4) *Contents of the appeal.* The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the department action giving rise to the appeal.

b. The date of the department action giving rise to the appeal.

c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to the particular statutes, rules, or agreement terms, if known.

e. References to and copies of any documents or other evidence relevant to the appeal.

f. Any other matters deemed relevant to the appeal.

g. A statement setting forth the relief sought.

h. The signature, mailing address, and telephone number of the person or that person's representative.

7.24(5) *Burden of proof.* The burden of proof is on the party challenging the director's decision under 701—subrule 10.15(4) or 103.16(3).

This rule is intended to implement Iowa Code section 441.6(3) and chapter 17A.

701—7.25(441) Appeals and hearings regarding the director's intent to remove a member of the board of review.

7.25(1) *Written request for hearing.* A member of the board of review who has received a notice of intent to remove from the director and who wishes to contest the removal shall file a written request for a hearing within 30 days after the receipt of the notice of the director's intent to remove the member. Any person who does not seek a hearing within 30 days of receipt of the notice of the director's intent to remove shall be precluded from challenging the removal.

7.25(2) *Procedures.* Hearings will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

a. The introductory paragraph of rule 701—7.7(17A), excluding the first sentence of the introductory paragraph of 701—7.7(17A); and subrule 7.8(6);

b. Subrule 7.8(1);

c. 701—7.9(17A);

d. Subrules 7.11(1) to 7.11(4);

e. Rule 701—7.12(17A,421);

f. Rule 701—7.13(17A);

g. Rule 701—7.14(17A);

h. Rule 701—7.15(17A);

i. Subrule 7.18(1); 7.18(3) through 7.18(7); subrule 7.18(8), except paragraph 7.18(8)*"b"* related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.18(9), and 7.18(12);

j. Rule 701—7.17(17A);

k. Rule 701—7.18(17A);

l. Rule 701—7.19(17A);

m. Rule 701—7.20(17A); and

n. Rule 701—7.21(17A).

7.25(3) *Presiding officer.* The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.25(4) *Contents of the appeal.* The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the department action giving rise to the appeal.

b. The date of the department action giving rise to the appeal.

c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to the particular statutes, rules, or agreement terms, if known.

e. References to and copies of any documents or other evidence relevant to the appeal.

f. Any other matters deemed relevant to the appeal.

g. A statement setting forth the relief sought.

h. The signature, mailing address, and telephone number of the person or that person's representative.

7.25(5) *Burden of proof.* The burden of proof is on the party challenging the director's intent to remove a board member.

This rule is intended to implement Iowa Code section 441.32(2)*"e"* and chapter 17A.

701—7.26(17A) License and permit denials and revocations.

7.26(1) *Specified license or permit denial and revocation processes.* Procedures related to alcohol and lottery license denials and revocations are contained in 701—Chapters 1000 and 1102. Procedures related to sales or use tax permit revocations are contained in 701—Chapter 201. For all other license and permit denials, this rule applies.

7.26(2) *Denial of license or permit; refusal to renew license or permit.*

a. Written notice in general. When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, the department will serve notice of intent to deny or refuse the license by restricted certified mail or by personal service as in a civil action. The notice will contain a statement of facts or conduct and the provisions of law which warrant the denial of the license or the refusal to renew a license. The notice will provide the licensee or applicant with 30 days to request a hearing and information about how to contact the department to make such a request.

b. Requesting a hearing. If a hearing is requested, the matter will be transferred to the administrative hearings office unless retained by the director.

c. Notice of hearing. A notice of hearing issued as described in rule 701—7.15(17A) upon the licensee or applicant.

d. Licensee opportunity to file a petition. If the licensee so desires, the licensee may file a petition as provided in subrule 7.26(4) with the presiding officer within 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.18(17A) governing contested case proceedings shall apply.

e. Treatment of existing license while matter is pending. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and in the case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a later date fixed by order of the department or the reviewing court.

7.26(3) *Revocation of license.*

a. Written notice in general. The department will not revoke, suspend, annul or withdraw any license until written notice is served by restricted certified mail or by personal service as in a civil case. The notice will provide the licensee with the 30 days to request a hearing and information about how to contact the department to make such a request. If a hearing is requested, the matter will be transferred to the division of administrative hearings unless retained by the director. A notice of hearing will be issued by the presiding officer as described in rule 701—7.15(17A) The licensee whose license is to be revoked, suspended, annulled, or withdrawn, will be given an opportunity to show at an evidentiary hearing conducted pursuant to rule 701—7.18(17A) compliance with all lawful requirements for the retention of the license.

b. Contents of notice. In addition to the requirements of rule 701—7.15(17A), the notice shall contain a statement of facts or conduct and the provisions of law that warrant the revocation, suspension, annulment, or withdrawal of the license.

c. Licensee opportunity to file petition. A licensee whose license may be revoked, suspended, annulled, or withdrawn may file a petition as provided in subrule 7.26(4) with the department prior to the hearing. The petition should be filed at the address provided on the notice to revoke, suspend, annul, or withdraw. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.18(17A) governing contested case proceedings shall apply.

d. Emergency proceedings. Notwithstanding paragraph 7.26(3)*"a,"* if the department finds that public health, safety, or welfare imperatively requires emergency action and the department incorporates a finding to that effect in an order to the licensee, summary suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

7.26(4) *Petition.*

a. When a person desires to file a petition as provided in subrules 7.26(2) and 7.26(3), the petition to be filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	PETITION
_____	*	Docket No.
State taxpayer's name and address, and	*	_____
type of license)	*	(filled in by Department)

b. The petition shall substantially state in separate numbered paragraphs the following:

(1) The full name and address of the petitioner;

(2) Reference to the type of license and the relevant statutory authority;

(3) Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;

(4) Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and

(5) The signature of the petitioner or petitioner's representative, the address of petitioner and of the petitioner's representative, and the telephone number of petitioner or petitioner's representative.

This rule is intended to implement Iowa Code section 17A.18.

ITEM 8. Adopt the following **new** subrule 201.10(3):

201.10(3) *Appeals.* The department will provide notice of a sales permit denial according to 701—subrule 7.26(2). Any request for hearing or contested case of the department's intent to deny a sales tax permit application is governed by rule 701—7.15(17A) and the contested rules in 701—Chapter 7.

ITEM 9. Adopt the following **new** subrule 201.11(3):

201.11(3) *Intent to revoke; opportunity for hearing.*

a. The department will provide notice of intent to revoke a sales or use tax permit by ordinary mail. A permittee will have 30 days to petition the department for a hearing on the proposed revocation. If the permittee does not petition the department within 30 days, the permit is revoked.

b. If the permittee files a petition for a hearing on the proposed revocation, the department will transmit the case to the division of administrative hearings unless retained by the director. The presiding offer will issue a notice of hearing by restricted certified mail or by personal service as in a civil case. Notice shall contain a statement of facts or conduct and the provisions of law that warrant the revocation of the permit. A hearing may be set no less than ten days from the date of the notice sent under this paragraph. The permittee will be given an opportunity to show at an evidentiary hearing conducted pursuant to rule 701—7.18(17A) compliance with all lawful requirements for the retention of the permit. The permittee may file a petition with the presiding officer prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the permittee prior to the hearing. Thereafter, rule 701—7.18(17A) governing contested case proceedings shall apply.

c. If the department finds that public health, safety, or welfare imperatively requires emergency action and the department incorporates a finding to that effect in an order to the permittee, summary suspension of a permittee shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 8
"Forms and Communications"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14
State or federal law(s) implemented by the rulemaking: Iowa Code Title X

Public Hearing

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

October 8, 2024 1 to 2 p.m.	Via videoconference: meet.google.com/wzj-ksyk-rmg

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt new Chapter 8. This chapter describes generally the forms used by the Department, how to obtain them, how to file them, acceptable forms of signatures on forms, and when and how substitute forms may be used. The Department proposes to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Rule 701—8.7(422,523) implements the statutory requirement for certain businesses to file tax returns electronically by providing definitions, prescribing acceptable methods for electronic filing, and providing for exceptions to the requirement. This rule was revised to include the moneys and credits tax type, rather than creating a separate new rule dedicated to that tax type. Additionally, a rule on authorized representatives that is proposed to be removed from Chapter 7 in a Regulatory Analysis published herein (IAB 9/18/24) has been moved to this chapter under rule 701—8.8(17A,22,421,422), where it is better suited. This rule provides for how and when third parties may represent a taxpayer before the Department and the circumstances in which a third party may be authorized to receive confidential tax information from the Department.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Commercial tax preparation software companies that wish to offer Iowa Modernized e-File (MeF) filing to their customers will incur some costs to apply and test their products under these rules. However, no software company is obligated to offer Iowa tax filing products to their customers; only

those companies that have made a business decision to do so are impacted by these rules. There are few or no free MeF filing options available to most business income and franchise taxpayers subject to the statutory electronic filing requirement. These taxpayers will have to either purchase tax preparation software to self-prepare their annual returns or pay a professional tax preparer to do so. Additionally, commercial software companies are free to choose which Iowa forms they offer, and the rule explicitly provides that the taxpayer's decision to purchase software that does not support an Iowa form the taxpayer needs to file is not a valid reason for an exception to the electronic filing requirement. As a result, some taxpayers, or more likely tax preparers, may have to purchase different or more expensive tax software options than they otherwise might have in order to access necessary forms. In contrast, there are no commercially available tax preparation software options at all available to credit unions subject to the Iowa moneys and credits tax. Therefore, the Department has incurred costs to develop an electronic filing method for moneys and credits taxpayers, which will be available for free through GovConnectIowa. There will be some ongoing cost to the State to maintain this system in the future.

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

Taxpayers and tax professionals benefit from clear and consistent guidance on how to obtain legally required Department forms, signature requirements for those forms, and acceptable formats in which those forms may be submitted. Commercial software developers benefit from having uniform and consistent rules to govern their interactions with the Department, and taxpayers and tax professionals benefit from the assurances provided by the rules that commercial tax preparation software meets the Department's standards before it can be offered on the market. Taxpayers benefit from the protections to sensitive personal information offered by the third-party access procedures.

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:

No economic impact from the proposed rules has been identified.

- Qualitative description of impact:

The qualitative impact of this chapter is to provide guidance regarding the forms used by the Department, how to obtain them, how to file them, acceptable forms of signatures on forms, and when and how substitute forms may be used.

3. Costs to the State:

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

It is a core function of the Department to create, maintain, and process tax forms every year; those functions are required by law, and for the most part, these rules only standardize Department policies around the submission of forms. The rules themselves arguably create the need for a form to request exceptions to the electronic filing requirement, and several forms used to appoint third-party representatives or grant third-party access to confidential tax information. These forms already exist, and the Department incurs minimal annual costs to maintain them and minimum to moderate annual costs to process forms received from taxpayers. Additionally, taxpayers may elect to receive electronic correspondence, which has the potential to reduce mailing costs.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

There are minimal administrative costs relating to the proposed rules. The cost of inaction would be failing to update the rule to remove unnecessary language and language duplicative of statute. The benefit of the rules is reducing confusion about how Department forms may be used.

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

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance regarding the forms used by the Department, how to obtain them, how to file them, acceptable forms of signatures on forms, and when and how substitute forms may be used.

6. Alternative methods considered by the agency:

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

Some tax preparers have complained about the cost of purchasing tax preparation software that offers all of the forms necessary to electronically file their client's returns. The Department did consider implementing a financial hardship exception to the rule that inadequate software is not a reason to grant an exception to the electronic filing requirement for tax preparers and their clients. However, every possible exception considered was either; (1) overly complex, making it burdensome for the preparer to show qualification and difficult for the Department to administer, (2) so broad it effectively eliminated the e-file requirement, or (3) completely discretionary, meaning the Department could arbitrarily decide who qualified and who did not, making it extremely difficult to treat tax preparers fairly and consistently over time.

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

Every possible exception considered was either; (1) overly complex, making it burdensome for the preparer to show qualification and difficult for the department to administer, (2) so broad it effectively eliminated the e-file requirement, or (3) completely discretionary, meaning the Department could arbitrarily decide who qualified and who did not, making it extremely difficult to treat tax preparers fairly and consistently over time.

Small Business Impact

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

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

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

This chapter does not have a substantial impact on small business. Alternative methods were considered by the agency, as identified above; however, any feasible options would be difficult to administer to treat tax preparers fairly and consistently over time.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
FORMS AND COMMUNICATIONS

701—8.1(17A,421) Definitions. For the purposes of this chapter, the following definitions apply, unless the context otherwise requires:

"Communication" means any method of transfer of data, information, or money by any conduit or mechanism.

"Department" means the Iowa department of revenue.

"Department form" means a form that is distributed by the department.

"Director" means the director of the department or the director's designee.

"Form" means any overall physical arrangement and general layout of communications, using any method of communication, related to tax, alcohol or other administration and prescribed by the director or otherwise required by law.

"GovConnectIowa" means the e-services portal of the department.

"IRS" means the federal Internal Revenue Service.

"Person" means any individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Return" means the same as defined in Iowa Code section 421.6.

"Substitute form" means a form that is intended to replace a department form.

This rule is intended to implement Iowa Code sections 17A.3(1)*"b"* and 421.14.

701—8.2(17A,421) Department forms.

8.2(1) *Generally.* Department forms may be available in electronic format, on paper, or in other formats as prescribed by the director. Communications with the department, for which department forms have been created, shall be carried out using those forms or substitute forms.

8.2(2) *Compliance with department forms.* Each direction of every instruction contained within or accompanying department forms shall be followed, and each question within or accompanying every form shall be answered as if the instructions and forms were contained in these rules.

8.2(3) *Obtaining department forms.* Department forms and instructions may be obtained from Taxpayer Services, Iowa Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457; by telephoning 800.367.3388 or 515.281.3114; or on the department's website at revenue.iowa.gov.

8.2(4) *Filing department forms.* A department form may be filed with the department as directed on the department form or in the corresponding instructions. Filing a department form using any other method requires prior approval from the department. Attempting to file a department form using an unapproved method may, at the discretion of the director, result in the rejection of the form and all information contained therein.

8.2(5) *Electronic reporting.* No prior approval is necessary for electronic reporting when the reporting is in accordance with department policy. Any other electronic reporting of a department form requires department approval unless otherwise authorized. Electronic reporting may be required for certain taxpayers and tax types. Additional information regarding electronic reporting for income taxes is available at iowaforms.gov. Electronic forms for other tax types administered by the department are available through GovConnectIowa.

8.2(6) *Signatures.*

a. Paper filings. Unless expressly prohibited by state or federal law, a return, application, or other form may be submitted using an original signature, or a copy or facsimile of a signature. For purposes of this rule, "copy or facsimile of a signature" may be a copy or facsimile of an original signature or a copy or facsimile of an electronic signature.

b. Electronic filings. For income tax returns submitted through the IRS e-file program, see rule 701—8.5(422). For all other returns, applications, or other documents, the following applies. Unless expressly prohibited by state or federal law, a return, application or other form accepted by the department as filed by email or other electronic means may be submitted using an electronic signature or a signature designated by the department in lieu of a handwritten signature. For purposes of this rule, "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a tax return, application, or other document filed with the department and executed or adopted by a person with the intent to sign the return, application, or other document filed with the department. Electronic signatures appear in many forms and may be created by many different

technologies. No specific technology is required. For purposes of this rule, "signature designated by the department" means a symbol or other information that is provided by the department to the taxpayer or the taxpayer's representative and is to serve instead of the handwritten signature of the taxpayer. In a situation where the taxpayer or the taxpayer's representative has submitted a return, application, or other document to the department by email, GovConnectIowa, or other electronic means with an electronic signature or signature designated by the department, the department will collect information from the signator to establish the signator's identity.

This rule is intended to implement Iowa Code sections 17A.3(1)*"b,"* 421.14, 422.13, 422.14, 422.16, 422.36, 423.31, 450.53, 452A.60, and 453A.14.

701—8.3(17A,421) Substitute forms.

8.3(1) *Generally.* A substitute form may be in electronic format, on paper, or created using other media for communication. Approval shall be obtained prior to the use of any substitute form, unless otherwise noted in this rule. The director may change any department form without providing notice to users of any substitute form. The director may require use of department forms in communications with the department concerning tax administration or other matters.

8.3(2) *Types of substitute forms.* Many types of forms may, upon approval when necessary, be substituted for department forms. Descriptions of a partial list follow.

a. Reproduced forms. A reproduced form is a legible photocopy or an exact copy of a department form. A reproduced form may be used without prior approval of the department if the reproduced form meets the following conditions:

(1) The reproduced form does not vary from the department form in size or any other format specification.

(2) No rule prohibits the reproduction of the department form.

(3) The reproduced form does not vary from criteria stated elsewhere in this chapter.

b. Replacement forms. A replacement form is produced by imagery or otherwise replicated using the department form as a model, but it is not an exact copy of a department form. A form that is created in its entirety, including layout, by computer is a replacement form. A replacement form may include modifications, such as line enlargement or copy deletion. A replacement form must receive department approval prior to use.

c. Federal forms. A federal form is a form that is distributed by the IRS. A federal form, or its alternate, may be used without department approval if the form is approved for federal use and Iowa tax instructions or other administrative instructions authorize or require the use of the federal form in lieu of a department form.

8.3(3) *Registration and approval of substitute forms.*

a. Registration. A developer of a substitute form must register with the department by submitting the Registration for Substitute Forms and Barcode Approval. Each registration is valid for one tax year only. Failure to register with the department may, at the discretion of the director, result in the rejection of the developer's forms and all information contained therein.

b. Approval. Once registered, the developer of a substitute form must request department approval of the form, unless approval is not necessary. The developer may request department approval by submitting a PDF of the form to IDRSubForms@iowa.gov. Those forms listed on the Iowa Substitute Forms Checklist, which is provided with the Registration for Substitute Forms and Barcode Approval, should be submitted for approval. If doubt exists about the need for approval of a particular substitute form, the form should be submitted for consideration. Attempting to file an unapproved substitute form with the department may, at the discretion of the director, result in the rejection of the form and all information contained therein.

8.3(4) *Quality of substitute forms.*

a. General information. All substitute forms must, to the extent practicable, reflect the same size, color, content, design, and legibility as department forms posted on the department's website at revenue.iowa.gov.

b. Printed substitute forms. When printed on paper, a substitute form must use only black ink or black imaging material, unless the corresponding department form indicates otherwise. A printed substitute form generally must be printed on 20-pound white paper stock with a brightness rating of at least 92 on the TAPPI scale.

c. Distinctive markings and symbols. A department form may contain distinctive symbols. These symbols must be reproduced on any substitute forms.

8.3(5) *Filing substitute forms.* A substitute form may be filed with the department as directed on the corresponding department form or instructions or by any other method approved by the department. Attempting to file a substitute form with the department using an unapproved method may, at the discretion of the director, result in the rejection of the form and all information contained therein.

8.3(6) *Removable media and electronic reporting.* Submitting a substitute form on removable media, such as compact disc, requires prior approval from the department. No prior approval is necessary for electronic reporting when the reporting is in accordance with department policy. Any electronic reporting of a substitute form requires department approval, unless otherwise authorized. Additional information regarding electronic reporting is available at Processing Services, P.O. Box 10413, Des Moines, Iowa 50306; or by email at IDRSubForms@iowa.gov.

This rule is intended to implement Iowa Code sections 17A.3(1)*"b"* and 421.14.

701—8.4 Reserved.

701—8.5(422) Electronic filing of Iowa income tax returns. There is no statutory requirement that individual income taxpayers file their Iowa income tax returns electronically. Some businesses, estates, and trusts may be required to file Iowa tax returns electronically. Taxpayers not subject to an electronic filing requirement also have the option to file by paper. When a taxpayer files an electronic return, all information related to the return should be electronically transmitted through an approved channel. No information is to be submitted on paper unless specifically requested by the department. A taxpayer's electronic Iowa return shall include the same information as if the taxpayer had filed a paper return.

8.5(1) *Definitions.* For the purpose of this rule, the following definitions apply, unless the context otherwise requires:

"Acknowledgment" means a report generated by the department and sent electronically to a transmitter via the IRS indicating the department's acceptance or rejection of an electronic submission.

"Declaration for e-File Return form" means a taxpayer declaration form that authenticates the electronic tax return, authorizes its transmission, and consents to the financial transaction order as designated using the financial institution information provided.

"Direct debit" means an order for electronic withdrawal of funds from a taxpayer's financial institution account for payment to the department.

"Direct deposit" means an order for electronic transfer of a refund into a taxpayer's financial institution account.

"E-file provider" means a firm that is assigned an Electronic Filing Identification Number (EFIN) by the IRS to assume any one or more of the following IRS e-file provider roles: electronic return originator, intermediate service provider, transmitter, software developer, or reporting agent.

"Electronic filing" means a paperless filing of the Iowa income tax return, order for financial transaction, or both by way of the IRS e-file program, also known as federal/state electronic filing (MeF).

"Electronic return originator" or *"ERO"* means an authorized IRS e-file provider that originates the electronic submission by any one of the following methods: electronically sending an electronic tax return to a transmitter that will transmit the electronic tax return to the IRS, directly transmitting

the electronic tax return to the IRS, or providing the electronic tax return to an Intermediate Service Provider for processing prior to transmission to the IRS.

"Electronic signature" includes data in electronic form, which is logically associated with other data in electronic form and executed or adopted by a person with the intent to sign a document. This type of signature has the same legal standing as a handwritten signature if the requirements in either paragraph 8.5(2)*"b"* or *"c"* are met. Electronic signatures appear in many forms and may be created by many different technologies. No specific technology is required.

"Intermediate service provider" means the firm that assists with processing submission information between the ERO (or the taxpayer in the case of online filing) and a transmitter.

"Online filing" means the process for taxpayers to self-prepare returns by entering return data directly into commercially available software, software downloaded from an Internet site and prepared offline, or through an online Internet site.

"Origination of an electronic return" means the action by an ERO of electronically sending the return directly to an Intermediate Service Provider, a transmitter, or the IRS.

"Reporting agent" means a firm that originates the electronic submission of certain returns for its clients or transmits the returns to the IRS in accordance with the IRS electronic filing procedures, or both.

"Software developer" means an approved IRS e-file provider that develops software according to IRS and Iowa specifications for the purposes of formatting electronic returns, transmitting electronic returns directly to the IRS, or both. A software developer may sell its software.

"Stockpiling" means collecting returns from taxpayers or from other e-file providers and waiting more than three calendar days after receiving the information necessary for transmission to transmit the returns to the department.

"Transmitter" means a firm that transmits electronic tax return information directly to the IRS and routes electronic acknowledgments from the IRS (and the states) to the firm originating the electronic return.

8.5(2) *Completion and documentation of the electronic return.*

a. The electronic submission must match the prepared return. The taxpayer(s) must declare the authenticity of the electronic return before it is transmitted. If the ERO makes changes to the electronic return after the Declaration for e-File Return form has been signed by the taxpayer(s), a new Declaration for e-File Return form must be completed and signed by the taxpayer(s) before the return is transmitted.

b. Electronic signature via remote transaction. In lieu of in-person handwritten signatures, a paid preparer, at the discretion of the taxpayer, may collect taxpayers' electronic signatures remotely by a process using identity verification and audit trail in the manner that the IRS allows for Form 8879.

c. Electronic signature via in-person transaction. Before a taxpayer electronically signs a Declaration for e-File Return form in which the ERO is physically present with the taxpayer, the ERO must validate the taxpayer's identity unless there is a multiyear business relationship. A multiyear business relationship is one in which the ERO has originated returns for the taxpayer for a prior tax year and has identified the taxpayer using a valid government picture identification and the method in paragraph 8.5(2)*"b."* For in-person transactions, identity verification through a record check is optional.

d. The ERO must provide the taxpayer with a copy of all information to be filed. The taxpayer and ERO must retain all tax documentation for three years. The Declaration for e-File Return form and accompanying schedules are to be furnished to the department only when specifically requested.

8.5(3) *Direct deposit and direct debit.*

a. Taxpayers designating direct deposit of the Iowa refund or direct debit of payment remitted to the department on electronically filed returns must provide proof of account ownership to the ERO. The department is not responsible for the misapplication of a direct deposit refund or direct debit payment caused by error, negligence, or wrongdoing on the part of the taxpayer, e-file provider, financial institution, or any agent of the above.

b. Once the return has been transmitted, the financial order may not be altered. The department may, when processing procedures allow, grant a taxpayer's timely request to revoke the financial order. The taxpayer is responsible for revoking the financial order if the specified payment is not exactly as intended. A direct deposit or direct debit order will be disregarded by the department if the electronic submission is rejected for any reason as indicated in the acknowledgment.

c. The department may, when processing procedures require, convert a direct deposit order to a paper warrant. If a refund is deposited into an incorrect bank account, the department will issue a paper refund warrant once the funds are returned by the financial institution.

d. Payment withdrawal date.

(1) Funds will be withdrawn from the account specified in the direct debit order no sooner than the date specified by the taxpayer.

(2) Payment must be timely made to prevent the assessment of all applicable penalty and interest. A direct debit payment within an electronic submission is considered timely made when:

1. The department accepts the electronic submission;
2. The electronic postmark date is prior to the tax due date;
3. The payment withdrawal date is prior to the tax due date; and
4. The direct debit payment is honored by the specified financial institution.

(3) When the tax due date has not yet elapsed, the withdrawal date should occur on or before the tax due date. Scheduling a withdrawal date after the tax due date will result in the assessment of all applicable penalty and interest unless the taxpayer otherwise makes payment before the tax due date.

(4) When the tax due date has already elapsed, the withdrawal date should specify immediate payment to prevent the accrual of additional interest.

(5) Withdrawal cannot occur prior to the electronic postmark date. When the taxpayer attempts to schedule a withdrawal date that is prior to the electronic postmark date, the electronic postmark date is the withdrawal date.

(6) If a taxpayer wants to change the withdrawal date specified in a financial order, the taxpayer must revoke the financial order and submit a new financial order. If the department determines that the taxpayer may have erroneously scheduled a withdrawal date, the department may notify the taxpayer of the possible error, but the department is not required to do so.

8.5(4) *Software approval.* Software developers that want to develop electronic submission formatting software for e-filing Iowa returns shall register their respective software products annually with the department. The department publishes specifications, test packages, and testing procedures. Software must pass transmission tests before the department will approve it for electronic filing of Iowa income tax returns. The department will define the test period annually.

8.5(5) *ERO acceptance to participate.* Once accepted by the IRS as an ERO for a specific tax type, the ERO is automatically accepted to e-file Iowa returns of that tax type, provided that the department offers the tax type for e-file.

8.5(6) *Suspension of an e-file provider from participation in the Iowa electronic filing program.*

a. The department may immediately suspend, without notice, an e-file provider from the Iowa electronic filing program. In most cases, a suspension is effective as of the date of the letter informing the e-file provider of the suspension. Before suspending an e-file provider, the department may issue a warning letter describing specific corrective action required to correct deviations set forth in paragraph 8.5(6)*"b."* An e-file provider will be automatically prohibited from participating in the Iowa electronic filing program if denied participation in, or suspended from, the federal electronic filing program.

b. An e-file provider that is eligible to participate in the federal electronic filing program may be suspended from the Iowa electronic filing program if any of the following conditions occur. The list is for illustrative purposes only and is not deemed to be all-inclusive.

(1) Deterioration in the format of electronic returns transmitted.

(2) Unacceptable cumulative error or rejection rate or failure to correct errors resulting from the transmission of electronic returns.

(3) Untimely received, illegible, incomplete, missing, or unapproved substitute Declaration for e-File Return forms when requested by the department.

(4) Stockpiling returns at any time while participating in the Iowa electronic filing program.

(5) Failure on the part of the transmitter to retrieve acknowledgments within two working days of the department's providing them.

(6) Failure on the part of the transmitter to initiate the communication of acknowledgments to the ERO within two working days of the department's providing them.

(7) Significant complaints about the e-file provider.

(8) Failure on the part of the e-file provider to cooperate with the department's efforts to monitor e-file providers, investigate electronic filing abuse, and investigate the possible filing of fraudulent returns.

(9) Submitting the electronic return with information that is not identical to information on the Declaration for e-File Return form.

(10) Transmitting the electronic return with software not approved by the department for use in the Iowa electronic filing program for the given tax type and tax period.

(11) Failure on the part of the e-file provider to provide W-2s, 1099s, or out-of-state tax returns when requested by the department.

8.5(7) *Administrative procedure for denial of participation or suspension of participation.*

a. When a firm has requested participation in the Iowa electronic filing program but there is reason to deny the request, the department shall send written notice to the firm advising that entry into the program has been denied. When an e-file provider is a participant in the Iowa electronic filing program but is to be suspended from the program for any condition described in subrule 8.5(6), the department will send written notice to notify the e-file provider about its suspension from the program.

b. When the firm either disagrees with the denial of participation or the suspension from participation, the firm must file a written appeal to the department within 60 days of the date of the denial or the suspension. The written appeal must be filed pursuant to rule 701—7.8(17A). During the administrative review process, the denial of the firm's participation in or the suspension of the firm from the Iowa electronic filing program shall remain in effect.

This rule is intended to implement Iowa Code sections 422.21 and 422.68.

701—8.6(421) Electing to receive communications in electronic format in lieu of paper. A taxpayer that is a registered account holder in GovConnectIowa may elect to receive notices, correspondence, or other communication electronically through GovConnectIowa in lieu of receiving them by mail.

8.6(1) *How to make the election.* The election must be made by selecting the appropriate setting on GovConnectIowa.

8.6(2) *Limitations.*

a. This election only exists for persons registered in GovConnectIowa.

b. Unless specified elsewhere in rule, this option is limited to notices, correspondence, or other communications on tax types managed in GovConnectIowa.

c. Where the department finds it beneficial to continue to send items by regular mail, the department may continue to send regular mail even if an electronic copy is also provided and even if the person elects to receive electronic mail.

8.6(3) *When service occurs.* If the department sends a notice, correspondence, or other communication by both mail and electronic communication, service occurs upon the earlier of when the communication is posted to GovConnectIowa or mailed.

8.6(4) *Taxpayer authorized representatives.* Authorized representatives as described in rule 701—8.8(17A,22,421,422) cannot opt out of paper mail for the taxpayers they represent. For each account an authorized representative represents, the authorized representative will receive paper copies of notices, correspondence, or other communication sent to the represented taxpayer. If the

authorized representative creates a login and requests and is granted account access for the represented taxpayer, the authorized representative will be able to view electronic versions of the notices, correspondence, or other communication the represented taxpayer receives, but the authorized representative will still receive paper copies of those notices, correspondence, or other communication.

This rule is intended to implement Iowa Code section 421.60(11).

701—8.7(422,533) Mandatory electronic filing for certain business entity and fiduciary taxpayers. Iowa corporate and fiduciary income and franchise taxpayers, credit unions subject to the moneys and credits tax, and pass-through entities subject to Iowa income reporting requirements, are required to file their annual returns in an electronic format approved by the department for any tax year in which certain criteria are met. This rule provides information needed to determine whether any entity is subject to this electronic filing requirement for a given tax year.

8.7(1) *Definitions.*

"Business entity," when used in this rule, means entities taxed as corporations, partnerships, S corporations, and financial institutions as defined in Iowa Code section 422.61.

"Fiduciary taxpayer" means the same as "fiduciary" as defined in Iowa Code section 422.4.

"Iowa tax credits" means refundable and nonrefundable tax credits authorized under the Iowa Code for the tax year in which they are claimed or applied, but does not include credits for prior payments.

"Return," when used in this rule, means Form IA 1120, IA 1120S, IA 1120F, IA 1065, IA PTE-C, IA 1041, or Iowa credit union moneys and credits tax return, as context requires, and includes amended returns, supporting schedules, attachments, or lists that are supplemental to or part of the filed return.

"Taxpayer," unless the context otherwise requires, means any business entity, financial institution, credit union or fiduciary taxpayer as defined in this rule.

"Tax year" means any period of up to 12 months, including periods of less than 12 months, for which a taxpayer subject to this rule is required to file an Iowa income tax, franchise tax, moneys and credits, or information return.

"Total gross receipts" means gross receipts or sales from all business operations conducted within and without Iowa without any adjustment for returns and allowances, and also includes receipts from all interest, dividends, rents, and royalties; income from ordinary and capital gains; and the distributive share of income received by the taxpayer from a partnership, S corporation, estate, or trust.

8.7(2) *Electronic format for filing.* The following are the only approved methods of electronic filing.

a. Business entity and fiduciary taxpayers. A business entity or fiduciary taxpayer that meets any of the criteria for mandatory electronic filing in subrule 8.7(3) shall file a paperless Iowa income or franchise tax return by way of the Internal Revenue Service (IRS) Modernized e-File (MeF) program, also known as federal/state electronic filing, in a manner consistent with the requirements of rule 701—8.5(422).

b. Moneys and credits taxpayers. Credit unions shall file a paperless Iowa moneys and credits tax return using an electronic form provided by the department through GovConnectIowa.

8.7(3) *Criteria for mandatory electronic filing.* This subrule applies to business entities for tax years ending on or after December 31, 2022; to fiduciary taxpayers for tax years ending on or after December 31, 2023; and to moneys and credits taxpayers for any tax year ending on or after December 31, 2024. Every taxpayer required to file an Iowa income, franchise, or moneys and credits tax return for an applicable year must file using the electronic format specified in subrule 8.7(2) if the taxpayer meets any of the following criteria for the tax year:

a. Gross receipts. The taxpayer has $250,000 or more in total gross receipts for the tax year.

b. Iowa tax credits. The taxpayer claims or applies $25,000 or more of Iowa tax credits on the return for the tax year.

c. Iowa Schedules K-1. The taxpayer is required to issue ten or more Iowa Schedules K-1 to its partners, members, shareholders, or beneficiaries for the tax year.

d. Consolidated corporate return. The taxpayer elects or is required to file or be included on an Iowa consolidated corporate income tax return under Iowa Code section 422.37 for the tax year.

e. Moneys and credits return. All credit unions required to file an Iowa moneys and credits tax return for a tax year are required to file electronically.

8.7(4) *Returns not in compliance with this rule.* Any return filed in any manner other than the manner specified in subrule 8.7(2) by a taxpayer that meets any of the criteria for mandatory electronic filing as described in subrule 8.7(3) is not a valid return. The taxpayer is a nonfiler for the tax year for which the return was required, and may be subject to the failure to file penalties as provided for in rules 701—10.6(421) and 701—10.9(421), until such time as the taxpayer files the return in the proper electronic format. This subrule shall not apply if an exception has been granted under subrule 8.7(5).

8.7(5) *Exceptions.* At the department's discretion, exceptions to the electronic filing requirement under this rule may be granted for good cause. The taxpayer bears the burden to prove that good cause exists for the failure to file electronically. Except as provided in paragraph 8.7(5)*"b,"* a claim that the return preparation software purchased or licensed by a taxpayer or taxpayer's return preparer does not include all of the features necessary to comply with the taxpayer's Iowa filing obligations shall not be considered good cause for purposes of granting an exception to the electronic filing requirement.

a. Requests for exceptions to the electronic filing requirement.

(1) Form of request. Requests for exceptions to the electronic filing requirement must be submitted by mail or online through GovConnectIowa on forms provided by the department.

(2) Timing of request. Requests for exceptions to the electronic filing requirement must be submitted before the return is filed.

(3) Department determination. The department will notify the taxpayer in writing whether a request for an exception to the electronic filing requirement has been approved or denied. If the department does not respond to a taxpayer's valid request for an exception to the electronic filing requirement within 90 days of the date the request is received, the request shall be deemed accepted.

(4) Applicability of exception. An exception to the electronic filing requirement, if granted, shall only be valid for the tax year for which it was approved.

b. Special relief provided by the department. The department may, at its discretion, offer a good-cause exception to the electronic filing requirement for filers of a specific return type or form for a specific filing period by providing such an exception in the instructions for that return type or form or by an order issued by the director. Taxpayers must comply with all instructions provided by the department in order to qualify for relief.

c. Temporary one-time relief for business entity and fiduciary taxpayers. For tax years ending on or before December 31, 2023, if the department determines a taxpayer that filed a paper return was required to file in an electronic manner as provided in this rule, the department will notify the taxpayer in writing of the requirements of this rule. If the taxpayer properly files in an electronic manner within 30 days of the date of the notification under this paragraph, the department shall grant an exception to the requirements of this rule and deem the originally filed paper return a valid return. A taxpayer shall only be granted the benefit of this paragraph for one eligible return.

d. Temporary one-time relief for moneys and credits taxpayers. For tax years ending on or before December 31, 2024, if the department determines a moneys and credits taxpayer that filed a paper return was required to file in an electronic manner as provided in this rule, the department will notify the taxpayer in writing of the requirements of this rule. If the taxpayer properly files in an electronic manner within 30 days of the date of the notification under this paragraph, the department shall grant an exception to the requirements of this rule and deem the originally filed paper return a valid return. A taxpayer shall only be granted the benefit of this paragraph for one eligible return.

This rule is intended to implement 2022 Iowa Acts, House File 2552, division II.

701—8.8(17A,22,421,422) Authorized representatives—powers of attorney and representative certifications. No individual will be recognized as representing any taxpayer in regard to any tax claim, tax appeal, or other tax matter before the department or in any communication with or hearing before the department, or any agent thereof, unless a written authorization in compliance with this rule and Iowa Code section 421.59 is first filed with the department. If a taxpayer wishes to allow the department to discuss otherwise confidential tax matters with an individual without giving that individual authority to act on the taxpayer's behalf, the taxpayer must provide the department with written authorization to disclose such confidential tax information as provided in rule 701—5.7(17A,22,99G,123,421-454).

8.8(1) *Individuals authorized to represent a taxpayer, generally; transfers of decision-making authority.*

a. If a taxpayer wishes to have any other individual act on the taxpayer's behalf in matters before the department, the taxpayer must file with the department an IDR power of attorney form, as described in subrule 8.8(5), authorizing that individual to do so. This applies even if an individual desires to represent a taxpayer only through correspondence with the department but does not intend to personally appear before the department in a hearing or conference.

b. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file a representative certification form as described in subrule 8.8(6).

8.8(2) *Powers authorized.*

a. An IDR power of attorney or representative certification form, or other form designated by the department, as applicable, is required by the department before an individual can perform one or more of the following acts on behalf of the taxpayer:

(1) To receive copies of any notices or documents sent by the department, its representatives, or its attorneys.

(2) To receive, but not to endorse or collect, checks made payable to the taxpayer in payment of a refund of Iowa taxes, penalties, or interest. Certain representatives with a valid representative certification form or equivalent authorization may be authorized to receive, endorse, and collect checks made payable to the taxpayer in payment of a refund of Iowa taxes, penalties, or interest.

(3) To execute waivers (including offers of waiver) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

(4) To execute consents extending the statutory period for assessment or collection of taxes.

(5) To fully represent the taxpayer in any hearing, determination, final or otherwise, or appeal. Subrule 8.8(8) contains additional requirements.

(6) To enter into any settlement or compromise with the department.

(7) To execute any release from liability necessary as a prerequisite to divulging otherwise confidential information concerning the taxpayer.

(8) To authorize a third party as authorized representative or disclosure designee for the taxpayer.

(9) To waive, withdraw, or dismiss any claims or defenses or amend a pleading, to the extent permitted by subrule 7.8(7).

b. The taxpayer may limit the scope of the authority of an authorized representative appointed via an IDR power of attorney form by expressly stating the limitations, if any, on the IDR power of attorney form submitted to the department. The scope of authority of an authorized representative may not expand beyond those powers authorized in this rule.

8.8(3) *Submitting a form.*

a. Submit separately. An IDR power of attorney form or representative certification is not accepted as an attachment to a tax return except as provided by these rules. A power of attorney form or representative certification form must be submitted in accordance with the submission instructions on the form(s).

b. Original or electronic forms accepted. The department may accept either an original form, an electronically scanned and transmitted form, or a copy of a form. A copy received by facsimile transmission (fax) or email may be accepted.

c. Timely submission. The form must be submitted within six months of the date of signature, or it will be considered invalid.

d. Appointment of a representative via another form. The department designates certain returns or other departmental forms on which a taxpayer may appoint an authorized representative.

e. Signature. The signature on the form must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

8.8(4) *Communications with represented taxpayers.* Any notice or other written communication (or copy thereof) from the department provided to the authorized representative, where required or permitted to be given to the taxpayer, will be given to the taxpayer as well.

8.8(5) *Powers of attorney.* Taxpayers must ensure that all required fields of the IDR power of attorney form are properly completed.

a. Individuals who may execute an IDR power of attorney form. Individuals who are permitted to execute an IDR power of attorney form are as follows:

(1) Individual. In matters involving an individual taxpayer, an IDR power of attorney form must be signed by the taxpayer or the taxpayer's authorized representative.

(2) Joint or combined returns. In matters involving a joint return, each taxpayer must complete and submit an IDR power of attorney form, even if the taxpayers are represented by the same appointee(s). In any matter concerning a joint return, the authorized representative of one spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

b. Contents of the IDR power of attorney form. A valid IDR power of attorney form contains the following information:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., social security number (SSN), federal employer identification number (FEIN), or any federal- or Iowa-issued tax identification number), or other number as approved by the department;

(3) Name, mailing address, and identification number of the representative (i.e., preparer's tax identification number (PTIN), SSN, centralized authorization file (CAF) number, any federal- or Iowa-issued tax identification number, or other number as approved by the department);

(4) Description of the matter(s) for which representation is authorized, which may include:

1. The type of tax(es) involved or an indication that all tax types are within the scope of authority;

2. The specific year(s) or period(s) involved or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date);

3. Iowa tax permit number;

4. No limitation on tax type, year/period, or permit will allow the authorized representative to act for any tax type/year/period/permit.

(5) A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 8.8(2).

(6) A signature on the form, which may be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

(7) Any other information required by the department.

c. Authorization period for an IDR power of attorney form.

(1) An IDR power of attorney form may be used to authorize representation for tax periods that end within three years after the date on which the form is signed by the taxpayer. The authority granted may concern an unlimited number of tax periods that have ended prior to the date on which the IDR power of attorney form is received by the department; however, tax periods must be stated if

the intention is to limit the periods. If the tax period section is left blank, all tax periods, including those ending up to three years in the future, are included.

(2) The authority granted by an IDR power of attorney form ceases to be effective for tax periods as defined in subparagraph 8.8(5)*"c"*(1) upon revocation by the taxpayer; incapacity of the taxpayer; death of the taxpayer; or withdrawal, death, or incapacity of the authorized representative.

d. Evaluation of documentation provided. The department will evaluate the IDR power of attorney form and any additional documentation to confirm authority. Authority to act before the department only covers those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer has the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

e. Revocation and withdrawal.

(1) Revocation by the taxpayer.

1. By written statement. By filing a statement of revocation with the department, a taxpayer may revoke authority granted by an IDR power of attorney form without authorizing a new representative. The statement of revocation must indicate that the authority of the previous representative is revoked and be signed by the taxpayer. The name and address of each representative whose authority is revoked must be listed (or a copy of the prior IDR power of attorney form must be attached). If the writing indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or an entity representative form.

2. By filing a new IDR power of attorney form. Filing a new IDR power of attorney form for a particular tax type(s) and tax period(s) automatically revokes a previously granted authority for the same tax type(s) and tax period(s). For a previously designated authorized representative to remain as the taxpayer's authorized representative when a subsequent IDR power of attorney form is filed, the taxpayer must include the representative on the newly submitted IDR power of attorney form. This rule applies regardless of whether the power of attorney authority is authorized by an IDR power of attorney form or on a return as described in subrule 8.8(7). This subrule does not apply to entities appointed as authorized entity representatives under subrule 8.8(9).

(2) Withdrawal by the authorized representative. By filing a statement with the department, an authorized representative may withdraw from representation in a matter in which an IDR power of attorney form has been filed. The statement must be signed by the representative and identify the name, identification number, and address of the taxpayer(s); the name, address and identification number of the representative withdrawing; and the matter(s) from which the representative is withdrawing. A representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired.

(3) Administrative revocation by the department. The department may administratively revoke any third-party access authority, including those appointed via the IDR power of attorney form or representative certification form.

8.8(6) *Representative certification; durable and general powers of attorney.*

a. Authorized representatives. Individuals with the authority to act on behalf of a taxpayer granted outside of IDR, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file with the department a form certifying their authority to represent the taxpayer prior to utilizing that authority with the department. Individuals authorized by an IDR power of attorney form should not file a representative certification form for themselves.

b. Contents of the representative certification form. The representative certification form must include the following information:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., SSN, FEIN, any federal- or Iowa-issued tax identification number relative to matters covered by the IDR power of attorney form, or other number as approved by the department);

(3) Name, mailing address, and identification number (i.e., SSN, CAF number, any federal- or Iowa-issued tax identification number, or other number as approved by the department) of the representative.

(4) Proof of authority must be included with the form as follows:

1. Durable power of attorney or general power of attorney other than an IDR power of attorney form: a copy of the power of attorney document;

2. Guardian, conservator, or custodian appointed by a court: documentation as required in Iowa Code section 421.59(2)*"a"*;

3. Receiver appointed pursuant to Iowa Code chapter 680: a copy of the relevant court order(s);

4. Licensed attorney appearing on behalf of the taxpayer or the taxpayer's estate in a court proceeding: a copy of the filed notice of appearance in the relevant court proceeding;

5. Parent or guardian of a minor taxpayer: a copy of the return signed by the parent or guardian or proof of status as parent or guardian, such as a birth certificate or equivalent document, stating parent and minor taxpayer's names, as well as the minor taxpayer's date of birth. By submitting a copy of a return signed by the parent or guardian, the parent or guardian will only have authority in relation to that return. Without other authorization, such as a court-ordered guardianship, a parent's right to access a minor taxpayer's account will cease when the minor taxpayer reaches majority;

6. Executor or personal representative: a copy of the will or court order appointing the individual;

7. Trustee: a copy of the certificate of trust, trust document, or court order appointing the representative;

8. The following categories of authorized representative do not require documentation:

- Individual holding one of the following titles within a corporation, association, partnership, or other entity:
  - Officer/employee of corporation/association;
  - Designated partner authorized to act on behalf of a partnership;
  - Individual authorized to act on behalf of a limited liability company in tax matters;
- Governmental representative.
- Successor of a very small estate under Iowa Code section 633.356(2).

(5) Affirmation of authority to act on behalf of the taxpayer, and agreement to only act within that authority. Affirmation will be signed under penalty of perjury.

(6) A signature of the representative on the form, which must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization;

(7) Any other information requested by the department.

c. Evaluation of documentation provided. The department will evaluate documentation submitted in support of a representative certification to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer has the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

d. Revocation. A representative certification may be revoked in the following ways:

(1) By the representative being withdrawn, following procedures in subparagraph 8.8(5)*"e"*(2).

(2) By the taxpayer, following procedures in subparagraph 8.8(5)*"e"*(1).

(3) By another representative. An authorized representative properly appointed by a representative certification or an IDR power of attorney form may notify the department that an authorized representative no longer has authority to act on behalf of the taxpayer by filing a statement of revocation with the department. The notification statement must indicate the taxpayer's name, address, and identification; state that the authority of the former representative has ceased; and be signed by a current authorized representative. Also, the name and address of each representative who no longer has authority must be listed (or a copy of the prior representative certification form must be attached).

(4) Administrative revocation by the department, following procedures in paragraph 8.8(5)*"e."*

8.8(7) *Returns that may be used to grant power of attorney authority.* An IDR power of attorney form is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14, a corporation or S corporation return filed under Iowa Code section 422.36 or 422.37, a partnership return filed under Iowa Code section 422.15, a franchise tax return filed under Iowa Code section 422.62, a moneys and credits return filed under Iowa Code section 533.329, or a tax return filed under Iowa Code chapter 450.

8.8(8) *Individuals authorized to represent themselves or others in a contested case proceeding.* The right to represent oneself or others in connection with any contested case proceeding before the department or administrative hearings division is limited to the following classes of individuals, so long as such representation is not barred by another provision of law. Representatives must have a valid IDR power of attorney form or valid representative certification form on file with the department to represent others in a contested case proceeding. The right to represent a taxpayer before the department or the administrative hearings division does not confer the right to represent the taxpayer in a judicial proceeding.

a. Individuals representing themselves. One spouse may not represent the other in contested case proceedings unless the spouse is acting in a capacity described in paragraphs 8.8(8)*"b"* through *"j"*;

b. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;

c. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with the requirements for admission to practice before the courts of the state of Iowa pro hac vice;

d. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542;

e. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer. Attorneys who are acting in the capacity of a director or officer of a corporation must comply with paragraph 8.8(8)*"b"* or *"c"*;

f. Partners representing their partnership. Attorneys who are acting in the capacity of a partner must meet the requirements of paragraph 8.8(8)*"b"* or *"c"*;

g. Fiduciaries including trustees, receivers, guardians, personal representatives, administrators, and executors. For purposes of this rule, a fiduciary is considered to be the taxpayer and not a representative of the taxpayer;

h. Government officials authorized by law;

i. Enrolled agents, currently enrolled under 31 CFR Section 10.6(2011) for practice before the IRS, representing a taxpayer in proceedings under Iowa Code chapter 422; and

j. Conservators, guardians, or durable powers of attorney appointed to handle tax matters.

8.8(9) *Entities as authorized representatives.*

a. Appointment.

(1) A taxpayer may authorize an entity to act on its behalf in tax-related matters by following the procedures described in this subrule in a manner approved by the department. By appointing an authorized entity representative, the taxpayer consents to the authorized entity representative, and any individuals submitted to the department by the authorized entity representative, as described in paragraph 8.8(9)*"c,"* sending and receiving the taxpayer's information to and from the department and taking any other action described in these rules. By appointing an authorized entity representative, the taxpayer understands that the authorized entity representative is solely responsible for maintaining an accurate list of individuals allowed to act on the taxpayer's behalf. The taxpayer agrees that any improper disclosure or use of the taxpayer's information by the entity or entity's current or former employees, agents, or contractors is solely the responsibility of the entity and the entity's employees, agents, or contractors. The department is not liable for any acts or omissions of the entity or the entity's employees, agents, or contractors.

(2) The taxpayer's consent must be in writing, in a form specified by the department, including a signature and date. The signature must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

b. Department approval of authorized entity representatives.

(1) The department will review authorized entity representative appointments.

(2) The department has the authority to approve, deny, or remove third-party access to any entity or individual employee upon review.

c. Duties of the authorized entity representative.

(1) The authorized entity representative is responsible for managing access for individual employees that it authorizes to act on behalf of the taxpayer in a manner defined by the department. The authorized entity representative provides the department a single point of contact for matters involving the entity's status as an approved entity representative.

(2) The authorized entity representative single point of contact must have a valid IA 2848 or representative certification form on file on behalf of the authorized entity representative.

(3) The authorized entity representative will provide information regarding each individual employee authorized to act on behalf of the taxpayer as determined by the department. This information will be used to identify the individual employee when contacting the department. The authorized entity representative will maintain with the department an accurate and up-to-date list of individual employees that the authorized entity representative has authorized to act on a taxpayer's behalf under this rule. The authorized entity representative will remove any individuals from its list with the department as soon as an individual is no longer employed by the entity or is no longer authorized by the entity to act on behalf of a taxpayer. The authorized entity representative shall submit all information and changes to information to the department via GovConnectIowa.

(4) The authorized entity representative is responsible for the actions taken by its employees, agents, and contractors on behalf of the taxpayer.

(5) The authorized entity representative shall remain in good standing with the department.

d. Powers authorized. An authorized entity representative may be granted any or all of the powers described in subrule 8.8(2). The taxpayer may limit the authorized entity representative as described therein and by tax type. If the tax type field is left blank, all tax types are included within the scope of the authorized entity representative's authority.

e. Contents of form. A valid IDR authorized entity representative form contains the information specified in paragraph 8.8(5)*"b."*

f. Authorization period.

(1) An authorized entity representative may be used to authorize representation for an unlimited number of tax periods prior to or following the date on which the form is received by the department. If the tax period is left blank, all tax periods are included.

(2) At any time while the taxpayer has an effective authorized entity representative appointment filed with the department, the taxpayer consents to allowing the authorized entity representative and any individuals listed by the authorized entity representative, as described in paragraph 8.8(9)*"c,"* to send and receive the taxpayer's information to and from the department and take any other action described in these rules.

(3) The authority granted by an IDR power of attorney form ceases to be effective upon revocation by the taxpayer or withdrawal or dissolution of the authorized entity representative. It is the sole responsibility of the taxpayer to revoke an authorized entity representative.

g. Revocation and withdrawal.

(1) Revocation by the taxpayer. Such appointment may be revoked by the taxpayer at any time, via GovConnectIowa or in writing to the department. The revocation must include the name and identification number of the taxpayer, the name of the representative entity, an indication of the wish to withdraw, and the taxpayer's dated signature. If the revocation indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or entity representative form.

(2) Withdrawal by the authorized entity representative. By filing a statement with the department, an authorized entity representative may withdraw from representation appointed under this subrule. The statement must be signed by the authorized entity representative single point of contact and must identify the name and address of the taxpayer(s) and the matter(s) from which the authorized entity representative is withdrawing. An authorized entity representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired. Such statement shall be signed by the authorized entity representative single point of contact.

(3) Administrative revocation by the department. The department may administratively revoke any entity representative authority.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 10
"Interest, Penalty, and Exceptions to Penalty"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14

State or federal law(s) implemented by the rulemaking: Iowa Code sections 421.7, 421.27, and 421.60

Public Hearing

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

October 8, 2024	Via videoconference:
1 to 2 p.m.	meet.google.com/wzj-ksyk-rmg

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt new Chapter 10, which implements statutes relating to penalties and interest associated with Iowa tax filings. The Department proposes to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language. Additionally, rules on the order of application of payments and jeopardy assessments are proposed to be removed from this chapter and adopted under Chapter 11 in a separate rulemaking to be in a general administration chapter, where they are better suited.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No classes of persons have been identified to bear the costs of the proposed rules.

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

Taxpayers and tax practitioners, as well as the Department, benefit from a uniform understanding of how and when penalties, interest, and exceptions to penalties related to Iowa taxes apply.

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:

No economic impact from the proposed rules has been identified. The penalties and interest described in this chapter are imposed by statute. The rules themselves impose no additional costs.

- Qualitative description of impact:

The rules serve to provide guidelines in the form of definitions and examples to help both the Department and the public understand how penalties and interest related to tax liabilities apply.

3. Costs to the State:

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

There are no costs to the Department related to implementing the proposed rules beyond those that would otherwise be required to administer the statute. The only identified costs would be minimal administrative costs, which would be required under the law, with or without the rules.

- Anticipated effect on state revenues:

The rules have no expected impact on state revenues beyond that of the statutory penalties and interest they implement.

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

The costs associated with this chapter are minimal and are required to meet statutory requirements regardless of the rules. The primary benefits are in providing uniformity and certainty to both the public and the Department on how tax-related penalties and interest will be applied.

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

No less costly or intrusive method of implementing tax-related penalty and interest statutes has been suggested.

6. Alternative methods considered by the agency:

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

The Department considered not providing definitions or examples to implement penalty and interest but determined that providing them was a greater benefit to the public.

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

Not providing these definitions and examples would mean handling issues related to penalty and interest in a less uniform and predictable manner. Proceeding without the proposed rules would lead to confusion.

Small Business Impact

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

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

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

There is no known reason this proposed rulemaking would have any greater or lesser impact on small businesses as compared to larger businesses, individuals, or others affected by these rules.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
INTEREST, PENALTY, AND EXCEPTIONS TO PENALTY

701—10.1(421) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

"Department" means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"Taxes" means all taxes and charges arising under Title X of the Iowa Code, and all other taxes administered by the department including but not limited to the moneys and credits tax arising under Iowa Code section 533.329, except the beer barrel tax under Iowa Code section 123.136 and the wine gallonage tax under Iowa Code section 123.183.

This rule is intended to implement Iowa Code chapter 421.

701—10.2(421) Interest.

10.2(1) *Rate determination.* Except where a different rate of interest is provided by Title X of the Iowa Code, the rate of interest on interest-bearing taxes and interest-bearing refunds arising under Title X is fixed for each calendar year by the director. In addition to any penalty computed, there shall be added interest as provided by law from the original due date of the return. Any portion of the tax imposed by statute that has been erroneously refunded and is recoverable by the department shall bear interest as provided in Iowa Code section 421.7(2) from the date of payment of the refund, considering each fraction of a month as an entire month.

10.2(2) *Examples of the application of interest.* The following scenarios demonstrate how interest will be applied to tax liabilities and refunds under various fact patterns. For purposes of these examples, the interest rate in effect for year one is 5 percent per year, the interest rate in effect for year two is 7.5 percent per year, and the interest rate in effect for year three is 10 percent per year.

EXAMPLE 1: The taxpayer, A Corp, owes corporate income taxes assessed for tax year zero. The assessment was made by the department in year one. On January 1 of year two, that assessment had not been paid. The rate of interest on the unpaid tax assessed has accrued at the rate of 5 percent per annum (0.416 percent per month) through December 31 of year one. Commencing on January 1 of year two, the rate of interest on the unpaid tax will accrue at the rate of 7.5 percent per annum for the year (0.625 percent per month).

EXAMPLE 2: The taxpayer, Y, owes retail sales taxes assessed to it for the audit period January 1, through December 31 of year one. The assessment is made on March 1 of year two. For the tax periods in which the tax became due prior to January 1 of year two, the interest rate on such unpaid sales taxes accrued at 5 percent per annum (0.416 percent per month). Commencing on January 1 of year two, the entire unpaid portion of the tax assessed which was delinquent at that time will begin to accrue interest at the rate of 7.5 percent per annum. Those portions of the tax assessed first becoming delinquent in year two will bear interest at the rate of 7.5 percent per annum (0.625 percent per month). In the event that any portion of the tax assessed remains unpaid on January 1 of year three, the rate of interest will then accrue in year three at a rate of 10 percent per annum (0.833 percent per month).

EXAMPLE 3: The taxpayer, Z, files a refund claim for tax year zero individual income taxes in March of year two. The refund claim is allowed in May of year two and is paid. Z is entitled to receive interest at the rate of 5 percent per annum (0.416 percent per month) upon the refunded tax accruing through December 31 of year one and is entitled to interest at the rate of 7.5 percent per annum (0.625 percent per month) upon such tax from January 1 of year two until the refund is paid.

EXAMPLE 4: A's tax year zero individual income tax liability becomes delinquent on May 1 of year one. A owes interest, commencing on May 1 of year one at the rate of 5 percent per annum (0.416

percent per month). In the event that A does not pay the liability in year one, the interest will then accrue in year two at a rate of 7.5 percent per annum (0.625 percent per month).

EXAMPLE 5: Decedent died December 31 of year zero. The inheritance tax was due 12 months after death or December 31 of year one. Prior to the due date, the estate was granted an extension of time, until September 1 of year two, to file the return and pay the tax due. The tax, however, was paid March 15 of year three. Interest accrues on the unpaid tax during the period of the extension of time (January 1 to September 1 of year two) and the remainder of year two at the rate of 7.5 percent per annum. Interest accrues on the delinquent tax from January 1 to the date of payment on March 15 of year three at the rate of 10 percent per annum.

The examples set forth in these rules are not meant to be all-inclusive. In addition, other rules set forth the precise circumstance when interest begins to accrue and whether interest accrues for each month or fraction of a month or annually as provided by law. Interest accrues as provided by law, regardless of whether the department has made a formal assessment of tax.

This rule is intended to implement Iowa Code section 421.7.

701—10.3(421,422,423,450,452A) Interest on refunds and unpaid tax.

10.3(1) *Interest on refunds.* For those taxes on which interest accrues on refunds, interest shall accrue through the month in which the refund is mailed to the taxpayer and no further interest will accrue unless the department did not use the most current address as shown on the latest return or refund claim filed with the department.

10.3(2) *Interest on unpaid tax.* Interest due cannot be waived except in accordance with the settlement authority described in Iowa Code sections 421.5 and 17A.10.

This rule is intended to implement Iowa Code sections 421.5, 421.60, 422.25(3), 422.28, 423.47, 437A.13, 450.94, 452A.65 and 533.329.

701—10.4(421) Frivolous return penalty. A $500 civil penalty is imposed on any return of a taxpayer that is considered to be a frivolous return. A frivolous return is a return that lacks sufficient information from which the substantial correctness of the amount of tax liability can be determined or contains information that on its face indicates that the amount of tax shown is substantially incorrect and that reflects a position of law that is frivolous or is intended to delay or impede the administration of the tax laws of this state.

If the frivolous return penalty is applicable, the penalty will be imposed in addition to any other penalty that has been assessed. If the frivolous return penalty is relevant, the penalty may be imposed even under circumstances when it is determined that there is no tax liability on the return.

10.4(1) *Nonexclusive examples of circumstances under which the frivolous return penalty may be imposed.* The following are examples of returns filed in circumstances under which the frivolous return penalty may be imposed:

a. A return claiming a deduction against income or a credit against tax liability that is clearly not allowed such as a "war," "religious," or "conscientious objector" deduction or tax credit.

b. A blank or partially completed return that was prepared on the theory that filing a complete return and providing required financial data would violate the Fifth Amendment privilege against self-incrimination or other rights guaranteed by the Constitution.

c. An unsigned return where the taxpayer refused to sign because the signature requirement was "incomprehensible or unconstitutional" or the taxpayer was not liable for state tax since the taxpayer had not signed the return.

d. A return that contained personal and financial information on the proper lines but where the words "true, correct and complete" were crossed out above the taxpayer's signature or where the taxpayer claimed the taxpayer's income was not legal tender and was exempt from tax.

e. A return where the taxpayer claimed that income was not "constructively received" and the taxpayer was the nominee-agent for a trust.

f. A return with clearly inconsistent information.

g. A document filed for refund of taxes erroneously collected with the contention that the document was not a return and that no wage income was earned. This was inconsistent with attached W-2 Forms reporting wages.

h. A return that includes falsified information or supporting documentation.

10.4(2) *Nonexclusive examples where the frivolous return penalty is not applicable.* The following examples illustrate situations where the frivolous return penalty would not be applicable:

a. A return that includes a deduction, credit, or other item that may constitute a valid item of dispute between the taxpayer and the department.

b. A return that includes innocent or inadvertent mathematical or clerical errors, such as an error in addition, subtraction, multiplication, or division or the incorrect use of a table provided by the department.

c. A return that includes a statement of protest or objection, provided the return contains all required information.

d. A return that shows the correct amount of tax due, but the tax due is not paid.

This rule is intended to implement Iowa Code section 421.8.

701—10.5 Reserved.

701—10.6(421) Penalties.

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

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

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

c. For a deficiency of tax due found during an audit or examination, there is a 5 percent penalty on the unpaid tax. This penalty is in lieu of the penalty for failure to timely pay but is in addition to any other penalty provided by law.

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

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

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

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

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

"Imputed Iowa liability" means the specified business's Iowa net income after the application of the Iowa business activity ratio, if applicable, multiplied by the applicable tax rate for the tax year, less any Iowa tax credits available to be claimed by the specified business in the current year. For purposes of the imputed Iowa liability calculation, "Iowa tax credits" does not include any credit for withholding or estimated tax. The applicable tax rate is:

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

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

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

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

"Specified business" means any of the following:

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

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

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

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

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

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

10.6(3) *Examples.* The following are examples to illustrate the computation of penalties imposed under this rule. For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax due was paid.

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

a. Tax due is $100.

b. Return filed 2 months and 10 days after the due date.

c. $0 paid prior to filing.

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

Tax	$100	
Penalty	10	(5% for failure to timely file, 5% for failure to timely pay)
Interest	3	(3 months interest)
Total amount due	$113	

Example (b) — Failure to Timely Pay

a. Tax due is $100.

b. Return is timely filed.

c. $0 paid with the return.
The calculation for the total amount due 5 months after the due date is shown below:

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

Example (c) — Audit Deficiency on Timely Filed Return
a. Timely filed return reported $100 tax due.
b. $100 paid with return.
c. Audit completed 8 months after the due date of the return.
d. $100 in additional tax found due during audit.
The calculation for the total amount due is shown below:

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

Example (d) — Audit Deficiency on Late Return Granted an Exception From Failure to File
a. Tax due reported on return is $100.
b. Return filed 3 months and 10 days after the due date.
c. $100 paid with the return.
d. Taxpayer is granted an exception from penalty for failure to timely file and failure to timely pay.
e. Audit completed 8 months after the due date of the return.
f. $100 additional tax found due during audit.
The computation for the total amount due is shown below:

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

Example (e) — Audit Deficiency on Late Filed Return No Pay Return
a. Tax due reported on the return is $100.
b. Return filed 3 months and 10 days after the due date.
c. $114 in tax, penalty, and interest paid with the return.
d. Audit completed 8 months after the due date.
e. $100 additional tax found due during audit.
The computation for the total amount due is shown below:

Tax due reported on original return	$100	
Penalty	10	(5% for failure to timely file, 5% for failure to timely pay)
Interest	4	(4 months interest)

Total amount due on original return	$114	
Additional tax due after audit	$100	
Penalty	10	(5% for failure to file, 5% for audit deficiency)
Interest	8	(8 months interest)
Amount due after audit	$118	
Total amount due for tax period	$232	

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

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

Tax	$0
Penalty	200
Interest	0
Total amount due	$200

701—10.7(421) Waiver of penalty. Under certain circumstances, the penalty for failure to timely file a return, failure to timely pay the tax due with the filing of a return, or failure to pay following an audit by the department may be waived. The taxpayer has the burden to prove the necessary conditions to waive a penalty.

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

"Act of God" means an unusual and extraordinary manifestation of nature which could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight.

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

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

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

In determining whether there is substantial authority, only the following will be considered authority: applicable provisions of Iowa statutes, provisions of the Internal Revenue Code and United States Treasury regulations that were applicable for the tax period(s) in question, Iowa administrative rules construing those statutes, court cases, administrative rulings, legal periodicals, department guidance and tax return instructions current for the applicable tax period(s), tax treaties and regulations, and legislative intent as reflected in committee reports.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department. This exception does not apply to a sanctioned self-audit program conducted by the department or to adjustments from a state partnership audit as described in Iowa Code section 422.25C(2).

b. Changes to Iowa tax liability.

(1) For changes to Iowa tax liability resulting from a federal partnership level audit, the partnership or a direct or indirect partner voluntarily and timely complies with its reporting and payment requirements following the final determination date of the audit. Requirements for reporting federal partnership level audit adjustment to Iowa can be found in Iowa Code section 422.25A.

(2) For changes to Iowa tax liability resulting from an audit or examination by the Internal Revenue Service other than a federal partnership level audit, the taxpayer voluntarily files a complete federal adjustments report and pays any additional Iowa tax due within 180 days of the final determination date of the federal audit or examination. For purposes of this paragraph, "federal adjustments report" means a filing that includes an amended Iowa return with any required supporting schedules, a copy of the federal audit report or other federal documents that show the final

determination and explains all the final federal adjustments, and a copy of the amended federal return if one was filed.

(3) This exception does not apply to adjustments from a state partnership audit as described in Iowa Code section 422.25C(2).

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

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

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice as described in paragraph 10.7(3)*"f."*

c. Reliance upon results in a previous audit was a direct cause for failure to file or pay as described in paragraph 10.7(3)*"g."*

d. The taxpayer presents documented proof of substantial authority as described in paragraph 10.7(3)*"h."*

701—10.8(421) Tax return extension in disaster areas. If a natural disaster is declared by the governor in any area of the state, the director may extend for a period of up to one year the due date for the filing of any tax return and may suspend any associated penalty or interest that would accrue during that period of time for any affected taxpayer whose principal residence or business is located in the covered area, if the director determines it necessary for the efficient administration of the tax laws of this state. The director will notify the public of any possible extensions of tax filings as well as possible suspensions of penalty and interest. Notification will be made through different means available to the director including but not limited to press releases, media information, and the department's website. Persons eligible for extension shall complete any application or form if required by the department and satisfy any requirements or conditions for the extension.

This rule is intended to implement Iowa Code section 421.17(30).

701—10.9(421) Failure to file penalty. A penalty may be assessed for failure to file a return if a taxpayer is subject to a return filing requirement. This penalty may be assessed on any person required to file a return for any tax type administered by the department. This penalty shall be assessed 90 days after the department has issued a demand letter if a return has not been filed. This penalty will be equal to $1,000 for each failure to file. This penalty is in addition to any other penalty provided by law.

10.9(1) *Demand letter.*

a. The department may send a demand letter to a taxpayer at any time after the taxpayer has failed to file a return, as defined in Iowa Code section 421.6, by the due date. Once this letter has been issued, the taxpayer has 90 days from the date on the letter to file all returns referenced in the letter or show proof that all returns referenced in the letter have already been filed before a penalty will be assessed.

b. The letter shall contain the following title and heading:

FAILURE TO FILE DEMAND LETTER

The Iowa Department of Revenue has determined you have not filed one or more required returns. Under Iowa Code section 421.27(8), failure to file your return(s) as described in this letter within 90 days of the date of this letter will result in a $1,000 penalty for each return that is not filed. Penalties under Iowa Code section 421.27(8) are in addition to other penalties under Iowa law.

c. The letter shall also contain the following:

(1) Date of demand letter.

(2) Tax period(s) involved.

(3) Return(s) to be filed.

(4) Date by which the return(s) must be filed to avoid incurring a penalty under Iowa Code section 421.27(8).

(5) Total penalty under Iowa Code section 421.27(8) that will be assessed if the return(s) are not filed within 90 days.

10.9(2) *Waiver of penalty.*

a. Documentation. Unless otherwise indicated, written documentation from the taxpayer is required to support the waiver of this penalty.

b. Good reason. This penalty can be waived if the taxpayer proves by a preponderance of the evidence that the taxpayer did not file a return within 90 days of the date of the demand letter due to a "good reason" as defined in this rule. "Good reason" can only be shown by proving one of the following circumstances:

(1) Destruction of records by fire, flood, or act of God when the destruction interferes with the filing of a return within 90 days of the date of demand letter. "Act of God" means the same as defined in subrule 10.7(1).

(2) The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return when such illness or hospitalization interferes with the filing of a return within 90 days of the date of the demand letter.

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

(4) A timely appeal of a department action, other than the demand letter, contesting the filing requirement of the return(s) stated in the demand letter was filed before the date stated in the letter pursuant to subparagraph 10.9(1)*"c"*(4).

(5) Other good reason within the discretion of the department, if the taxpayer has mutually agreed, in writing, with the department to file the required return(s) within a reasonable period of time beyond the date stated in the letter pursuant to subparagraph 10.9(1)*"c"*(4).

c. Subsequent issuance. The department may issue a new demand letter for the same filing obligation if the taxpayer continues to fail to file after the waiver is granted.

EXAMPLE 1: X fails to file a return. The department sends X a failure to file demand letter pursuant to subrule 10.9(1). X fails to file the return within 90 days of the date of the demand letter. X is assessed a $1,000 penalty. X is still required to file the return.

EXAMPLE 2: Y fails to file a return. The department sends Y a failure to file demand letter under subrule 10.9(1). Y fails to file the return within 90 days of the date of the demand letter. Y is assessed a $1,000 penalty. Y demonstrates to the department that Y was in the hospital and that the hospitalization interfered with Y's filing of the return within 90 days of the demand letter. The department waives the $1,000 penalty. Y is still required to file the return.

EXAMPLE 3: Same facts as Example 2. After receiving the good reason waiver, Y does not file the return. The department issues a new failure to file demand letter under subrule 10.9(1) for the same return that the department sought to be filed in Example 2. Y fails to file the return within 90 days of the date of the second demand letter. Y is assessed a $1,000 penalty. Y is no longer hospitalized and has no other good reason pursuant to paragraph 10.9(2)*"b."* The $1,000 penalty is not waived. A good reason waiver for the first demand letter does not permanently relieve Y from filing the return. Granting the waiver for a good reason for the first demand letter does not prevent the department from issuing a new demand letter for the same filing obligation.

10.9(3) *Rescission.* The department may rescind the demand letter in writing any time before the penalty is assessed under Iowa Code section 421.27(8) if the taxpayer demonstrates to the department's satisfaction that the taxpayer has no Iowa return filing requirement or that the filing requirement has been met. The taxpayer has the burden to prove by a preponderance of the evidence that no filing obligation exists. The department may also rescind the demand letter if the taxpayer proves a good reason exists as described in paragraph 10.9(2)*"b"* that prevents the taxpayer from filing the return and the taxpayer has mutually agreed, in writing, with the department to file the required return within a reasonable period of time. The department may issue a new demand letter for

the same filing obligation if the taxpayer continues to fail to file after the reasonable period of time mutually agreed to by the taxpayer and the department due to proof of a good reason has expired or if, after the department previously determined the taxpayer had no filing requirement, the department obtains additional information that shows the taxpayer does have a filing requirement.

EXAMPLE 4: Z fails to file a return and receives a demand letter. Z presents proof to the department that Z has no filing requirement. In response to this information, the department rescinds the demand letter. Z does not need to file the return within 90 days, and the department does not impose a $1,000 penalty on Z.

EXAMPLE 5: Same facts as Example 4. After the department rescinds the demand letter, the department receives new information showing Z is required to file a return. The department can send Z a new demand letter for the same return.

This rule is intended to implement Iowa Code section 421.27.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 11 and rules 701—202.18(422,423), 701—202.19(423), and 701—202.20(423)
"Tax Administration"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14

State or federal law(s) implemented by the rulemaking: Iowa Code sections 421.17, 421.60, 422.25, 422.30, 423.37, 423.41, 452A.43, 452A.62, 452A.76, 453A.30, and 453B.9

Public Hearing

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

October 8, 2024	Via videoconference:
1 to 2 p.m.	meet.google.com/wzj-ksyk-rmg

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt new Chapter 11. This chapter provides guidance on the Department's administration of Iowa taxes, including Iowa sales and use tax, new registration fee, equipment tax, cigarette and tobacco taxes, and fuel taxes. The Department proposes to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language. Existing rules 701—11.9(422,423) and 11.10(423) are proposed to be moved to Chapter 202 where they are better suited. Additionally, rules on jeopardy assessments and the order of application of payments are proposed to be moved to this chapter under rules 701—11.7(422,453B) and 701—11.8(421,422) and removed from 701—Chapter 10 in a separate rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No classes of persons have been identified to bear the costs of the proposed rules.

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

Taxpayers will benefit from guidance on the Department's tax administration on a wide array of tax topics outlined under rule 701—11.2(421).

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:

No economic impact from the proposed rules has been identified.

- Qualitative description of impact:

These rules reduce uncertainty about the requirements expected for various tax administration types. Failing to have these rules would lead to confusion and frequent additional questions to the Department.

3. Costs to the State:

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

There are no costs to the Department related to implementing the proposed rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

There are no costs associated with the proposed rules. The benefit of the rules is reducing confusion and providing consistency on tax administration on various tax types.

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

The proposed rulemaking is not costly or intrusive. The Department considered the option of not having rules that explain the tax administration guidance on topics but determined the rules provide useful guidance to the public on matters including taxpayer recordkeeping requirements and audits of those records, billings, application of payments, disclosure of certain taxpayer information, and bonding procedures.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing the rules in these chapters but determined that it provides useful guidance to the public.

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

The absence of these rules would lead to confusion and reduce consistency on the topics of tax administration.

Small Business Impact

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

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

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

This chapter does not have a substantial impact on small business as it does not make any special distinctions for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
TAX ADMINISTRATION

701—11.1(421) Definitions. For purposes of this chapter:

"Department" means the Iowa department of revenue.

"Director" means the director of revenue or the director's designee.

"Taxpayer" includes any person subject to the provisions of a tax or charge administered by the department whether acting on the person's own behalf or as an agent or fiduciary.

This rule is intended to implement Iowa Code chapter 421.

701—11.2(421) Scope.

11.2(1) Except as otherwise provided in this chapter, this chapter provides certain rules related to the department's administration of the following taxes:

a. Sales and use taxes and local option taxes under Iowa Code chapters 423 and 423B.
b. Fee for new registration under Iowa Code section 321.105A.
c. Hotel and motel tax under Iowa Code chapter 423A.
d. Automobile rental excise tax under Iowa Code chapter 423C.
e. Equipment tax under Iowa Code chapter 423D.
f. Water service excise tax under Iowa Code chapter 423G.
g. Motor fuel, special fuel, and electric fuel taxes under Iowa Code chapter 452A.
h. Cigarette and tobacco taxes under Iowa Code chapter 453A.

11.2(2) The tax administration rules described in this chapter are not intended to be comprehensive. The administrative code chapters for each relevant tax may contain additional tax administration rules.

This rule is intended to implement Iowa Code chapter 421.

701—11.3(321,421,423,452A,453A) Taxpayer records.

11.3(1) *Records required.* Every taxpayer shall keep and preserve records. The records must include the normal books of account ordinarily maintained by a person engaged in the activity in question including but not limited to all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns or reports. The records must be made available for examination upon request by the director.

11.3(2) *Automatic data processing records.* Automatic data processing (ADP) is defined in this rule as including electronic data processing (EDP).

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director upon request. The system should be designed so that the supporting documents are readily available. An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from a source to a financial statement or tax return or report; or the reverse; that is, to have an auditable system.

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

(1) The application being performed.

(2) The procedure employed in each application, which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures.

(3) The controls used to ensure accurate and reliable processing. Program and system changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

11.3(3) *Electronic data interchange or EDI technology.*

a. Definitions. The following definitions are applicable to this subrule:

"Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

"Electronic data interchange" or *"EDI technology"* means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

"Hard copy" means any documents, records, reports, or other data printed on paper.

"Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

"Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

b. This subrule prescribes requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Iowa law. It is also the purpose of this subrule to address these requirements where all or part of the taxpayer's records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems. A taxpayer must maintain all records that are necessary for determination of the correct tax liability as set forth in this subrule. All required records must be made available on request by the department. If a taxpayer retains records required to be retained under this subrule in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. Nothing in this subrule will be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this subrule. However, this will not relieve a taxpayer of the obligation to comply with the requirement to make records available to the department.

c. Recordkeeping requirements—machine-sensible records. A taxpayer that maintains and retains books, records, and other sources of information in the form of machine-sensible records must comply with the following:

(1) General requirements. A taxpayer must comply with the following general requirements regarding the retention of machine-sensible records:

1. Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicate records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format. The term "standard record format" does not mean that every taxpayer must keep records in an identical manner. Instead, it requires that if a taxpayer utilizes a code system to identify elements of information in each record when creating and maintaining records, the taxpayer is required to maintain a record of the meaning of each code and any code changes so the department may effectively review the taxpayer's records.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer that does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct a traditional paper document for tax purposes.

(2) Electronic data interchange requirements. A taxpayer must comply with the following requirements for records received through electronic data interchange:

1. Where a taxpayer uses an electronic data interchange process and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain the following minimal information: vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping details. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy the requirements set forth in the preceding paragraph at any level within the accounting system and need not retain the original EDI transaction records provided that the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains the other records such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its original EDI transaction for tax purposes.

(3) Electronic data processing systems requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule. In addition, pursuant to Iowa law, the department must have access to the taxpayer's EDI processing, accounting, or other systems for the purposes of verifying or evaluating the integrity and reliability of those systems to provide accurate and complete records.

(4) Business process information. To verify the accuracy of the records being retained, the taxpayer must comply with the following:

1. Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. The description must include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

2. The taxpayer must be capable of demonstrating the following:

- The functions being performed as they relate to the flow of data through the system;
- The internal controls used to ensure accurate and reliable processing; and
- The internal controls used to prevent unauthorized addition to, alteration of, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this rule:

- Record formats or layouts;
- Field definitions (including a record of any changes in the system or codes with the meaning of all codes used to represent information);
- File descriptions (e.g., data set name); and
- Detailed charts of accounts and account descriptions.

d. Record maintenance requirements. The department recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records such as the labeling of records, the location and security of the storage environment, the creation of backup copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, November 2, 2009, Edition. The taxpayer's computer hardware and software must accommodate the extraction and conversion of retained machine-sensible records.

e. Access to machine-sensible records. If a taxpayer retains records required to be retained under this rule in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon the request of the department.

(1) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that must take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Access will be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the department with the hardware, software, and personnel resources to access the machine-sensible records.

2. The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

3. The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department.

4. The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

f. Taxpayer's responsibility and discretionary authority. In conjunction with meeting the requirements of paragraph 11.3(3)*"c,"* a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with this subrule for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of paragraph 11.3(3)*"c."* The taxpayer should document the process that created the separate file to show the relationship between that file and the original records. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract will not relieve the taxpayer of its responsibilities under this rule.

g. Alternative storage media. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents, provided the rules governing alternative storage media are met.

h. Microfilm, microfiche, and other storage-only imaging systems. These shall meet the following requirements:

(1) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available upon request. Such documentation shall, at a minimum, contain sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(2) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

(3) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

(4) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(5) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(6) There is no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

i. Effect on hard-copy recordkeeping requirements. Except as otherwise provided, the provisions of this subrule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on alternative storage media as indicated in this subrule.

(1) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), hard-copy records need not be created.

(2) Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule.

(3) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(4) Nothing in this rule will prevent the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

11.3(4) *Preservation of records.*

a. The records required in this rule shall be preserved, at a minimum, for the length of time that the records may be relevant to the department's determination of tax liability for any tax year, and shall be open for examination by the department during this period of time.

b. If a tax liability has been assessed and an appeal is pending to the department, district court, or an appellate court, the records described in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

c. If the requirements of this rule are not met, the records will be considered inadequate.

This rule is intended to implement Iowa Code sections 321.105A, 421.17, 423.41, 452A.10, 453A.15, 453A.18, 453A.19, and 453A.24.

701—11.4(421,423,452A,453A) Audit of records.

11.4(1) *In general.* The department has the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return or report filed or determining the tax liability of any taxpayer. The right to examine records includes but is not limited to the right to examine copies of the taxpayer's state and federal income tax returns.

11.4(2) *Delegation of authority.* Pursuant to statutory authority, the director delegates to department staff the power to examine reports, returns, and records; make audits; determine the correct amount of tax, penalty, interest, and fines due; and take all actions authorized to collect the same, subject to review by or appeal to the director.

11.4(3) *Audit costs.*

a. In the case of fuel taxes under Iowa Code chapter 452A, the costs incurred in examining the records of a taxpayer are at the taxpayer's expense when the records are kept at an out-of-state location. Costs will include meals, lodging, and travel expenses but will not include salaries of department personnel.

b. In the case of cigarette and tobacco taxes under Iowa Code chapter 453A, when it is determined upon audit that any person dealing in cigarettes owes additional tax, the costs of the audit are assessed against such person as additional penalty.

This rule is intended to implement Iowa Code sections 421.17, 423.37, 452A.43, 452A.62, 452A.76, and 453A.30.

701—11.5(421) Time and place of taxpayer interviews. This rule governs taxpayer interviews related to all taxes and charges administered by the department. If a taxpayer is selected for an interview, the time and place of the interview is to be fixed by an employee of the department and employees of the department are to endeavor to schedule a time and place that is reasonable under the circumstances.

11.5(1) *Time of taxpayer interviews.* The department will schedule the day(s) for a taxpayer interview during a normally scheduled workday(s) of the department during the department's normal business hours. The department will schedule taxpayer interviews throughout the year without regard to seasonal fluctuations in the business of particular taxpayers or their representatives. The department will, however, work with taxpayers or their representatives to try to minimize any adverse effects in scheduling the date and time of a taxpayer interview.

11.5(2) *Type of taxpayer interview.*

a. The department will determine whether a taxpayer interview will be an office interview (i.e., an interview conducted at a department office) or a field interview (i.e., an interview conducted at the taxpayer's place of business or residence, or some other location that is not a department office) based on which form of interview will be more conducive to effective and efficient tax administration.

b. The department will grant a request to hold an office interview at a location other than a department office in case of a clear need.

11.5(3) *Place of taxpayer interview.* The department will make an initial determination of the place for an interview based on the address shown on the return for the tax period to be examined. Requests by taxpayers to transfer the place of interview will be resolved on a case-by-case basis using the criteria set forth in paragraph 11.5(3)*"c."*

a. Office taxpayer interviews. An office interview of an individual or sole proprietorship generally is based on the residence of the individual taxpayer. An office interview of a taxpayer that is a business or other legal entity generally is based on the location where the taxpayer's original books, records, and source documents are maintained.

b. Field taxpayer interviews. A field interview generally will take place at the location in this state where the taxpayer's original books, records, and source documents pertinent to the interview are maintained. In the case of a business, this usually will be the taxpayer's principal place of business.

c. Requests by taxpayers to change place of interview. The department will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place that the department has set for an interview. In considering these requests, the department will take into account the following factors:

(1) The location of the taxpayer's current residence;

(2) The location of the taxpayer's current principal place of business;

(3) The location where the taxpayer's books, records, and source documents are maintained;

(4) The location at which the department can perform the interview most efficiently;

(5) The department resources available at the location to which the taxpayer has requested a transfer; and

(6) Other factors that indicate that conducting the interview at a particular location could pose undue inconvenience to the taxpayer.

d. Granting of requests to change place of interview. A request by a taxpayer to transfer the place of interview generally will be granted under the following circumstances:

(1) In the case of a taxpayer that is a small business, if an interview is scheduled at the taxpayer's place of business and the taxpayer can demonstrate in writing that conducting the interview at the place of business would essentially require the business to close or would unduly disrupt business operations, the department will change the place of interview.

(2) If a taxpayer does not reside at the residence where an interview has been scheduled, the department will agree to transfer the examination to the taxpayer's current residence.

(3) If the taxpayer's books, records, and source documents are maintained at a location in this state other than the location where the interview has been scheduled, the department will agree to transfer the interview to the location where the taxpayer's books, records, and source documents are maintained.

e. Other factors that affect the location of an interview include:

(1) The location of the place of business of a taxpayer's representative generally will not be considered in determining the place for an interview. However, the department in its sole discretion may determine, based on the factors described in paragraph 11.5(3)*"c,"* to transfer the place of interview to the representative's office.

(2) If any applicable period of limitations of assessment and collection provided in the Iowa Code will expire within 13 months from the date of a taxpayer's request to transfer the place of interview, the department may require, as a condition to the transfer, that the taxpayer agree in writing to extend the limitations period up to one year.

(3) The department is not required to transfer an interview to an office that does not have adequate resources to conduct the interview.

(4) Notwithstanding any other provision of this rule, employees of the department may decline to conduct an interview at a particular location if it appears that the possibility of physical danger may exist at that location. In these circumstances, the department may transfer an interview to a department office and take any other steps reasonably necessary to protect its employees.

(5) Nothing in this rule shall be interpreted as precluding the department from initiating the transfer of an interview if the transfer would promote the effective and efficient conduct of the interview. Should a taxpayer request that such a transfer not be made, the department will consider the request according to the principles and criteria set forth in paragraph 11.5(3)*"c."*

(6) Regardless of where an interview takes place, the department may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The department generally will visit for these purposes on a normal workday of the department during the department's normal business hours.

11.5(4) *Audio recordings of taxpayer interviews.*

a. A taxpayer is permitted, upon advance notice to the department, to make an audio recording of any interview of the taxpayer by the department relating to the determination or collection of any tax. The recording of the interview is at the taxpayer's own expense and must be with the taxpayer's own equipment.

b. Requests by taxpayers to make audio recordings must be addressed to the department employee who is conducting the interview and must be received by no later than ten calendar days before the interview. If ten calendar days' advance notice is not given, the department may, in its discretion, conduct the interview as scheduled or set a new date.

c. The department employee conducting the interview will approve the request to record the interview if:

(1) The taxpayer (or representative) supplies the recording equipment;

(2) The taxpayer acknowledges that the department may produce its own recording of the proceedings;

(3) The recording takes place in a suitable location; and

(4) All participants in the proceedings other than department personnel consent to the making of the audio recording and all participants identify themselves and their role in the proceedings.

d. A department employee is also authorized to record any taxpayer interview if the taxpayer receives prior notice of the recording and is provided with a transcript or a copy of the recording upon the taxpayer's request.

e. Requests by taxpayers (or their representatives) for a copy or transcript of an audio recording produced by the department must be addressed to the employee conducting the interview and must be received by the department no later than 30 calendar days after the date of the recording. The taxpayer must pay the costs of duplication or transcription.

f. At the beginning of the recording of an interview, the department employee conducting the interview must state the employee's name, the date, the time, the place, and the purpose of the interview. At the end of the interview, the department employee will state that the interview has been completed and that the recording has ended.

g. When written records are presented or discussed during the interview being recorded, they must be described in sufficient detail to make the audio recording a meaningful record when matched with the other documentation contained in the case file.

This rule is intended to implement Iowa Code section 421.60.

701—11.6(421) Adjustments.

11.6(1) *Notice of proposed adjustments.*

a. An employee of the department designated by the director to examine returns and make audits who discovers discrepancies or omissions in returns or who discovers that no return was filed when one was due is authorized to notify the person of this discovery by mail or electronically in accordance with rule 701—8.6(421). This notice is not an assessment. It informs the person of the amount that would be due if the proposed adjustments are finalized.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of a proposed adjustment in connection with a return may do either of the following:

(1) Pay the additional amount stated to be due, if any. If payment is made and the person wishes to contest the matter, the person should then file a claim for refund. Payment is not required until an assessment is made, although interest will continue to accrue if payment is not made.

(2) If no payment is made, the person may discuss with the employee who notified the person of the proposed adjustments all matters of fact and law that may be relevant to the situation. This person may also ask for a conference with the Alcohol and Tax Compliance Division. Documents and records supporting the person's position may be required.

c. If after following the procedures outlined in this subrule, no agreement is reached and the person does not pay the amount determined to be correct, if any, or if the department in its discretion does not send notice of the proposed adjustments, the department will send a notice of assessment or a denial of a refund claim which initiates the appeal period.

11.6(2) *Notice of assessment.*

a. A notice of assessment will be issued in accordance with the Iowa Code, within the time period prescribed by the Iowa Code, and will be sent by mail or electronically in accordance with rule 701—8.6(421).

b. If the notice of assessment is timely appealed in accordance with 701—Chapter 7, proceedings to collect the tax will not be commenced until the appeal is ultimately determined unless the department has reason to believe that a delay caused by the appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa.

11.6(3) *Supplemental assessments.* The department may, at any time within the applicable statute of limitations period for examining a tax return, issue a supplemental assessment whenever it is ascertained that any prior assessment or refund adjustment was inaccurate. The department may also, at any time within the applicable statute of limitations period for examining a tax return, issue an assessment whenever it is ascertained that any prior refund was issued in error.

11.6(4) *Denial of a refund claim.* A denial of a refund claim will be issued in accordance with the Iowa Code. The department may issue a denial of a refund claim in whole or in part at any time if the department determines a claim for refund is untimely or without merit.

11.6(5) *Effect of resolved assessments or refund adjustments.* If an assessment or refund adjustment is appealed in accordance with 701—Chapter 7 and is resolved, whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code section 421.60.

701—11.7(422,453B) Jeopardy assessments.

11.7(1) *Generally.* This rule governs jeopardy assessments for all taxes and charges administered by the department. A jeopardy assessment may be made where the director believes for any reason that assessment or collection of the tax will be jeopardized by delay. In addition, all assessments made pursuant to Iowa Code chapter 453B are jeopardy assessments. The department is authorized to estimate the applicable tax base and the tax upon available information, add penalty and interest, and demand immediate payment. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

11.7(2) *Request for bond.*

a. In the event a taxpayer seeks to post a bond in lieu of summary collection of a jeopardy assessment, pending final determination of the amount of tax legally due, the taxpayer must file a Jeopardy Assessment Bond Request Form, available on the department's website, with the clerk of the appeals section for the department. The department will accept or reject the bond request, in writing, within ten days. If the department does not respond within ten days, the bond request is deemed rejected. The department is not required to accept bond requests. If the department accepts the bond request, the clerk of the appeals section for the department shall be notified. The approval is conditioned upon the taxpayer's posting the bond in accordance with this rule.

b. Bond requests may be made any time after a timely appeal of the jeopardy assessment has been filed with the department in accordance with 701—Chapter 7, except that any bond request whereby the taxpayer seeks to postpone a scheduled sale of assets seized by or on behalf of the department must be filed with the clerk of the appeals section for the department no later than ten days from the date on which notice of the sale was mailed to, or otherwise served upon, the taxpayer. Portions of an assessment that are undisputed must be paid in full at the time a bond request is filed.

11.7(3) *Posting of bond.* If the department accepts the bond request, the taxpayer shall post the bond within 15 days from the date the taxpayer was notified of the acceptance by the department. If the taxpayer fails to post the bond by the deadline, the bond request is deemed rejected and no bond will be allowed.

11.7(4) *Type of bond.*

a. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings up to the amount of the bond.

b. A personal bond, without a surety, is only permitted if the taxpayer posts with the clerk of the appeals section for the department, cash, a cashier's check, a certificate of deposit, or other marketable securities which are approved by the department with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of Iowa Code chapter 636 relating to personal and corporate sureties shall govern to the extent not inconsistent with the provisions of this subrule.

11.7(5) *Form of surety bond.* The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE

HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	
	*	
(Taxpayer's Name, Address and	*	SURETY BOND
designate proceeding, e.g.,	*	
income, sales, etc.)	*	DOCKET NO.
	*	

KNOW ALL PERSONS BY THESE PRESENTS:

That we _____(taxpayer)_____ as principal, and _____(surety)_____, as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue for the use of the State of Iowa, in the sum of $ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above-named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated this _____ day of _____, _____.

_____
Principal

_____
Surety

_____
Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA)
ss
COUNTY OF) _____

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts," and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution."

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____	$ _____	$ _____
Surety (type name)		
_____	$ _____	$ _____
Surety (type name)		

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, _____.

(Seal)

Notary Public in and
for the State of Iowa

11.7(6) *Duration of bond.* The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated as provided by law.

11.7(7) *Exoneration of bond.* Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the department when any of the following events occur: upon full payment of the tax, penalty, interest, costs or fees found to be due; upon filing a bond for the purposes of judicial review which bond is sufficient to secure the unpaid tax penalty, interest, costs and fees; or if no additional tax, penalty, interest, costs or fees are found to be due that have not been previously paid, upon entry of a final unappealable order which resolves the underlying appeal.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—11.8(421,422) Application of payments to fees, penalty, interest, and then tax due. This rule governs the application of payments for all taxes and charges administered by the department.

11.8(1) *Reapplication of prior payments.* The department will not reapply prior payments made on or before the due date of the original return by the taxpayer to penalty or interest determined to be due after the date of those prior payments. However, the department will apply payments to penalty and interest which were due at the time the payment was made.

Example (a) — Delinquent Return

a. Tax due is $1,000.

b. Return filed two months late.

c. $1,000 paid with the return.

d. Assume 0.7% monthly interest for purpose of example.

e. The department bills the additional tax in the third month after the due date. The taxpayer pays the assessment in the third month.

The computation of fees, penalty, interest, and tax is shown below:

Tax	$1,000.00	
Penalty	100.00	(5% failure to file penalty and 5% failure to timely pay penalty)
Interest	14.00	(2 months interest)
Subtotal	$1,114.00	
Less payment	(1,000.00)	
Remaining tax due	$ 114.00	
Interest	.80	(1 month interest)
Total due	$ 114.80	

Two years after the due date, the Internal Revenue Service conducts an audit and increases the taxpayer's taxable income. The department redetermines the taxpayer's liability 26 months after the due date as follows:

Tax as redetermined by the department	$1,100.00	
Penalty	110.00	(5% failure to file penalty and 5% failure to timely pay penalty)
Interest	15.40	(2 months interest)
Less payment	($1,000.00)	
Subtotal	$225.40	
Interest	1.58	(1 month interest)
Less payment	($114.80)	
Remaining tax due	$112.18	

Interest	18.06	(23 months interest)
Total due	$ 130.24	

Example (b) — Timely Filed No Remit
a. Tax due is $1,000.
b. Return timely filed.
c. $0 paid.
d. Assume 0.7% monthly interest for purpose of example.
The calculation for the total amount due five months after the due date is shown below:

Tax	$1,000.00	
Penalty	50.00	(5% failure to timely pay penalty)
Interest	35.00	(5 months interest)
Total due	$1,085.00	

The department bills the amount due in the fifth month after the due date and the taxpayer pays the billed amount in the eighth month after the due date. The payment is applied as follows:

Tax	$1,000.00	
Penalty	50.00	(5% failure to timely pay penalty)
Interest	56.00	(8 months interest)
Subtotal	$1,106.00	
Less payment	($1,085.00)	
Remaining tax due	$ 21.00	

Taxpayer does not pay the remaining tax due of $21, which continues to accrue interest. Three years after the due date the taxpayer reports the result of an Internal Revenue Service audit which increases the taxpayer's income and tax due to the department. The department recomputes the taxpayer's liability as follows:

Tax as redetermined by the department	$1,200.00	
Penalty	60.00	(5% failure to timely pay penalty)
Interest	67.20	(8 months interest)
Less payment	($1,085.00)	
Remaining tax due	$ 242.20	
Interest	47.47	(28 months interest)
Total due	$289.67	

11.8(2) *Refunds from department audit.* In those instances where a department audit reduced the amount of tax, fees, penalty, and interest due over the amount paid, the department will, when possible, reapply payments so that the amount refunded is tax on which interest will accrue as set forth in the Iowa Code.

11.8(3) *Partial payments.*

a. Where partial payments are made, the department will apply payments to fees, penalty, interest, and then to tax due. If fees, penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the fees, penalty, then the interest, then the tax for the earliest period, then to the fees, penalty, interest, and tax for each following tax period in chronological order from the earliest tax period to the latest tax period, until the payment is exhausted.

b. Where there are both agreed-to and unagreed-to items as a result of an audit, the taxpayer and the department may agree to apply payments to the fees, penalty, interest, and then to tax due on the

agreed-to items of the audit when all of the fees, penalty, interest, and tax on the agreed-to items are paid. In these instances, subsequent payments will not be applied to fees, penalty, and interest accrued on the agreed-to items of the audit.

11.8(4) *Taxpayer designation of tax type and period to which voluntary payments are to be applied.*

a. A taxpayer may designate in a separate written instruction at the time a voluntary payment is made the type of tax and tax periods to which any voluntary payment is to be applied.

b. The taxpayer may not designate the application of a voluntary payment between fees, penalty, interest, and tax due for a particular type of tax or tax period.

c. The taxpayer may not designate the application of payments which are the result of a jeopardy assessment or enforced collection. Enforced collection includes, but is not limited to, garnishment of wages or bank accounts, setoff of public payments as defined in Iowa Code section 421.65, and seizure of assets.

This rule is intended to implement Iowa Code sections 421.60 and 422.25.

ITEM 2. Amend paragraph **202.6(1)"f"** as follows:

f. ~~*Record-keeping*~~ *Recordkeeping requirements.* The parties involved in transactions involving a direct pay permit shall have the following ~~record-keeping~~ recordkeeping duties:

(1) Permit holder. The holder of a direct pay permit will retain possession of the direct pay permit and keep a record of all transactions made pursuant to the direct pay permit in compliance with rule ~~701—11.4(423)~~ 701—11.3(321,421,423,452A,453A).

(2) Vendor. A vendor will retain a valid exemption certificate under rule ~~701—288.3(423)~~ 701—209.1(423) that is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule ~~701—11.4(423)~~ 701—11.3(321,421,423,452A,453A). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule ~~701—288.3(423)~~ 701—209.1(423).

ITEM 3. Adopt the following **new** rule 701—202.18(422,423):

701—202.18(422,423) Information disclosures to certain persons.

202.18(1) When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to the person the amount of unpaid sales or use taxes due by a taxpayer. The person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. Examples of those who might seek information on a taxpayer are persons from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property.

202.18(2) Upon request, the department may disclose to any person whether or not a taxpayer has a sales tax permit because the law requires the taxpayer's permit to be conspicuously posted at all times in the taxpayer's place of business, thus becoming public information.

202.18(3) The information disclosed pursuant to this rule is not a violation of Iowa Code section 422.72.

This rule is intended to implement Iowa Code sections 422.72, 423.42, and 423.23.

ITEM 4. Adopt the following **new** rule 701—202.19(423):

701—202.19(423) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix or, in lieu of the bond, securities approved by the director in an

amount as the director may prescribe. Pursuant to Iowa Code section 423.35, the director has determined that the following procedures apply with regard to bonds:

202.19(1) *When required.*

a. New applications for sales tax permits.

(1) An applicant for a new sales tax permit may be required to post a bond or security if:

1. It is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or

2. The new applicant held a permit for a prior business and the remittance record of the tax under the prior permit falls within one of the conditions in paragraph 202.19(1)*"b,"* or

3. The department experienced collection problems while the applicant was engaged in business under the prior permit, or

4. The applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in paragraph 202.19(1)*"b"* or the person had a previous sales tax permit that has been revoked.

(2) The applicant is substantially similar to the extent that said applicant is owned or controlled by persons who owned or controlled the previous permit holder. For example, X, a corporation, had a previous sales tax permit revoked. X is dissolved, and its shareholders create a new corporation, Y, which applies for a sales tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

b. Existing permit holders.

(1) Existing permit holders may be required to post a bond or security under the following circumstances:

1. When they have had one or more delinquencies in remitting the sales tax or filing timely returns during the last 24 months if filing returns on an annual basis.

2. When they have had four or more delinquencies in remitting the sales tax or filing timely deposits or returns during the last 24 months if filing returns on a monthly basis.

(2) The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or the late payment of the tax will not count as a delinquency if the permit holder has satisfied one of the conditions set forth in Iowa Code section 421.27.

c. Return of bond. If a permit holder has been required to post a bond or security or if an applicant for a permit has been required to post a bond or security, upon the filing of the bond or security if the permit holder maintains a good filing record for a period of two years, the permit holder may request that the department return the bond or security. The department may elect to return the bond without a request from the permit holder.

d. Applying bond. The department may apply a bond to any existing tax liability of the permit holder at its discretion.

202.19(2) *Type of security or bond.*

a. When it is determined that a permit holder or applicant for a sales tax permit is required to post collateral to secure the collection of the sales tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities or certificates of deposit. "Cash" means guaranteed funds, including but not limited to the following:

(1) Cashier's check,

(2) Money order, or

(3) Certified check.

b. If cash is posted as a bond, the bond will not be considered filed until the final payment is made if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An acknowledgement of assignment from the bank must accompany the original certificate of deposit filed with the department. When a permit holder elects to post cash rather than a certificate of deposit as a bond, conversion to certificate of deposit will not be allowed. When the permit holder is a corporation, an officer of the corporation may assume personal

liability as security for the payment of the sales tax. The officer will be evaluated as provided in subrule 202.19(1) as if the officer applied for a sales tax permit as an individual.

202.19(3) *Amount of bond or security.* When it is determined that a permit holder or applicant for a sales tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond unless the facts warrant a greater amount:

a. If the permit holder or applicant will be or is a monthly filer, a bond or securities in an amount sufficient to cover five months' sales tax liability will be required.

b. If the applicant or permit holder will be or is an annual filer, the bond or securities that will be required would be in the amount of one year's tax liability.

c. The department does not accept bonds for less than $100. If the bond amount is calculated to be less than $100, a $100 bond is required.

This rule is intended to implement Iowa Code section 423.35.

ITEM 5. Adopt the following **new** rule 701—202.20(423):

701—202.20(423) Taxpayer records—specific requirements. Records required to be kept in accordance with rule 701—11.3(321,421,423,452A,453A) include but are not limited to the following:

202.20(1) A daily record of the amount of all cash and time payments and credit sales.

202.20(2) A record of the amount of all merchandise purchased and of all services performed for a taxpayer, including all bills of lading, invoices and copies of purchase orders.

202.20(3) A record of all deductions and exemptions taken in filing an Iowa tax return.

202.20(4) A true and complete inventory of the value of the stock on hand taken at least once a year. This includes an inventory of merchandise accepted as partial payment of the sales price on new merchandise.

202.20(5) An accurate record of all services performed, including materials purchased for use in performing these services.

202.20(6) Exemption certificates that are evidence of exempt sales; 701—Chapter 209 contains more information.

This rule is intended to implement Iowa Code section 423.41.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 28
"Nonlocal Business Entity Bond Forfeitures"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 9C.4 and 91C.7
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 9C and 91C

Public Hearing

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

October 8, 2024 1 to 2 p.m.	Via videoconference: meet.google.com/wzj-ksyk-rmg

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to move content from rule 701—7.30(9C,91C) into a new Chapter 28. The Department proposes to remove portions of the rule that the Department determined are unnecessary, outdated, or duplicative of statutory language. The proposed chapter describes the Department's interpretation of the underlying statute to help the public understand the procedures involved for nonlocal business entity bond forfeitures under Iowa Code chapters 9C and 91C. Creating a new chapter for this information provides a more logical location for the information than where it was previously included in 701—Chapter 7. This move will make the information easier to find.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No classes of persons have been identified to bear the costs of the proposed chapter.

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

This chapter helps the public understand the procedures for nonlocal business entity bond forfeitures.

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:

No economic impact from the proposed chapter has been identified.

- Qualitative description of impact:

The Department is required to provide rules on these procedures pursuant to Iowa Code sections 9C.4 and 91C.7. The qualitative impact of this chapter is to provide guidance regarding the procedures for nonlocal business entity bond forfeitures.

3. Costs to the State:

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

There are no costs to the Department related to implementing the proposed chapter beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

There are no costs relating to the proposed chapter. The cost of inaction would be failing to update the rule to remove unnecessary language and language duplicative of statute. The benefit of the chapter is reducing confusion about the procedures for nonlocal business entity bond forfeitures. The Department is required to provide rules on these procedures pursuant to Iowa Code sections 9C.4 and 91C.7.

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

The proposed rulemaking is not costly or intrusive.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing rules on these topics but determined that providing guidance on the procedures for nonlocal business entity bond forfeitures was necessary.

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

Proceeding without the proposed chapter would lead to confusion and increase communications to the Department for clarification.

Small Business Impact

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

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

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

This rulemaking does not have a substantial impact on small business. The chapter does not make any special distinctions for small businesses. The chapter does not impose any requirements on businesses other than requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 28:

CHAPTER 28
NONLOCAL BUSINESS ENTITY BOND FORFEITURES

701—28.1(9C,91C) Procedure. The following subrules shall govern the procedure for that forfeiture under Iowa Code chapters 9C and 91C.

28.1(1) *Definitions.*

"Nonlocal business entity" is either an out-of-state contractor or a transient merchant as those terms are defined in this subrule.

"Out-of-state contractor" means a general contractor, subcontractor, architect, engineer, or other person who contracts to perform in this state construction or installation of structures or other buildings or any other work covered by Iowa Code chapter 103A and whose principal place of business is outside Iowa.

"Taxes payable" means any amount referred to in the definitions of "taxes payable by an out-of-state contractor" and "taxes payable by a transient merchant."

"Taxes payable by an out-of-state contractor" means tax, penalty, interest, and fees that the department, another state agency, or a subdivision of the state has determined to be due by assessment or due as a result of an appeal from an assessment. The tax assessed must accrue as the result of a contract to perform work covered by Iowa Code chapter 103A.

"Taxes payable by a transient merchant" refers to all taxes administered by the department and penalties, interest, and fees that the department has previously determined to be due by assessment or due as a result of an appeal from an assessment.

"Transient merchant," for the purposes of this rule, means the same as defined in Iowa Code section 9C.1.

28.1(2) *Increases in existing bonds.* If an out-of-state contractor has on file with the secretary of state a bond for any particular contract and for that particular contract the contractor has tax due and owing but unpaid and this tax is greater than the amount of the bond, the department shall require the out-of-state contractor to increase the bond on file with the secretary of state in an amount sufficient to pay tax liabilities that will become due and owing under the contract in the future.

28.1(3) *Responsibility for notification.* Concerning taxes that are payable by an out-of-state contractor but that are not administered by the department of revenue, it shall be the duty of the department or subdivision of Iowa state government to which the taxes are owed to notify the department of revenue of the taxes payable by the out-of-state contractor in order to institute bond forfeiture proceedings or an increase in the amount of the bond that the out-of-state contractor must post.

28.1(4) *Initial notification.* After it is determined that a bond ought to be forfeited, notice of this intent shall be sent to the nonlocal business entity and its surety of record, if any, in accordance with Iowa Code section 91C.7(4). This notice may be sent by ordinary mail. The notice shall state the intent to demand forfeiture of the nonlocal business entity's bond, the amount of bond to be forfeited, the nature of the taxes alleged to be payable, the period for which these taxes are due, and the department or subdivision of Iowa to which the taxes are payable. The notice shall also state the statutory authority for the forfeiture and the right to a hearing upon timely application.

28.1(5) *Appeal of bond forfeiture.* The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for appeals of other department action in rule 701—7.8(17A). The caption of the application shall be basically in the form set out in 701—subrule 7.8(5), except the type of proceeding shall be designated as a bond forfeiture collection. The body of the application for hearing must substantially resemble the body of the protest described in 701—subrule 7.8(5). However, referring to 701—numbered paragraph 7.8(5)*"b"*(2)"1," the

nonlocal business entity shall state the date of the notice described in subrule 28.1(4). With regard to 701—subparagraph 7.8(5)*"b"*(2), in the case of a tax payable that is not administered by the department, the errors alleged may be errors on the part of other departments or subdivisions of the state of Iowa. The application for hearing shall be filed with the department's administrative law judge in the manner described in rule 701—7.9(17A). The docketing of an application for hearing shall follow the procedure for the docketing of an appeal under that rule.

28.1(6) *Prehearing, hearing and rehearing procedures.* The following rules are applicable to preliminary and contested case proceedings under this rule: 701—7.3(17A) through 701—7.14(17A) and 701—7.17(17A) through 701—7.23(17A).

28.1(7) *Sureties and state departments other than revenue.* If there exist taxes payable by an out-of-state contractor and these taxes are payable to a department or subdivision of state government other than the department of revenue, that department or subdivision shall be the real party in interest to any proceeding conducted under this rule and it shall be the responsibility of that department or subdivision to provide its own representation and otherwise bear the expenses of representation.

This rule is intended to implement Iowa Code sections 9C.4 and 91C.7.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 1100
"Miscellaneous Operational Rules of the Lottery"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.9, 99G.25, and 99G.30

State or federal law(s) implemented by the rulemaking: Iowa Code sections 99G.9, 99G.25, and 99G.30

Public Hearing

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

October 8, 2024	Via virtual/videoconference:
2 to 3 p.m.	meet.google.com/nun-pwxd-szf

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

This proposed chapter provides generally applicable rules that govern the operation of the Iowa Lottery that do not fit neatly in other rule chapters. Because this chapter falls under the Iowa Lottery Authority's portion of the Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapters 1 and 2 are proposed to be rescinded. This rulemaking proposes to readopt the chapters under the Department of Revenue as 701—Chapter 1100. Finally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The only persons who may be affected by proposed rule 701—1100.1(99G) are those persons who wish to purchase lottery tickets offered by the Iowa Lottery and used by the purchaser for promotional purposes. The costs are limited to the price of the tickets in the game of the participant's choosing. Persons who may be affected by proposed rule 701—1100.2(99G) are those persons who wish to act as vendors for the Iowa Lottery. Potential vendors will not incur costs beyond those envisioned by Iowa Code section 99G.22(1).

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

Proposed rule 701—1100.1(99G) facilitates the promotional use of tickets in games offered by the Iowa Lottery while furthering the Iowa Lottery's goal of conducting games with fairness and integrity. Proposed rule 701—1100.2(99G) will benefit potential vendors by providing guidance upon which those potential vendors can rely and benefits the Iowa Lottery by ensuring the fairness and integrity of lottery operations.

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 economic impact associated with these rules beyond what was envisioned by Iowa Code chapter 99G.

- Qualitative description of impact:

This proposed rulemaking furthers the Iowa Lottery's goal of conducting games with fairness and integrity while providing entertainment to the public and maximizing revenue.

3. Costs to the State:

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

There are no costs to the agency to implement these rules beyond the costs contemplated by Iowa Code chapter 99G. Under Iowa Code section 99G.38, the Iowa Lottery remains self-funded even after being incorporated into the Department of Revenue.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues.

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

There are no costs associated with this rulemaking beyond those costs contemplated by statute. The benefits of the rulemaking are promotion of certainty among persons wishing to offer lottery products as part of a promotion and potential lottery vendors and the protection of fairness and integrity of the Iowa Lottery's operations.

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

The Department has determined that less intrusive methods do not exist for achieving the purposes of this proposed rulemaking.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing the rules in this chapter, but determined that the rules provide useful guidance to persons wishing to include lottery products as part of a promotion and persons wishing to become lottery vendors.

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

Alternative methods were rejected in favor of the proposed rulemaking because the alternatives would have threatened the fairness and integrity of lottery operations and would not have provided generally applicable guidance to persons wishing to use lottery products as part of a promotion or potential lottery vendors.

Small Business Impact

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

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

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

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

This chapter does not have a substantial impact on small business. The proposed rulemaking does not impose any special requirements on any particular type of business beyond those requirements mandated by the Iowa Code.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1100:

CHAPTER 1100
MISCELLANEOUS OPERATIONAL RULES OF THE LOTTERY

701—1100.1(99G) Promotional use of tickets by persons without lottery licenses. Tickets may be given away for promotional purposes by persons without a lottery license in conjunction with the purchase of a product or service or an admission fee without violating this provision provided that the actual cost of the product or service or admission fee is not calculated to include the ticket price, and the promotion is not designed, intended, or conducted to circumvent the department's licensing requirements.

This rule is intended to implement Iowa Code sections 99G.9, 99G.25, and 99G.30.

701—1100.2(99G) Background and informational statements.

1100.2(1) All prospective vendors for major procurements, and any other prospective vendor as required by the department, shall submit to criminal history and background investigations as conditions for submission of a bid. Any person identified as an officer, director, trustee, partner, sole proprietor, employee, or other person identified by the department as a key person in a sensitive position or relationship with a prospective vendor may also be required to submit to a criminal history and background investigation as required by the department.

Prospective vendors, and any individual identified as a key person, will comply with all requirements necessary for criminal history and background investigations, as determined by the department. Failure to comply with all requirements may result in bid disqualification.

1100.2(2) Any change in key personnel during the bidding process or during the contract term must be reported to the department before the change occurs. Replacement personnel will be subject to investigation.

1100.2(3) If a prospective vendor or any key personnel thereof is found to have been convicted of any felony related to the security or integrity of the lottery in Iowa or any other jurisdiction, the prospective vendor will be automatically disqualified from the selection process without further investigation.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 1101
"Prizes"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.9, 99G.21, 99G.30, and 99G.31

State or federal law(s) implemented by the rulemaking: Iowa Code sections 99G.9, 99G.21, 99G.30, and 99G.31

Public Hearing

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

October 8, 2024 2 to 3 p.m.	Via virtual/videoconference: meet.google.com/nun-pwxd-szf

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

This proposed chapter provides generally applicable rules that govern claiming and payment of prizes when players win games offered by the Iowa Lottery. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 11 is rescinded. This rulemaking proposes to readopt the chapter under the Department of Revenue as Iowa Administrative Code 701—Chapter 1101. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The only persons who may be affected by this proposed rulemaking are those individuals who win prizes in games conducted by the Iowa Lottery. The costs are limited to the price of a ticket in the game of the participant's choosing.

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

The proposed rulemaking facilitates the Iowa Lottery's conduct of games that are operated with fairness and integrity while raising revenue for the State. This rulemaking will directly benefit lottery

customers who win lottery-operated games by providing generally applicable guidelines upon which participants can rely.

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 economic impact associated with these rules beyond what was envisioned by Iowa Code chapter 99G.

- Qualitative description of impact:

As noted, this rulemaking provides generally applicable guidelines that apply to prize claims and prize payments for all games offered by the Iowa Lottery. The rules reduce any uncertainty that may surround prize claims and payments. Additionally, the rulemaking furthers the Iowa Lottery's goal of conducting games with fairness and integrity while providing entertainment to the public and maximizing revenue.

3. Costs to the State:

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

There are no costs to the agency to implement these rules beyond the costs contemplated by Iowa Code chapter 99G. Under Iowa Code section 99G.38, the Iowa Lottery remains self-funded even after being incorporated into the Department of Revenue.

- Anticipated effect on state revenues:

These rules facilitate the Iowa Lottery's conduct of games and the prize claim and payment process for players who win. In 2023, the Iowa Lottery paid winners prizes totaling $305 million. This rulemaking will help ensure these games, including the claiming and payment of prizes, continue to be conducted with fairness and integrity while providing continued public entertainment.

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

There are no costs associated with this rulemaking beyond those costs contemplated by statute. The benefits of the rulemaking are promotion of certainty among lottery customers and the protection of fairness and integrity of the Iowa Lottery's operations.

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

The Department has determined that less intrusive methods do not exist for achieving the purposes of this proposed rulemaking.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing the rules in this chapter but determined that the rules provide useful guidance to lottery customers and facilitates the Lottery's prize claim and payment processes.

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

Alternative methods were rejected in favor of the proposed rulemaking because the alternatives would have threatened the fairness and integrity of lottery operations and would not have provided generally applicable guidance to lottery customers.

Small Business Impact

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

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

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

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

This chapter does not have a substantial impact on small business. The proposed rulemaking governs prize claims and payments for games offered by the Iowa Lottery and does not impose any special requirements on any business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1101:

CHAPTER 1101
PRIZES

701—1101.1(99G) Claiming prizes.

1101.1(1) A prize claim shall be entered in the name of a single individual or organization. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses or has applied for a federal employer's identification number (FEIN) as issued by the Internal Revenue Service. Groups, family units, organizations, clubs, or other organizations that are not legal entities, do not possess a FEIN, or have not applied for a FEIN must designate one individual in whose name the claim will be entered.

1101.1(2) By submitting a claim, a player agrees that the state, the lottery commission, the lottery division, the department of revenue, and the officials, officers, and employees of each shall be discharged from all further liability upon payment of the prize.

1101.1(3) By submitting a claim, the player also agrees that the prizewinner's name may be used for publicity purposes by the lottery.

1101.1(4) An original ticket or share must be presented before payment of any prize will occur. No reproductions, facsimiles, or copies of any kind are allowed.

1101.1(5) The player must sign the original ticket or share prior to presenting the ticket to another party for the purpose of checking or validating the ticket. The lottery and retailers shall verify that there is a signature on any ticket submitted for checking or validation.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.2(99G) Claim period. A prize must be claimed within the time limit specifically designated in these rules or as specified in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.3(99G) Invalid tickets not entitled to prize payment. If a ticket presented to the lottery division is invalid pursuant to the terms of these rules or the game specific rules, the ticket is not entitled to prize payment.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.4(99G) Ticket is a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature if a signature space is provided. The person who signs the ticket is thereafter considered the owner of the ticket unless circumstances indicate the person is not the rightful owner of the ticket.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.5(99G) Assignment of prizes. Payments of prizes will be made as follows:

1101.5(1) If a prize is payable in installments, all future installments of the prize will be made to the person or legal entity that received the initial installment of the prize or to a person designated by the court to receive payment following the prizewinner's death unless otherwise assigned according to these rules.

1101.5(2) The right to control receipt of a lottery prize is substantially limited. See 26 U.S.C. §451 (2019) and Treas. Reg. §1.451-2(a) (1979). The right to receive payment of a lottery prize or a future installment of a lottery prize shall not be sold, assigned or otherwise transferred in any manner without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

1101.5(3) In the event that a legal entity other than an individual is entitled to a lottery prize won jointly by more than one individual, the individuals originally entitled to share the prize cannot sell, assign or otherwise transfer their interest in the legal entity receiving prize payment or their right to receive future payments from the legal entity without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.6(99G) Prize payment to minors. If the person entitled to a prize is under the age of 18, the payment of the prize may be made by delivery of cash or a check payable to the order of the minor or to a parent or legal guardian of the minor, or other payment methods as determined by the department. Claim forms and tickets submitted by minors must be signed by a parent or legal guardian of the minor.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.30(3), and 99G.31.

701—1101.7(99G) Time of prize payment. The lottery division will pay all prizes within a reasonable time after verifying a claim and determining a winner. The date of the first installment payment of any prize to be paid in installment payments is the date the claim is validated and processed unless these rules or applicable game specific rules specify a different date. Subsequent installment payments will be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The lottery division may, at any time, delay any prize payment to review a change in circumstances relative to the prize awarded, the payee, or the claim.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.30.

701—1101.8(99G) Prizes payable for the life of the winner. If any prize is payable for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner shall be deemed to be 20 years.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.9(99G) Prizes payable after death of winner. All prizes and portions of prizes that remain unpaid at the time of the prizewinner's death are payable to the court-appointed representative of the prizewinner's estate or to a single individual pursuant to the terms of a final order closing the estate.

The lottery division may withhold payment until it is satisfied that the proper payee has been identified, or it may petition the court to determine the proper payee. In making payment, the lottery division may rely on the presentation of a certified copy of the letters of appointment as an administrator, executor, or other personal representative for the prizewinner's estate or on a certified copy of the final order closing the estate. Payment to the representative of the estate of the deceased owner of any prize winnings or to another individual pursuant to a final order closing the estate

absolves the state, the lottery commission, the lottery division, the department of revenue, and the officials, officers, and employees of each from all further liability for payment of prize winnings.

If the winner received an annuitized prize funded through the Multi-State Lottery Association (MUSL) or any other multijurisdictional lottery organization in which the Iowa lottery participates as a member, the MUSL board or other organization board, as may be appropriate, in its sole discretion, upon the petition of the estate of the prizewinner, may accelerate the payment of all of the remaining lottery proceeds to the estate of the prizewinner. If the winner received an annuitized prize funded solely through the sales from the Iowa lottery, the lottery division, in its sole discretion, upon the petition of the estate of the prizewinner, may accelerate the payment of all of the remaining lottery proceeds to the estate of the prizewinner. If such a determination is made, then securities or cash held for the deceased prizewinner, that represents the present value of that portion of the future lottery payments that are to be accelerated, will be distributed to the estate. Valuation of the securities and determination of the present value of the accelerated lottery payments are at the sole discretion of the entity granting the petition.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.10(99G) Disability of prizewinner. The lottery division may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings that are or may become due a person under a disability. For this rule's purposes, a "disability" includes but is not limited to mental deficiency, and physical or mental incapacity.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.11(99G) Stolen or lost tickets. The lottery division has no responsibility for paying prizes attributable to stolen or lost tickets.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.12(99G) Effect of game rules. In purchasing a ticket, the player agrees to comply with Iowa Code chapter 99G, these rules, the game specific rules, lottery division instructions and procedures, and the final decisions of the lottery division. The lottery division's decisions and judgments in determining winning tickets, or any other dispute arising from the payment or awarding of prizes, is binding upon all participants in the lottery. If a dispute between the lottery division and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the lottery division may, solely at the lottery division's option, replace the ticket with an unplayed ticket of equivalent price from any game or refund the price of the ticket. This is the player's sole and exclusive remedy. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.13(99G) Disputed prizes. If there is a dispute, or it appears that a dispute may occur relative to the payment of any prize, the lottery division may refrain from making payment of the prize pending a final determination by the lottery division or by a court of competent jurisdiction as to the proper payment of the prize.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.14(99G) Prize payment for prizes paid over a term exceeding ten years.

1101.14(1) A prizewinner who wins a prize that is payable over a term exceeding ten years may, not later than 60 days after the player became entitled to the prize, elect to have the prize paid in cash or by annuity consistent with 26 U.S.C. §451 (2019). If the payment election is not made by the prizewinner at the time of purchase or is not made within 60 days after the prizewinner becomes entitled to the prize, then the prize will be paid as an annuity prize. An election for an annuity payment made by a prizewinner before the ticket purchase or by system default or design may be changed to a cash payment at the election of the prizewinner until the expiration of 60 days after the prizewinner

becomes entitled to the prize. The election to take the cash payment may be made at the time of the prize claim or within 60 days after the prizewinner becomes entitled to the prize, whichever is earlier.

An election made after the prizewinner becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed.

1101.14(2) In the event there is more than one prizewinner for a prize paid over a period exceeding ten years, the shares of the prize are determined by dividing the cash available in the prize pool equally among all the winners of the prize. Winners who elect a cash payment will be paid their share in a single cash payment. The annuitized option prize is determined by multiplying a winner's share of the prize pool by the annuity factor used by the lottery division. The lottery division's annuity factor is determined by the best price obtained through a competitive bid of qualified, preapproved brokers or insurance companies made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the prizewinner becomes entitled to the prize.

1101.14(3) The lottery division is not responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount of the prize value purchased from the time the player becomes eligible for the prize and the time the prizewinner claims the prize.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 1102 "Licensing"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.7, 99G.9, 99G.21, 99G.24, 99G.27, 99G.30, 99G.35, 252J.2, 252J.8, 272D.8, and 272D.9

State or federal law(s) implemented by the rulemaking: Iowa Code sections 99G.7, 99G.9, 99G.21, 99G.24, 99G.27, 99G.30, 99G.35, 252J.2, 252J.8, 272D.8, and 272D.9

Public Hearing

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

October 8, 2024 2 to 3 p.m.	Virtual/videoconference: meet.google.com/nun-pwxd-szf

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

This proposed chapter provides generally applicable rules that govern the Iowa Lottery retail license application process, the conditions for license issuance, and the grounds for license suspension and revocation. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 12 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as 701—Chapter 1102. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The only persons who may be affected by this proposed rulemaking are those persons who operate as lottery retailers under the Iowa Code and these rules. Lottery retailers will incur costs when they submit applications for retail licenses and provide bonds as outlined in 531—subrules 12.4(3) and 12.16(6) (proposed subrules 1102.6(3) and 1102.5(2)), respectively.

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

A robust retailer network is central to the Iowa Lottery's mission to provide public entertainment and maximize revenue while ensuring fairness and integrity. This rulemaking will directly benefit applicants who wish to operate as lottery retailers by providing generally applicable guidelines upon which applicants can rely in their dealings with the Iowa Lottery.

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 economic impact associated with these rules beyond what is envisioned by Iowa Code chapter 99G.

- Qualitative description of impact:

As noted, this rulemaking provides generally applicable guidelines that outline the licensing process for persons wishing to become lottery retailers and that describe the responsibilities of persons who are licensed to sell lottery products. This rulemaking helps to reduce any uncertainty surrounding these topics. Additionally, the rulemaking furthers the Iowa Lottery's goals of conducting games fairly and with integrity while providing continued entertainment to the public and maximizing revenue.

3. Costs to the State:

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

There are no costs to the agency to implement these rules beyond the costs contemplated by Iowa Code chapter 99G. Under Iowa Code section 99G.38, the Iowa Lottery remains self-funded even after being incorporated into the Department.

- Anticipated effect on state revenues:

These rules facilitate the Iowa's Lottery's relationships with its retail partners—a relationship that is crucial in furthering the Lottery's goal to maximize revenue through sales of its products. A robust network of retailers has helped the Iowa Lottery to achieve record-breaking sales in 2023. This rulemaking will continue to ensure the Lottery's relationship with its retailers and potential retailers operate with clarity and integrity.

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

Any costs associated with this rulemaking are justified by the benefits of this proposed rulemaking. Those benefits are promotion of certainty among lottery retailers and potential retailers and the protection of fairness and integrity of the Iowa Lottery's operations.

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

The Department has determined that less intrusive methods do not exist for achieving the purposes of this proposed rulemaking.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing the rules in this chapter, but determined that the rules provide useful guidance to the Lottery's retailers and potential retailers and the rulemaking facilitates the Lottery's relationship with its retailer partners and persons seeking a lottery retail license.

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

Alternative methods were rejected in favor of this proposed rulemaking because the alternative would have threatened the fairness and integrity of lottery operations and would not have provided useful, generally applicable guidance to the Lottery's retailers and proposed retailers.

Small Business Impact

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

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

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

This proposed chapter does not have a substantial impact on small business. The proposed rulemaking applies to all businesses that wish to sell lottery products to their customers.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1102:

CHAPTER 1102
LICENSING

701—1102.1(99G) Applicant defined. For purposes of determining whether an applicant is eligible for a license, the term "applicant" includes the owner of a sole proprietorship, all partners or participants in a partnership or joint venture, the officers of a fraternal organization, the officers and directors of a corporation, persons owning at least 10 percent or more of a corporation, persons owning at least 10 percent or more of a limited liability company, the manager or managers of a limited liability company, and any legal entity applying for a license.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.24.

701—1102.2(99G,252J,272D) Effect of certain state debts.

1102.2(1) The department will deny a license to any applicant who is an individual if the department has received a certificate of noncompliance from Iowa child support services with regard to the individual until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

1102.2(2) The department will deny a license to any applicant defined by this chapter if the applicant is substantially delinquent in paying any tax due, or the interest or penalty on the tax due, administered by the department at the time of application or if the applicant has current or previous delinquent liabilities collected by the department. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any delinquent tax, penalty, or interest or if a partner has current or previous delinquent liabilities collected by the department. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest or if any officer having a substantial legal or equitable interest in the ownership of the corporation has current or previous delinquent liabilities collected by the department.

This rule is intended to implement Iowa Code sections 99G.7(1), 99G.9(2), 99G.21(2), 99G.24, 252J.8, and 272D.8.

701—1102.3(99G,252J) Factors relevant to license issuance.

1102.3(1) The department's licensing authority under Iowa Code chapter 99G is discretionary. The department may issue a license to any applicant to act as a licensed retailer who meets the eligibility criteria established by Iowa Code chapter 99G and these rules.

1102.3(2) In addition to the license eligibility criteria described in Iowa Code section 99G.24, the department will consider the following factors:

a. The background of the applicant in the community for honesty;

b. The financial responsibility;

c. The type of business owned or operated by the applicant to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity of the lottery;

d. The accuracy of the information supplied in the application for a license;

e. The applicant's indebtedness to the state of Iowa, local subdivisions of the state, or the United States government; and, if the applicant is an individual, the applicant's indebtedness for child support payments as indicated by a certificate of noncompliance from Iowa child support services;

f. Any other criteria or information the department deems relevant to determining if a license should be issued.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24(5), 252J.8 and 272D.8.

701—1102.4(99G) Financial responsibility. The department will use the following guidelines when determining whether an applicant seeking a license to sell lottery products or a retailer exhibits adequate financial responsibility.

1102.4(1) *Sole proprietorship.* The department will generally consider a sole proprietor to exhibit adequate financial responsibility if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

1102.4(2) *Partnership.* If the applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 1102.4(1) to be considered to exhibit adequate financial responsibility.

1102.4(3) *Fraternal or civic associations.* If the applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 1102.4(1) to be considered to exhibit adequate financial responsibility. If the fraternal association, civic organization, or other nonprofit entity has no credit history or the credit history is incomplete, then the officers of the fraternal association, civic organization, or other nonprofit entity must meet the requirements of subrule 1102.4(1) to be considered to exhibit adequate financial responsibility.

1102.4(4) *Corporations and limited liability companies in existence two years or more if a credit risk appraisal is available through a financial and credit reporting entity.* If the license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application and a credit risk appraisal is available through a financial and credit reporting entity, the applicant must meet all of the following financial responsibility guidelines to be considered to exhibit adequate financial responsibility:

a. The applicant is paying 60 percent of its suppliers on time or within terms; and

b. The applicant possesses a credit risk appraisal provided by a financial and credit reporting entity that indicates the corporation's or limited liability company's financial condition is fair or better.

1102.4(5) *Corporations and limited liability companies in existence less than two years or if a credit risk appraisal is not available through a financial and credit reporting entity.* If a corporation has been in existence for less than two years from the date of the application or a credit risk appraisal is not available through a financial and credit reporting entity, the department will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years or a credit risk appraisal is not available through a financial and credit reporting entity, the department will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital

of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 1102.4(1) to be considered to exhibit adequate financial responsibility.

1102.4(6) *Additional considerations.* If information obtained by the department, when considered as a whole, indicates that the applicant, the retailer, or the applicant's or retailer's business practices are inconsistent with sound financial management or pose a risk to the operation or integrity of the lottery, the department may, in its discretion, determine that an applicant or retailer does not demonstrate the adequate financial responsibility for licensure notwithstanding the guidelines in subrules 1102.4(1) through 1102.4(5).

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), 99G.21(2), 99G.24, 99G.30, 252J.2, 252J.8, and 272D.8.

701—1102.5(99G) Bonds.

1102.5(1) *In general.* Any applicant or retailer whose credit history does not meet the guidelines described in subrules 1102.4(1) through 1102.4(5) must obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amounts generally described herein. The department may require any other applicant or retailer to obtain a bond if the department determines a bond is necessary to ensure the applicant or retailer remains in compliance with Iowa Code chapter 99G and these rules.

1102.5(2) *Bond amounts.* The amount of the bond will vary depending on the type of lottery products sold by the license applicant, the sales history of the retail location or the average volume of sales of lottery products at the location, or a combination of the above factors. The department's authority to require a bond is discretionary. When the department determines that a bond is necessary, the following minimum amounts will be required:

a. Sale of pull-tab tickets only, $2,500.

b. Sale of instant tickets and scratch tickets with or without pull-tab tickets, $5,000.

c. Sale of online games with or without instant tickets, scratch tickets, and pull-tab tickets, $10,000.

Additional bond amounts or a new bond may be required by the department at any time if the department determines that an existing bond becomes insufficient or the surety thereon becomes unsatisfactory.

1102.5(3) *Holding period for bond.* The department will hold the bond provided by a license applicant for a minimum time period of one year. Thereafter, the department will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery may release the bond.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), 99G.21(2), and 99G.24.

701—1102.6(99G,252J,272D) Lottery licenses.

1102.6(1) A lottery license authorizes the licensee to sell only the types of lottery products specified on the license. The department has discretion to license a qualified applicant to sell any one or any combination of the following lottery products: scratch tickets, instaplay tickets, pull-tab tickets, and computerized game tickets, if available. The department may condition the ability of a licensee to sell one or more types of lottery products on the applicant's agreement to sell any other lottery product.

1102.6(2) Any eligible applicant may apply for a license to act as a retailer by first filing with the department an application form together with any supplements deemed necessary by the department. Supplements may include but are not limited to authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the division to conduct site surveys.

1102.6(3) The application fee for a lottery retail license is $25. The application fee is nonrefundable.

1102.6(4) Retailers who are currently licensed may apply for a license modification to allow the sale of additional lottery products. A current retailer may be required to complete an additional application or application supplements.

1102.6(5) The department may waive the payment of any license fee to facilitate an experimental program or a research project.

1102.6(6) A limited number of retailers may be selected as licensees from applications received. The selection will be made based on criteria designed to produce the maximum amount of net revenue and serve public convenience. The department may refuse to accept license applications for a period of time if the department determines that the number of existing licensees is adequate to market any lottery product.

1102.6(7) The department will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold are considered denied for purposes of appeal.

If an application is denied because the department has received a certificate of noncompliance from Iowa child support services in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice issued under Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), 99G.21(2), 99G.24, 99G.30, 252J.2, 252J.8, and 272D.8.

701—1102.7(99G,252J) Provisional licenses.

1102.7(1) The department may issue a provisional license to an applicant for a lottery license after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional license expires at the time of issuance of the requested license or 90 days from the date the provisional license was issued, whichever occurs first, unless the provisional license is extended by the department.

1102.7(2) Notwithstanding subrule 1102.7(1), the department will deny a provisional license to any applicant who is an individual if the department has received a certificate of noncompliance from Iowa child support services with regard to the individual unless Iowa child support services furnishes the department with a withdrawal of the certificate of noncompliance. If an application is denied because the department has received a certificate of noncompliance from Iowa child support services in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice issued under Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24(3), 99G.27, 252J.2, and 252J.8.

701—1102.8(99G) Off-premises licenses. Any retailer may apply for an off-premises license to sell tickets in locations other than that specified on the existing license. The department must specifically approve the geographical area in which sales are to be made and the types of locations at which off-premises sales are to be made prior to issuance of an off-premises license. Additional instructions and restrictions may be specified by the department to govern off-premises sales. An off-premises license expires at the time designated on the off-premises license. An off-premises license may be renewed at the department's discretion.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.30.

701—1102.9(99G) Duplicate licenses. Upon the loss, mutilation, or destruction of any license issued by the department, a retailer may apply for a duplicate permit. A statement signed by the retailer which details the circumstances under which the license was lost, mutilated, or destroyed may be required by the department.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24, and 99G.30.

701—1102.10(99G) Reporting changes in circumstances of the retailer. Every change of business structure of a licensed business, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the department prior to the change. Substantial changes in the ownership of a licensed business must also be reported to the department prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the department may require. All changes will be reviewed by the department to determine if the existing license should be continued.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.27(1).

701—1102.11(99G) License not a vested right. The possession of a lottery retailer license issued by the department to act as a retailer in any capacity is a privilege personal to that licensee and is not a legal right. The possession of a lottery license issued by the department to act as a retailer in any capacity does not automatically entitle that licensee to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21(2).

701—1102.12(99G,252J,272D) Suspension or revocation of a license.

1102.12(1) In addition to the criteria for suspension or revocation described in Iowa Code section 99G.27, the department may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code chapter 99G or these rules.

b. Failing to file any return or report or to keep records required by the lottery division;

c. Failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments that are dishonored or electronic funds transfers that are not paid.

d. If public convenience is adequately served by other licensees.

e. A history of thefts or other forms of losses of tickets or revenue from the business.

f. Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control.

g. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

h. Making a misrepresentation of fact to the commission or department on any report, record, application form, or questionnaire that is submitted to the commission or department.

i. Denying the division or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

j. Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

k. Systematically pursuing economic gain in an occupational manner or context that is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery.

l. Failing to follow the instructions or security procedures of the division for the management of personnel, handling of tickets, or the conduct of any particular game or special event.

m. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket or to the general public with respect to the conduct of a particular game or special event.

n. For a licensee who is an individual, when the department receives a certificate of noncompliance from the child support recovery unit in regard to the licensee unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

o. Allowing activities on the licensed premises that could compromise the dignity of the state.

1102.12(2) The effective date of revocation or suspension of a license as specified in the notice issued under Iowa Code section 252J.8 is 60 days following service of the notice upon the licensee. The effective date for all other notices of revocation or suspension is 20 days following service upon a licensee.

1102.12(3) If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the department will revoke the retailer's license upon 15 days' notice served in conformance with rule 701—1102.11(99G,252J,272D).

1102.12(4) Upon suspicion that a retailer has sold a ticket to an underage player, the department will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code section 99G.30(3). In the event a retailer sells a ticket to an underage player and the department can substantiate the claim, the department will suspend the retailer's license for seven days. When a retailer sells a ticket to an underage player and the department can substantiate the claim a second time in a period of one year from the date of the first event, the department will suspend the retailer's license for a period of 30 days. When a retailer sells a ticket to an underage player and the department can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license will be suspended for one year.

1102.12(5) Upon revocation or suspension of a retailer's license of 30 days or longer, the retailer will surrender to the department, by a date designated by the department, the license, lottery identification card, and all other lottery property. The department will settle the retailer's account as if the retailer had terminated its relationship with the department voluntarily.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24, 99G.27, 99G.30(3), 99G.35, 252J.8, and 272D.8(2).

701—1102.13(99G,252J,272D) Methods of service.

1102.13(1) The notice issued under Iowa Code section 252J.8 will be served upon the licensee by certified mail restricted delivery, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

1102.13(2) Notice of a license revocation or a suspension for the reasons described in Iowa Code section 99G.27 or rule 701—1102.12(99G,252J,272D) will be served upon the licensee by certified mail restricted delivery, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel. The notice will set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. If requested by the licensee, a hearing on the suspension or revocation will be held within 180 days after the notice has been served.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24(7), 252J.8, and 272D.8.

701—1102.14(99G,252J,272D) Licensee's obligation. Licensees and license applicants must keep the lottery informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J. Licensees and applicants must also provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9 or 272D.9, any final court orders entered in such actions, and any withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 252J.8, and 272D.8.

701—1102.15(99G,252J,272D) Calculating the effective date. In the event a licensee or applicant files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the department will continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For purposes of determining the effective date of a revocation or suspension of a license, or a denial of the issuance or renewal of a license, the department will count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 252J.8, 252J.9, 272D.8, and 272D.9.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 1103
"Responsibilities of Retailers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.7, 99G.9, 99G.12, 99G.21, 99G.24, 99G.25, 99G.27, 99G.28, 99G.30, 99G.31, and 99G.35

State or federal law(s) implemented by the rulemaking: Iowa Code sections 99G.7, 99G.9, 99G.12, 99G.21, 99G.24, 99G.25, 99G.27, 99G.28, 99G.30, 99G.31, and 99G.35

Public Hearing

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

October 8, 2024 2 to 3 p.m.	Via virtual/videoconference: meet.google.com/nun-pwxd-szf

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

This proposed chapter provides generally applicable rules that outline the responsibilities of retailers licensed by the Iowa Lottery to sell lottery products. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 13 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department of Revenue as 701—Chapter 1103. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The only persons who may be affected by this proposed rulemaking are those persons who wish to operate as lottery retailers under the Iowa Code and these rules. Lottery retailers will incur costs when they purchase lottery products for resale to their customers as outlined in rule 531—13.6(99G) (proposed rule 701—1103.5(99G)).

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

A robust retailer network is central to the Iowa Lottery's mission to provide public entertainment and maximize revenue while ensuring fairness and integrity. This rulemaking will directly benefit retailers who sell lottery products to their customers by providing generally applicable guidelines upon which retailers can rely in their dealings with the Iowa Lottery.

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 economic impact associated with these rules beyond what is envisioned by Iowa Code chapter 99G.

- Qualitative description of impact:

As noted, this rulemaking provides generally applicable guidelines that outline the responsibilities of retailers that are licensed to sell lottery products. This rulemaking helps to reduce any uncertainty surrounding retailer obligations. Additionally, the rulemaking furthers the Iowa Lottery's goals of conducting games fairly and with integrity while providing continued entertainment to the public and maximizing revenue.

3. Costs to the State:

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

There are no costs to the agency to implement these rules beyond the costs contemplated by Iowa Code chapter 99G. Under Iowa Code section 99G.38, the Iowa Lottery remains self-funded even after being incorporated into the Department of Revenue.

- Anticipated effect on state revenues:

These rules facilitate the Iowa Lottery's relationships with its retail partners—a relationship that is crucial in furthering the Lottery's goal to maximize revenue through sales of its products. A robust network of retailers has helped the Iowa Lottery to achieve record-breaking sales in 2023. This rulemaking will continue to ensure the Lottery's relationship with its retailers operates with clarity and integrity.

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

There are no costs associated with this rulemaking beyond those costs contemplated by statute. The benefits of this proposed rulemaking are promotion of certainty among lottery retailers and the protection of fairness and integrity of the Iowa Lottery's operations.

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

The Department has determined that less intrusive methods do not exist for achieving the purposes of this proposed rulemaking.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing the rules in this chapter but determined that the rules provide useful guidance to the Lottery's retailers and facilitate the Lottery's relationship with its retailer partners.

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

Alternative methods were rejected in favor of this proposed rulemaking because the alternative would have threatened the fairness and integrity of lottery operations and would not have provided useful, generally applicable guidance to the Lottery's retailers.

Small Business Impact

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

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

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

This chapter does not have a substantial impact on small business. The proposed rulemaking applies to all businesses that wish to sell lottery products to their customers.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1103:

CHAPTER 1103
RESPONSIBILITIES OF RETAILERS

701—1103.1(99G) Licensed retailers. All retailers shall be licensed in the manner provided in Iowa Code chapter 99G and these rules. Retailers shall abide by all applicable laws and administrative rules, the terms and conditions of the license, and all other directives and instructions issued by the lottery.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, 99G.25, 99G.27, 99G.30, and 99G.31.

701—1103.2(99G) Requirements for the sale of tickets.

1103.2(1) Retailers shall be knowledgeable about the lottery and lottery products and may be required to take training in the operation of lottery games. Retailers shall make the purchase of tickets convenient to the public.

1103.2(2) No retailer or any employee or member of a retailer shall attempt to identify a winning ticket prior to the sale of the ticket.

1103.2(3) Except as the lottery may allow in its discretion, retailers shall pay all prizes that the department requires retailers to pay during normal business hours at the location designated on the license.

1103.2(4) Retailers shall not purchase tickets previously sold by the retailer.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.30, and 99G.31.

701—1103.3(99G) Display and availability of rules and promotional materials provided by the lottery.

1103.3(1) Retailers shall display brochures, flyers, or similar items provided by the lottery that are designed to provide the rules of lottery games near the point at which tickets are sold.

1103.3(2) Retailers shall display point-of-sale material provided by the lottery in a manner that is readily seen by and available to the public. The lottery may require the removal of objectionable material or the discontinuance of objectionable advertising that may have an adverse impact on the lottery.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, and 99G.27.

701—1103.4(99G) Ownership of tickets and other property.

1103.4(1) All instant tickets and pull-tab tickets accepted by a licensed retailer are the property of the licensed retailer. Tickets that are erroneous or mutilated when received by a retailer may be returned to the department for credit. After confirmation of delivery, the retailer is responsible for the condition and security of the tickets and for any losses resulting from tickets that become lost, stolen, or damaged. The department may credit retailers for lost, stolen, or damaged tickets if the department determines that the best interests of the lottery will be served by issuing a credit.

1103.4(2) Unless otherwise indicated in writing, all department property provided to a licensed retailer for use in selling products, as opposed to property and tickets sold to a retailer, remains the property of the department. The retailer shall deliver department property to the department upon request.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), 99G.24, and 99G.27.

701—1103.5(99G) Retailer costs and compensation.

1103.5(1) Pull-tab tickets are available for purchase by a retailer for a price equal to the retail price of the tickets less the value of prizes that the retailer is obligated to pay and any discounts or commissions authorized by the lottery.

1103.5(2) Scratch tickets are available for purchase by a retailer at retail price, and the department will credit the retailer's account for validations and commissions.

1103.5(3) The department may impose a service fee on retailers to cover operational costs.

1103.5(4) The department, with commission approval, shall set the base amount of retailer compensation. The base amount of compensation shall be specified in the agreement between the retailer and the department. The department may increase the total amount of retailer compensation by implementing sales incentive programs.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.24.

701—1103.6(99G) Retailer payment methods. Retailers are required to pay for lottery tickets or shares by means of an electronic funds transfer from the retailer's account. Generally, an electronic funds transfer (EFT) from a retailer's account is the only permitted method of payment for lottery tickets or shares purchased by a retailer. The department may allow a retailer to make payments by another method if the retailer can show that the EFT system imposes a significant hardship on the retailer or if the department determines that the retailer's payment history justifies use of an alternative payment method.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), and 99G.28.

701—1103.7(99G) Dishonored checks and electronic funds transfers. Any payment made to the lottery by an applicant for a license or by a licensed retailer either by a check that is dishonored or by an EFT that is not paid by the depository shall be grounds for immediate denial of the application for a license or for the suspension or revocation of an existing license. The department may assess a surcharge up to the maximum allowed by applicable state law for each dishonored check or unpaid EFT. The department may also alter the payment terms of a retailer's license and require a retailer to reimburse the lottery for costs that occur as a result of a dishonored check or unpaid EFT.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, and 99G.27.

701—1103.8(99G) Inspection of lottery materials and licensed premises. Retailers shall allow the department to enter upon the licensed premises in order to inspect lottery materials, tickets, equipment and the premises. All books and records pertaining to the retailer's lottery activities shall be available to the department for inspection and copying during the normal business hours of the retailer and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the retailer's lottery activities are subject to seizure by the department without prior notice.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, 99G.27, 99G.28, and 99G.35.

701—1103.9(99G) Individuals who may sell lottery tickets. The retailer is responsible for the conduct of its employees and members that is within the scope of the retailer's lottery license. If the retailer is a nonprofit organization, members of the organization may also sell lottery tickets if authorized by the organization.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, and 99G.30.

701—1103.10(99G) Ticket sales restrictions. The lottery reserves the right to limit or terminate the sale of computerized game tickets at any licensed retail location if such sales may compromise the operation and integrity of the lottery, reflect conduct prejudicial to the public confidence in the lottery or reflect activity of an illegal nature under local, state or federal laws.

1103.10(1) Plays may only be entered manually using the lottery terminal keypad or touch screen or by means of a play slip provided by the lottery and hand-marked by the player or by such other means approved by the lottery. Retailers are not permitted to connect any device to a lottery terminal to enter plays, except as approved by the department.

1103.10(2) A ticket or combination of tickets that would guarantee such purchaser a jackpot win may not directly and knowingly be sold to any person or entity.

1103.10(3) An offer to buy and an offer to sell a ticket are only permitted at a location and only by a method that is licensed by the department.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, 99G.24, and 99G.27.

701—1103.11(99G) Placement of lottery equipment. The department, in its sole discretion, will determine the need for, type of, and placement of any lottery equipment to be installed at licensee sales outlet locations. In the exercise of discretion, the department may consider any of the following:

1. The availability of equipment.
2. The suitability of the type of equipment for the specific retail outlet under consideration.
3. The location, equipment, business type, and proximity of other extant retail outlets compared with an outlet under consideration.
4. The sufficiency of existing licensed outlets to serve the public convenience.
5. Such minimum sales criteria as may be appropriate based on current market conditions.
6. The cost of equipment and potential return on investment.
7. Such other factors as the department may deem appropriate to the exercise of prudent business judgment in reaching a decision.

The decision of the department regarding placement of equipment is solely discretionary and final.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.7, 99G.12, and 99G.21.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 1104
"Scratch Ticket and InstaPlay Ticket General Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.3, 99G.9, 99G.21, and 99G.31

State or federal law(s) implemented by the rulemaking: Iowa Code sections 99G.3, 99G.9, 99G.21, and 99G.31

Public Hearing

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

October 8, 2024 2 to 3 p.m.	Via virtual/videoconference: meet.google.com/nun-pwxd-szf

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

This proposed chapter provides generally applicable rules that govern all scratch ticket and InstaPlay ticket games offered by the Iowa Lottery. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 18 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as 701—Chapter 1104. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The only persons who may be affected by this proposed rulemaking are those individuals who wish to purchase scratch or InstaPlay tickets in games of those types offered by the Iowa Lottery. The costs are limited to the price of the ticket in the game of the participant's choosing.

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

The proposed rulemaking facilitates the Iowa Lottery's use of scratch ticket and InstaPlay ticket games that are conducted with fairness and integrity while raising revenue for the state. This

rulemaking will directly benefit Lottery customers who choose to play scratch or InstaPlay ticket games by providing generally applicable guidelines upon which participants can rely.

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 economic impact associated with these rules beyond what was envisioned by Iowa Code chapter 99G.

- Qualitative description of impact:

As noted, this rulemaking provides generally applicable guidelines that apply to all scratch and InstaPlay ticket games offered by the Iowa Lottery. The rules reduce any uncertainty that may surround these types of games. Additionally, the rulemaking furthers the Iowa Lottery's goal of conducting games with fairness and integrity while providing entertainment to the public and maximizing revenue.

3. Costs to the State:

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

There are no costs to the agency to implement these rules beyond the costs contemplated by Iowa Code chapter 99G. Under Iowa Code section 99G.38, the Iowa Lottery remains self-funded even after being incorporated into the Department.

- Anticipated effect on state revenues:

These rules facilitate the Iowa Lottery's conduct of scratch and InstaPlay ticket games. In 2023, sales of scratch and InstaPlay tickets totaled over $324 million and accounted for over two-thirds of the Iowa Lottery's total sales. This rulemaking will help ensure these games continue to be conducted with fairness and integrity while providing continued public entertainment.

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

There are no costs associated with this rulemaking beyond those costs contemplated by statute. The benefits of the rulemaking are promotion of certainty among Lottery customers and the protection of fairness and integrity of the Iowa Lottery's operations.

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

The Department has determined that less intrusive methods do not exist for achieving the purposes of this proposed rulemaking.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing the rules in this chapter but determined that the rules provide useful guidance to Lottery customers and facilitate the Lottery's conduct of scratch and InstaPlay ticket games.

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

Alternative methods were rejected in favor of the proposed rulemaking because the alternatives would have threatened the fairness and integrity of Lottery operations and would not have provided generally applicable guidance to Lottery customers.

Small Business Impact

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

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

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

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

This chapter does not have a substantial impact on small business. The proposed rulemaking governs conduct of scratch and InstaPlay ticket games offered by the Iowa Lottery and does not impose any special requirements on any business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1104:

CHAPTER 1104
SCRATCH TICKET AND INSTAPLAY TICKET GENERAL RULES

701—1104.1(99G) Authorization of instant ticket games. The lottery commission authorizes the sale of scratch tickets and instaplay tickets that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code section 99G.9(2).

701—1104.2(99G) Definitions.

"Instaplay ticket" means a ticket printed on lottery terminal paper with play symbols that are not concealed by a removable covering.

"Play symbols" means the numbers or symbols appearing under the removable covering on a scratch ticket or on the face of an instaplay ticket.

"Scratch ticket," as used in this chapter, means the same as "instant ticket" as defined in Iowa Code section 99G.3(8).

"Validation number" means the characters or numbers found on a ticket or ticket stub used by the department to determine whether a ticket or ticket stub is authentic.

This rule is intended to implement Iowa Code sections 99G.3 and 99G.9(2).

701—1104.3(99G) Method of play. Winners of a prize may be determined by such activities as locating, matching, or adding the play symbols on the tickets or by any other play action approved by the lottery division. The exact method of determining a winning ticket will be determined by the lottery division and shall be set forth in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1104.4(99G) Prizes.

1104.4(1) The number and amount of prizes in any specific scratch ticket or instaplay ticket game will be determined by the lottery division and set forth in the game specific rules applicable to that game.

1104.4(2) At the lottery division's discretion, a scratch ticket game or an instaplay ticket game may include a special prize event. The number of prizes and the amount of each prize in the prize event will be determined by the lottery division. The dates and times, as well as the procedures for conducting any prize events, will be determined by the lottery division in the game specific rules. Finalists for prize events will be selected in the manner stated in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1104.5(99G) Annuity prizes. If a prize offered in a scratch ticket game or an instaplay ticket game is an annuity, the prize will consist of an initial prize payment followed by yearly installments as described in the game specific rules. If the current cash value of an annuity prize attributable to a single ticket or entry is less than $100,000, the lottery division may elect to pay the current cash value of the prize in one lump-sum payment.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1104.6(99G) Disclosure of odds. The overall probability of purchasing a winning ticket will be displayed on the lottery division's website and in game literature made available by the lottery division.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1104.7(99G) Claiming prizes.

1104.7(1) *Claim period.* Scratch ticket prizes must be claimed within 90 days of the announced end of the scratch ticket game. Instaplay ticket prizes must be claimed within 90 days of the date of sale of the instaplay ticket.

1104.7(2) *Prizes claimed at retailer.* The game specific rules shall specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the game specific rules. If a retailer can verify the claim, the retailer shall pay the prize. If a retailer cannot verify the claim, the player may claim the prize from another retailer or may submit the ticket and a completed claim form to the lottery division. If the claim is validated by the lottery division, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery division, the claim shall be denied and the player shall be promptly notified.

1104.7(3) *Prizes claimed at a lottery division office.* The game specific rules may specify prizes that may be claimed only from the lottery division. To claim a prize from the lottery division, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa lottery division's main office as defined in rule 701—2.3(17A). If the claim is validated by the lottery, the prize or a check, warrant, or draft will be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding and less any applicable setoff withheld under Iowa Code section 99G.41. If the claim is not validated by the lottery, the claim is denied and the player will be promptly notified.

1104.7(4) *Variation by game specific rules.* The game specific rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any scratch ticket game or instaplay ticket game or special event.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1104.8(99G) Ticket validation requirements.

1104.8(1) To be a valid scratch ticket, a ticket must meet all of the following validation requirements. A ticket must:

a. Have been issued in an authorized manner as determined by the lottery division.

b. Not be altered, unreadable, reconstructed, or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen or appear on any list of omitted tickets on file with the lottery division.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have play symbols and captions as described in the game specific rules. All symbols, numbers, and codes must be present in their entirety, legible, right side up, and not reversed in any manner.

g. Have the appropriate bar code, pack-ticket number, retailer verification code, and security code.

h. Have a validation number that appears on the lottery division's official list of validation numbers of winning tickets. A ticket with that validation number shall not have been previously paid.

i. Pass all additional validation requirements stated in the game specific rules and any confidential validation requirements established by the lottery.

1104.8(2) To be a valid instaplay ticket, a ticket must meet all of the following validation requirements. A ticket must:

a. Have been issued in an authorized manner as determined by the lottery division.

b. Not be altered, unreadable, reconstructed, or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen, canceled, or appear on any list of omitted or test tickets on file with the lottery division.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have play symbols and captions as described in the game specific rules. All symbols, numbers, and codes must be present in their entirety, legible, right side up, and not reversed in any manner.

g. The information on the ticket or share must correspond precisely with the lottery division's computer record.

h. The ticket or share serial number must appear in its entirety and correspond, using a computer validation file, to the winning game play or plays printed on the ticket or share.

i. A ticket or share shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from which the ticket or share was purchased.

j. Pass all additional validation requirements stated in the game specific rules and any confidential validation requirements established by the lottery division.

1104.8(3) Any ticket not passing all applicable validation requirements is invalid and is ineligible for any prize. The lottery division determination that a ticket is invalid is binding on all participants in the lottery. The lottery division may choose to pay an amount equal to the prize that would have been won on an invalid ticket if the lottery division is able to determine the prize that would have been won by use of a symbol, number, color code, or other mechanism. The lottery division's decision as to whether to pay a player the sum equal to the prize on an invalid ticket is binding on all participants in the lottery. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

If an invalid ticket is purchased by a player, the only responsibility or liability of the lottery division will be to replace the invalid ticket with an unplayed ticket from the same game or any other game or issue a refund of the sale price.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1104.9(99G) Official end of game. The lottery division will announce the official end of each scratch ticket game and each instaplay ticket game. Retailers may continue to sell tickets for each game up to the cutoff date specified by the lottery.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 1105
"Pull-Tab Ticket General Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.3, 99G.9, 99G.21, and 99G.31

State or federal law(s) implemented by the rulemaking: Iowa Code sections 99G.3, 99G.9, 99G.21, and 99G.31

Public Hearing

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

October 8, 2024	Via virtual/videoconference:
2 to 3 p.m.	meet.google.com/nun-pwxd-szf

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

This proposed chapter provides generally applicable rules that govern all pull-tab ticket games offered by the Iowa Lottery. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 19 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as 701—Chapter 1105. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The only persons who may be affected by this proposed rulemaking are those individuals who wish to purchase pull-tab tickets offered by the Iowa Lottery and their costs are limited to the price of the pull-tab ticket in the game of their choosing.

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

The proposed rulemaking facilitates the Iowa Lottery's use of pull-tab ticket games that are conducted with fairness and integrity while raising revenue for the state. This rulemaking will directly

benefit lottery customers who choose to play pull-tab ticket games by providing generally applicable guidelines upon which participants can rely.

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 economic impact associated with these rules beyond what was envisioned by Iowa Code chapter 99G.

- Qualitative description of impact:

As noted, this rulemaking provides generally applicable guidelines that apply to all pull-tab ticket games offered by the Iowa Lottery. The rules reduce any uncertainty that may surround these types of games. Additionally, the rulemaking furthers the Iowa Lottery's goal of conducting games with fairness and integrity while providing entertainment to the public and maximizing revenue.

3. Costs to the State:

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

There are no costs to the agency to implement these rules beyond the costs contemplated by Iowa Code chapter 99G. Under Iowa Code section 99G.38, the Iowa Lottery remains self-funded even after being incorporated into the Department.

- Anticipated effect on state revenues:

These rules facilitate the Iowa Lottery's conduct of pull-tab ticket games. Pull-tab ticket sales totaled over $13 million in 2023. This rulemaking will help ensure these games continue to be conducted with fairness and integrity while providing continued public entertainment.

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

There are no costs associated with this rulemaking beyond those costs contemplated by statute. The benefit of the rulemaking is promotion of certainty among lottery customers and the protection of fairness and integrity of the Iowa Lottery's operations.

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

The Department has determined that less intrusive methods do not exist for achieving the purposes of this proposed rulemaking.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing rules in this chapter but determined that the rules provide useful guidance to lottery customers and facilitate conduct of pull-tab ticket games.

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

Alternative methods were rejected in favor of the proposed rulemaking because the alternatives would have threatened the fairness and integrity of lottery operations and would not have provided generally applicable guidance to lottery customers.

Small Business Impact

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

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

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

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

This chapter does not have a substantial impact on small business. The proposed rulemaking governs the conduct of pull-tab ticket games offered by the Iowa Lottery and does not impose any special requirements on any business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1105:

CHAPTER 1105
PULL-TAB TICKET GENERAL RULES

701—1105.1(99G) Authorization of pull-tab games. The lottery commission authorizes the lottery to sell pull-tab tickets meeting the criteria of this chapter.

This rule is intended to implement Iowa Code section 99G.9(2).

701—1105.2(99G) Definition. As used in this chapter, the following definition is applicable.

"Pull-tab tickets" means the same as "pull-tab ticket" or "pull-tab" as defined in Iowa Code section 99G.3(15).

This rule is intended to implement Iowa Code sections 99G.3 and 99G.9(2).

701—1105.3(99G) Method of play. A winning ticket is determined by matching, aligning, adding, or locating symbols or numbers under the tabs.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1105.4(99G) Ticket validation requirements.

1105.4(1) *Winning ticket requirements.* Winning tickets are validated by use of a symbol, number, or color-coded marking. A ticket is not valid if it fails to meet any of the following requirements. The ticket must:

a. Have been issued by the Iowa lottery division in an authorized manner.

b. Not be altered, unreadable, reconstructed, or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen or appear on any list of omitted tickets on file with the lottery division.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have the exact play symbols and captions specified in the game specific rules.

g. Pass all validation tests, including confidential validation tests.

1105.4(2) *Lottery responsibility.* If a ticket is invalid when sold, it is not eligible to receive any prize and the purchaser's sole remedy is to submit the ticket to the lottery division's main office for a refund of the retail sale price. The lottery has no liability or responsibility for tickets invalidated after the time of sale.

The lottery division may choose to pay a sum equal to the prize on an invalid ticket if the lottery division is able to determine the prize that would have been won on the invalid ticket by use of a symbol, number, color code, or other mechanism. The lottery division's determination that a ticket is valid or invalid, that a ticket was valid when sold and was subsequently invalidated, and whether a sum equal to the prize on an invalid ticket will be paid are binding on all participants in the lottery. A

player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.5(99G) Prizes. The number and the amount of prizes for any specific pull-tab ticket game will be determined by the lottery division and set forth by the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.6(99G) Disclosure of odds. The overall probability of purchasing a winning ticket shall be stated on the lottery division's website and in game literature made available by the lottery division.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1105.7(99G) Claiming prizes.

1105.7(1) *Claim period.* Prizes must be claimed within 90 days of the announced end of the pull-tab ticket game.

1105.7(2) *Prizes claimed at retailer.* The game specific rules specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the game specific rules. If a retailer can verify the claim, the retailer pays the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery division. If the claim is validated by the lottery division, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery division, the claim shall be denied and the player shall be promptly notified.

1105.7(3) *Prizes claimed at a lottery division office.* Game specific rules specify prizes that may be claimed only from the lottery division. To claim a prize from the lottery division, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Division main office as defined in rule 701—2.3(17A). If the claim is validated by the lottery division, the prize or a check, warrant, or draft will be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding and less any applicable setoff withheld under Iowa Code section 99G.41. If the claim is not validated by the lottery division, the claim is denied and the player will be promptly notified.

1105.7(4) *Variation by game specific rules.* Game specific rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any pull-tab game or special event.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.8(99G) Disputed claim. If a purchaser and a retailer cannot agree as to whether a prize should be paid on a ticket, the purchaser may submit the ticket to any lottery office. The lottery division's determination as to whether a prize should be awarded is binding on all participants in the lottery. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.9(99G) Lottery logo. All pull-tab tickets sold by the lottery division are to be conspicuously marked with the logo of the lottery.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.10(99G) End of game. The lottery division will announce the end of any pull-tab ticket game or games.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 1106
"Computerized Games—General Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.3, 99G.7, 99G.9, 99G.21, and 99G.31

State or federal law(s) implemented by the rulemaking: Iowa Code sections 99G.3, 99G.7, 99G.9, 99G.21, and 99G.31

Public Hearing

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

October 8, 2024 2 to 3 p.m.	Via virtual/videoconference: meet.google.com/nun-pwxd-szf

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

This proposed chapter provides generally applicable rules that govern all computerized games offered by the Iowa Lottery. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 20 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as 701—Chapter 1106. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The only persons who may be affected by this proposed rulemaking are those individuals who wish to purchase tickets or entries in the computerized games offered by the Iowa Lottery and their costs are limited to the price of a ticket or entry in the game of their choosing.

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

The proposed rulemaking facilitates the Iowa Lottery's use of computerized games that are conducted with fairness and integrity while raising revenue for the state. This rulemaking will directly

benefit Lottery customers who choose to play computerized games by providing generally applicable guidelines upon which participants can rely.

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 economic impact associated with these rules beyond what was envisioned by Iowa Code chapter 99G.

- Qualitative description of impact:

As noted, this rulemaking provides generally applicable guidelines that apply to all computerized games offered by the Iowa Lottery. The rules reduce any uncertainty that may surround these types of games. Additionally, the rulemaking furthers the Iowa Lottery's goal of conducting games with fairness and integrity while providing entertainment to the public and maximizing revenue.

3. Costs to the State:

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

There are no costs to the agency to implement these rules beyond the costs contemplated by Iowa Code chapter 99G. Under Iowa Code section 99G.38, the Iowa Lottery remains self-funded even after being incorporated into the Department.

- Anticipated effect on state revenues:

These rules facilitate the Iowa Lottery's conduct of computerized games. Computerized games accounted for approximately one-third of the Iowa Lottery's sales in 2023. This rulemaking will help ensure these games continue to be conducted with fairness and integrity while providing continued public entertainment.

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

There are no costs associated with this rulemaking beyond those costs contemplated by statute. The benefits of the rulemaking are promotion of certainty among Lottery customers and the protection of fairness and integrity of the Iowa Lottery's operations.

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

The Department has determined that less intrusive methods do not exist for achieving the purposes of this proposed rulemaking.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing the rules in this chapter but determined that the rules provide useful guidance to Lottery customers and facilitate the Lottery's conduct of computerized games.

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

Alternative methods were rejected in favor of the proposed rulemaking because the alternatives would have threatened the fairness and integrity of Lottery operations and would not have provided generally applicable guidance to Lottery customers.

Small Business Impact

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

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

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

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

This chapter does not have a substantial impact on small business. The proposed rulemaking governs conduct of computerized games offered by the Iowa Lottery and does not impose any special requirements on any business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1106:

CHAPTER 1106
COMPUTERIZED GAMES—GENERAL RULES

701—1106.1(99G) Authorization of computerized lottery games. The lottery commission authorizes the sale of computerized games to be played in compliance with the criteria set forth in this chapter.

This rule is intended to implement Iowa Code section 99G.9(2).

701—1106.2(99G) Computerized lottery definitions. As used in this chapter:

"Central computer" means a computer system designated to control, monitor, and communicate with lottery terminals and self-service kiosks and to record the transactions processed by that lottery equipment.

"Drawing" means the process used to randomly select winning numbers or entries.

"Easy pick" means the random selection by the terminal or self-service kiosk of a valid play for the game that was selected.

"Game" means any computerized game conducted by the lottery.

"Instant ticket vending machine" means a vending machine or self-service kiosk that dispenses printed paper lottery tickets, with or without a scratch-off area.

"Online vending machine" means a vending machine that prints and dispenses tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

"Play(s)" means the selection of an appropriate number of available variables that constitutes a valid entry in the game or the purchase of a ticket or share with a sequentially generated variable appearing on the face of the ticket or share that constitutes a valid entry in a pool exhaustion game.

"Play slip" means a card used by the player in marking a player's plays.

"Pool exhaustion game" means a game where a predetermined pool of plays is established.

"Predetermined pool drawing machine" means a computer or other device external to a lottery terminal, instant ticket vending machine, self-service kiosk or online vending machine, that predetermines winning and losing tickets or shares, assigns them to preprogrammed and prepackaged sequential electronic pool files and subsequently utilizes the files in production and distribution of electronic game cards and paper game tickets or shares produced in manufactured packs or through lottery terminals or vending machines.

"Terminal" means a device that is authorized by the lottery division to function with a central computer system for the purpose of issuing, entering, receiving, and processing lottery transactions.

"Vending machine" means a lottery ticket or share dispensing machine either with a mechanical operating mechanism or with computer components that perform accounting functions and activate the ticket or share dispensing mechanism.

"Winning numbers" means the selection of an appropriate number of the variables, randomly selected at each drawing, that are used to determine winning plays contained on a game ticket or share.

This rule is intended to implement Iowa Code sections 99G.3 and 99G.9(2).

701—1106.3(99G) Method of play. If mandated by the game specific rules, a player selects an appropriate number of the available game variables. A player may select each game variable by marking a play slip and submitting the play slip to a retailer, by asking a retailer to manually enter the game variables, or by purchasing an "easy pick" ticket from a retailer. Players may also purchase plays from player-activated terminals by use of a touch screen if player-activated terminals are available. A drawing is held in which an appropriate number of the game variables are drawn on a random basis.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.4(99G) Cancellation by a player. A ticket or share may be canceled by returning the ticket or share to the selling retailer provided that the ticket or share is returned to the retailer the same day it was purchased in time to permit canceling to be fully completed prior to the closing time for that drawing. In the event that a ticket or share is canceled, the player will be entitled to receive from the retailer a refund equal to the purchase price of the ticket or share.

Cancellations will not be allowed in certain games as outlined in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.5(99G) Prizes and odds. The amount of prizes and the odds of winning are set forth in the game specific rules. Game specific rules may allow alternative prize structures.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.6(99G) Payment of annuity jackpot prizes. The lottery division may offer cash prizes, annuitized installment prizes, and prizes with cash or annuity payment options available to the winners. If the jackpot prize or share of the jackpot prize will be paid as an annuity, it will consist of the initial payment followed by such number of yearly installments as may be provided in the game specific rules for the game unless the cash value of the annuity prize attributable to a single play is less than $100,000. If the cash value of the annuity prize attributable to a single play is under $100,000, the lottery division may elect to pay the cash value of the prize in one lump-sum prize payment. This rule does not apply to multistate or other multijurisdictional lottery games. Provision for payment of prizes for multistate and other multijurisdictional games shall be outlined in the game specific rules for such games.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.7(99G) Unclaimed prizes. Unclaimed jackpot prizes, shares of the jackpot prize, and other lottery prizes do not increase a prize simultaneously won by any other player in the game. Unclaimed jackpot shares are added to future jackpot prize pools at times determined by the lottery division. Other unclaimed prizes are added to future prize pools for any lottery game. This rule applies to such games offered in Iowa, except as may otherwise be provided in the game specific rules of a multistate lottery or other multijurisdictional lottery with which the Iowa lottery may be affiliated.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.8(99G) Price. The price of a play will be outlined in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.9(99G) Changes for special promotions. The lottery division may alter the price of the tickets or shares, features, or prizes of the game or drawings to accommodate special promotions. Alterations made by the lottery division shall be contained in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), and 99G.21.

701—1106.10(99G) Ticket or share ownership and prize entitlement.

1106.10(1) A ticket or share is owned by its physical possessor until a signature is placed on the back of a ticket in the area designated for signature. When a signature is placed on the back of the ticket or share in the designated space, the person whose signature appears in the designated space is the owner of the ticket or share and is entitled to any prize attributable to the ticket or share.

1106.10(2) Notwithstanding any name or names submitted on a claim form, the lottery division will make payment to the person whose signature appears on the back of the ticket or share in the designated space. If the signatures of more than one person appear in that space, the lottery division will make payment to the person identified on the winner's claim form to receive payment, which designation is made by all persons whose signatures appear on the reverse side of the ticket or share. In the event that all persons whose signatures appear in the appropriate space cannot identify one person to whom payment should be made, the lottery division may withhold payment until the proper payee is determined.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.11(99G) Ticket validation requirements.

1106.11(1) All claims for prizes are subject to validation by the lottery division. A valid ticket or share eligible to receive a prize will satisfy all of the following requirements.

a. The ticket or share was issued by the lottery division directly or through a retailer, via a terminal, in an authorized manner.

b. The information on the ticket or share corresponds precisely with the lottery division's computer record.

c. The ticket or share serial number appears in its entirety and corresponds, using a computer validation file, to the winning play or plays printed on the ticket or share.

d. A ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from which the ticket or share was purchased.

e. The ticket or share is not produced in error, counterfeit in whole or in part, altered, mutilated, unreadable, tampered with in any manner, incomplete, blank or partially blank, miscut, or defective.

f. The ticket or share is not stolen or canceled.

g. The ticket or share passes all additional validation requirements that may be stated in the game specific rules and other security criteria determined by the lottery division.

1106.11(2) In the event that a ticket or share fails to pass all of the validation criteria set forth in this rule, the game specific rules or as determined by the lottery division, the ticket or share is invalid and ineligible for any prize. The lottery division, in its sole discretion, may choose to pay a sum equal to the prize on an invalid ticket or share if the lottery division can determine the prize that would have been won by the ticket or share by use of a symbol, code number, color code, or other mechanism. The lottery division's decisions as to whether a ticket or share is invalid and whether a sum equal to the prize on an invalid ticket or share will be paid are binding on all participants in the lottery. If the lottery division determines that a ticket or share is not eligible to receive a prize or a sum equivalent to the prize amount, the lottery division may replace the invalid ticket or share with a ticket or share of equivalent sale price from any current lottery game or refund the purchase price of the ticket or share. Replacement of the ticket or share, or refund of the purchase price, are the claimant's sole and exclusive remedy. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.12(99G) All prizes for games not associated with another state's lottery must be claimed as directed within 90 calendar days of the drawing in which the prize was won unless otherwise specified in the game specific rules. All prizes for games associated with another state's lottery are to be claimed as directed within the game specific rules. For purposes of determining the claim period, the drawing date is not counted. If a prize is claimed by mail, the lottery division must actually receive the ticket or share and claim form within the claim period. Any prize not properly claimed within the specified period is forfeited. The claim period for a game may be altered by the lottery division in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.13(99G) Manner of claiming prizes.

1106.13(1) To receive payment for a prize or prizes on any single game ticket or share that total $600 or less, the winner may take the signed ticket or share directly to any lottery retailer authorized to sell and validate the game, or to any lottery division office, or mail the signed ticket or share, along with a completed claim form, to the Iowa Lottery Division's main office as defined in rule 701—2.3(17A).

If there is any alteration, mutilation, tear, or other ambiguity on the ticket or share, the retailer is not authorized to make direct payment of a prize and a claim form, and the ticket or share is to be submitted to the lottery division.

1106.13(2) To receive payment for a prize or prizes on any single game ticket or share that total more than $600, the winner may submit the signed ticket or share and a completed claim form directly to any lottery division office. The winner may also mail the signed ticket or share and claim form to the Iowa Lottery Division's main office as defined in rule 701—2.3(17A).

1106.13(3) Claim forms are available at all computerized lottery division retailers and lottery offices. The lottery division or, at the lottery division's direction, a lottery retailer may require the person claiming a prize of any amount to fill out a claim form.

1106.13(4) If a prize is claimed by mail, the ticket or share and the claim form must actually be received by the lottery division within the claim period.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.14(99G) Presentation of ticket. No prize payments will be made unless the player submits a valid, uncanceled ticket or share. A play slip has no pecuniary or prize value and is not evidence of ticket purchase or of numbers selected.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.15(99G) One prize per play. The holder of a winning ticket or share may win only one prize per play in connection with the winning numbers drawn and is entitled only to the prize won by those numbers in the highest matching prize category.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.16(99G) Corrections. The lottery division reserves the right to correct and adjust, up or down, the amount of any prize or prizes, whether all or part of the prize or prizes has been paid, if it is determined that one or more players are entitled to a portion of a prize and were not included in the prize calculations or were included in the prize calculations by mistake.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.17(99G) Risk of error. The placing of plays is done at the player's own risk. It is solely the player's responsibility to verify the accuracy of plays and all other data printed on the ticket. In the event of any error, the player's only remedy is cancellation of the ticket or share according to the procedure specified in this chapter. The lottery division and lottery retailers have no other responsibility for tickets or shares printed in error.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.18(99G) Multidraw plays and advance plays. Multidraw plays and advance plays may be available.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.19(99G) Drawings. Drawings will be held as specified in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.20(99G) Cancellation or delay. The lottery division reserves the right to cancel or delay drawings or sales of tickets or shares in the event of technical difficulties, and on days of special importance or on days the drawings would be impractical or inappropriate.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.21(99G) Pool exhaustion game—method of play.

1106.21(1) Players may purchase tickets or shares for a specific game. Each ticket or share sold for a pool exhaustion game will be generated separately. Tickets or shares will be sold against the pool until the pool of plays is exhausted or until the game ends in accordance with the game specific rules.

1106.21(2) Each ticket or share will bear a sequentially generated variable on the face of the ticket or share.

1106.21(3) Drawings for the prizes for a specific game will randomly select a winner or winners from the tickets or shares actually sold. The drawing method is described in the game specific rules.

1106.21(4) Prizes are awarded as specified in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.22(99G) Prize insurance fund.

1106.22(1) The lottery may provide that up to 10 percent of the funds designated for the jackpot prize level in the prize structure of the game specific rules for a game or that any prize funding not awarded by the conclusion of the relevant claim period for a fixed-prize game will be transferred to a prize insurance fund.

1106.22(2) The prize insurance fund may be used for any of the following purposes:

a. To pay prizes for any online game prize obligation if the amount available to fund an online game prize is insufficient;

b. To support a special promotion to retire an online game (e.g., a television show or a second-chance drawing);

c. To transfer amounts to a successor game to pay prize obligations for a different online game.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 1107
"Drawings and Contests"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99G.9, 99G.21, and 99G.31

State or federal law(s) implemented by the rulemaking: Iowa Code sections 99G.9, 99G.21, and 99G.31

Public Hearing

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

October 8, 2024 2 to 3 p.m.	Via virtual/videoconference: meet.google.com/nun-pwxd-szf

Public Comment

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

Madelyn Cutler
Department of Revenue
Hoover State Office Building
1305 Walnut Street
Des Moines, Iowa 50306
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Purpose and Summary

This proposed chapter provides generally applicable rules that govern all lottery drawings and contests. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 21 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as 701—Chapter 1107. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The only persons who may be affected by this proposed rulemaking are those individuals who wish to participate in drawings and contests offered by the Iowa Lottery, and their costs are limited to the price of a lottery ticket when submission of a nonwinning ticket is required for entry.

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

This proposed rulemaking facilitates the Iowa Lottery's use of drawings and contests that are conducted with fairness and integrity while raising revenue for the state. This rulemaking directly

benefits participants in the drawings or contests conducted under the rules by providing generally applicable guidelines upon which participants can rely.

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 economic impact associated with these rules beyond what was envisioned by Iowa Code chapter 99G.

- Qualitative description of impact:

As noted, this rulemaking provides generally applicable guidelines that apply to all drawings and contests offered by the Iowa Lottery. The rules reduce any uncertainty that may surround these types of drawings and contests. Additionally, the rulemaking furthers the Iowa Lottery's goal of conducting drawings and contests fairly and with integrity while providing entertainment to the public and maximizing revenue.

3. Costs to the State:

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

There are no costs to the agency to implement these rules beyond the costs contemplated by Iowa Code chapter 99G. Under Iowa Code section 99G.38, the Iowa Lottery remains self-funded even after being incorporated into the Department.

- Anticipated effect on state revenues:

The Iowa Lottery conducts drawings and contests to promote the sale of core lottery products. As a result, drawings and contests may increase sales of those core lottery products.

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

There are no costs associated with this rulemaking beyond those costs contemplated by statute. The benefits of the rules are the promotion of certainty among lottery customers, assuring fairness and integrity of lottery operations, and possible increase of sales of core lottery products.

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

The Department has determined that less intrusive methods do not exist for achieving the purposes of this proposed rulemaking.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing the rules in this chapter but determined that the rules provide useful guidance to lottery customers and facilitate the Lottery's conduct of drawings and contests.

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

Alternative methods were rejected in favor of the proposed rulemaking because the alternatives would have threatened the fairness and integrity of lottery operations and would not have provided generally applicable guidance to lottery customers.

Small Business Impact

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

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

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

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

This chapter does not have a substantial impact on small business. The proposed rulemaking governs drawings and contests conducted by the Iowa Lottery and does not impose any special requirements on any business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1107:

CHAPTER 1107
DRAWINGS AND CONTESTS

701—1107.1(99G) Authorization of drawings and contests. The lottery commission authorizes drawings and contests that meet the criteria set forth in this chapter.

701—1107.2(99G) Definitions.

"Contest" means a lottery event that may involve nonwinning tickets in which entries are selected as winners and prizes are valued at a total of $5,000 or less.

"Drawing" or *"second-chance drawing"* means a lottery event involving a random selection of an entry or entries for a prize in which entrants may either use a nonwinning Iowa lottery ticket as an entry or, at the lottery division's discretion, may enter the drawing using points earned from entering tickets through the Internet or an entry through an alternative method for which a purchase is not necessary.

"Nonwinning ticket" means a ticket that did not win in the original game for which it was printed.

"Presentation" means entering the ticket into a drawing or contest as permitted by the rules of the drawing or the description of the contest.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1107.3(99G) Price for drawings or contests. There is no cost to enter a drawing or contest beyond the original ticket price already paid. At the lottery division's discretion, certain drawings may be designated as accepting entries with a designated number of points earned by entry of nonwinning tickets through the lottery division's customer loyalty program or by another lottery-approved method.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1107.4(99G) Method of play. Contest or drawing winners may be determined from a computer-generated list of all the entries submitted during the eligibility period or by another method approved by the lottery division. The secure drawing system generates a list of winning entry numbers based on the prize levels. Alternates are drawn as determined by the lottery division. Other methods of choosing a winning entry may be determined by the lottery division and, if utilized, will be set forth in the specific drawing rules or contest description. The lottery division will post written contest rules informally at any contest event.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1107.5(99G) Prizes.

1107.5(1) The number and amount of prizes for a drawing or contest shall be determined by the lottery division and set forth in the specific drawing rules or contest description.

1107.5(2) At the lottery division's discretion, a drawing or contest may include a special prize event. The number of prizes, the amount of each prize, the dates and times of the contests or drawings, as well as the procedures for conducting elimination drawings or prize events, are determined by the lottery division and set forth in the specific drawing rules or contest description. Finalists for prize events are selected in the manner stated in the specific drawing rules or contest description.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21 and 99G.31.

701—1107.6(99G) Disclosure of odds. Because odds will vary based on the number of entrants in each contest or drawing, odds are not posted.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1107.7(99G) Claiming prizes. The specific drawing rules or contest description will set forth the manner in which prizes won should be claimed. If an individual prize is greater than $600 or at the lottery division's discretion, a player will fill out a claim form.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21 and 99G.31.

701—1107.8(99G) Entry validation requirements. A valid entry is a legally acquired nonwinning lottery ticket identified as an entry for the particular drawing or contest. At its discretion, the lottery division may include legally obtained winning and nonwinning Iowa lottery online tickets in drawings and contests.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21 and 99G.31.

701—1107.9(99G) Owner of a ticket. The lottery division pays prizes in an Internet-based drawing or contest only to persons who present the selected tickets by entering them into the drawing through the online entry form or other entry mechanism. Players should sign the original ticket to prevent entry of the ticket by another party into the drawings or contests. The signature on the ticket indicates the owner of the ticket. If no signature is present on the ticket, the owner of the ticket is the possessor of the ticket. If there is a question as to the ownership of a ticket, the lottery division will make a determination as to whether and to whom a prize will be awarded, and the lottery division's determination is binding on all participants in the drawing or contest. A player who wishes to challenge a determination by the lottery division under this rule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21 and 99G.31.

701—1107.10(99G) Official end of drawing or contest period. The lottery division announces the end of any drawing or contest period.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 20
"Procurement of Equipment, Materials, Supplies and Services"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)"j" and 8A.302(1)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 8A.302(1), 8A.311(20), 8A.514(3), 73.15 to 73.21, 307.12(1)"j" and 307.21

Public Hearing

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

October 11, 2024 10 to 10:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 626 184 752

Public Comment

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

Veronica Tolander
800 Lincoln Way
Ames, Iowa 50010
Email: veronica.tolander@iowadot.us

Purpose and Summary

This proposed chapter establishes the procedure for the procurement of equipment, materials, supplies and services. The process requires competitive procurement with public advertising at a set threshold and defines exceptions.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The proposed chapter does not create additional costs for any class of persons.

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

The proposed chapter streamlines the competitive bidding process, which has a positive impact on any and all potential bidders. By including "public mitigation banks" in the definition of "firm," it clarifies that a public mitigation bank is an eligible bidder, thus enabling the Department to procure the operationally required mitigation credits.

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

- Quantitative description of impact:

The proposed chapter does not have a quantitative impact.

- Qualitative description of impact:

The proposed chapter expedites the competitive bidding process to enable qualified bidders to enter into an awarded contract sooner.

3. Costs to the State:

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

There are no additional implementation or enforcement costs.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

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

The benefit of the proposed chapter is consistency and transparency of the procurement process to ensure fair and open competition amongst all bidders.

The cost of inaction is a less streamlined process that would lead to a delay in capturing goods and services essential to Department operations.

There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives to the proposed rules.

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

No alternatives to the proposed rules were considered.

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 streamlining the process, there will be less delay due to the prescribed agency timeline. This in turn leads to less time and potential costs to businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 20 and adopt the following **new** chapter in lieu thereof:

CHAPTER 20
PROCUREMENT OF EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES

761—20.1(307) General.

20.1(1) *Scope.* This chapter pertains only to the procurement of equipment, materials, supplies and services by the Iowa department of transportation with funds from the department's operating

budget or from the materials and equipment revolving fund established in Iowa Code section 307.47 or other program funds authorized for department use.

20.1(2) *Applicability.* Rules 761—20.4(307) through 761—20.6(307) apply to professional and technical services procured using the general purchasing process where contracts are awarded competitively, and cost is a factor. Rule 761—20.9(307) applies to professional and technical services contracts that are awarded based on qualifications when the cost is negotiated after the vendor is selected.

20.1(3) *Contact information.* Questions regarding this chapter may be directed to the Resources and Acquisitions Bureau, Purchasing Section, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1170.

761—20.2(307) Definitions. As used in this chapter, unless the context otherwise specifies:

"Bidder" means a respondent to a solicitation as a bidder, offeror or contractor.

"Competition" means the efforts of three or more parties acting independently to secure a contract with the department to provide equipment, materials, supplies or services to the department by offering or being in a position to offer the most favorable terms. "Favorable terms" includes, but is not limited to: price, speed of execution, anticipated quality of the product to be provided judged according to the expertise and experience of the provider, or ability to produce a desired result or to provide a desired commodity.

"Firm" means any bona fide contracting entity, including individuals, public mitigation banks and educational institutions. Except for educational institutions, the term is not to include governmental agencies or political subdivisions.

"Methods of procurement" means formal solicitation, informal solicitation, or negotiation as follows:

1. *"Formal solicitation"* means procurement by competition through public advertising of bid documents stating departmental needs.
2. *"Informal solicitation"* means procurement by obtaining a sufficient number of quotations, bids or proposals from qualified sources.
3. *"Negotiation"* means any method of procurement other than formal solicitation or informal solicitation to seek the best and final offer that is most advantageous to the department.

"Professional and technical services" means services that are unique, technical, or infrequent functions performed by independent contractors whose occupation is the rendering of such services. Contracts may go to partnerships, firms, or corporations as procured through formal and informal solicitation or negotiation methods outlined in rules 761—20.3(307) through 761—20.6(307). Architectural, landscape architectural, surveying, general engineering consultant, construction inspection, or engineering services and other related professional and technical services are outlined in rule 761—20.9(307).

"Response" means the submittal of written documents by a prospective bidder, offeror or contractor as a response to any type of solicitation issued by the department for a quotation, bid or proposal.

"Solicitation" means the request by the department for a quotation, bid or proposal. This includes but is not limited to the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of responding to a solicitation.

761—20.3(307) Procurement policy. It is the policy of the department to procure equipment, materials, supplies and services in a way that is most advantageous to the department and competitive to the maximum practicable extent.

20.3(1) *Formal solicitation.* The formal solicitation method of procurement is to be used whenever feasible and practicable under the existing conditions and circumstances and the estimated, aggregate amount of the purchase equals or exceeds $50,000.

20.3(2) *Informal solicitation.* The informal solicitation method of procurement may be used if formal solicitation is not feasible or practicable, or the estimated, aggregate amount of purchase is less than $50,000. This method is to be used as deemed necessary to ensure that the procurement is fair to the department, considering the administrative costs of the procurement, and is to be consistent with the nature and needs of the particular procurement so that the procurement is competitive to the maximum practicable extent.

20.3(3) *Negotiation.* The negotiation method of procurement may be used if formal solicitation or informal solicitation is not feasible or practicable, or in any of the following instances:

a. Procurement by negotiation is determined to be necessary and in the public interest during a period of man-made or natural disaster or emergency.

b. The estimated, aggregate amount of the purchase is less than $15,000.

c. The procurement is for architectural, landscape architectural, engineering, or related professional and technical services.

d. The procurement is for other professional and technical services.

e. When cost is only one of many factors considered to determine the award.

f. The procurement is for services to be rendered by an educational institution.

g. It is impracticable to secure competition through formal solicitation or informal solicitation, such as when:

(1) Equipment, materials, supplies or services can be obtained from only one source, as per rule 761—20.7(307).

(2) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw materials, or similar circumstances, as per rule 761—20.7(307).

(3) Solicitations have been made available to prospective bidders and no responses to the solicitation have been received.

(4) Solicitations have been made available and the submitted responses do not cover the quantity needed. In this case, negotiation is permitted for the remaining quantity needed.

(5) The procurement is for electrical power or energy, natural or manufactured gas, water or other utility services, or the procurement is for construction of a part of a utility system or railroad and it would not be practicable to allow a contractor other than the utility or railroad company to perform the work.

(6) The procurement is for professional and technical services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.

(7) The procurement involves maintenance, repair, alteration or inspection, and the exact nature or amount of work to be done is not known.

(8) The procurement is for commercial transportation.

(9) It is impossible to draft adequate specifications or any other adequately detailed description of the item or services to be procured.

(10) The procurement is for a part or component being procured as a replacement in support of equipment specially designed by the manufacturer, and the data available is not adequate to ensure that the part or component supplied by another manufacturer will perform the same function as the part or component it is to replace.

(11) The procurement involves construction where a contractor or group of contractors is already at work on the site, and either it would not be practicable to allow another contractor or an additional contractor to work on the same site or the amount of work involved is too small to interest other contractors to mobilize and demobilize.

h. The procurement is for experimental, developmental or research work or for the manufacture or furnishing of property for experimentation, development, research or testing.

i. It is determined that the responses received are not reasonable or have not been independently arrived at.

j. Procurement by negotiation is otherwise authorized by law including, but not limited to, Iowa Code section 73.19.

k. The manufacturer is willing to sell directly to the state at distributor cost.

761—20.4(307) Formal solicitation procedures.

20.4(1) *Bidders list.* The department's purchasing section will maintain current bidders lists by commodity classification.

a. These lists are generated from the department's electronic sourcing platform and will be actively managed to stay current with the relevant industry players and accurate commodity classifications to secure competition to the maximum practicable extent. Solicitations will be posted on the Iowa economic development authority's targeted small business website no later than 48 hours prior to the issuance of the solicitation.

b. Any firm legally doing business in Iowa may be placed on an appropriate bidders list or lists by registering as a vendor on the department's electronic sourcing platform.

c. Subject to concurrence of legal counsel, a bidder's name may be removed from a bidders list or lists for any of the following reasons:

(1) When the bidder has failed to meet prequalification as set forth in the bid solicitation.

(2) When the bidder has failed to meet the performance standards of a previous procurement.

(3) When the bidder has attempted to improperly influence the decision of any state employee involved in the procurement process.

(4) When there are reasonable grounds to believe that there is a collusive effort by bidders to restrain competition by any means.

(5) Where there is a determination by the civil rights commission that the bidder conducts discriminatory employment practices.

d. A bidder may protest removal from a bidders list or lists by submitting the appeal in writing as per instructions in paragraph 20.4(6)*"d."*

20.4(2) *Solicitation documents.* The department will prepare the solicitation documents complete with requirements, specifications and instructions, as applicable, to be publicly posted for the purpose of procuring goods or services.

a. In special situations (e.g., the procurement of new model equipment), the solicitation may be marked "preliminary" and sent to prospective bidders requesting their review of the solicitation to determine their ability to respond and meet the requirements of the procurement request. The "preliminary" solicitation process involves the following steps:

(1) A conference may be held to discuss the "preliminary" solicitation requirements with prospective bidders when the item in question is a new acquisition for the department.

(2) Written requests for variations, deviations or approved equal substitutions to the solicitation are to be accepted, evaluated and answered by the department.

(3) The solicitation requirements may be revised to incorporate approved changes.

(4) A final solicitation is to be sent to prospective bidders that participated in the preliminary process.

b. The solicitation is to be sent to a sufficient number of prospective bidders so as to promote adequate competition commensurate with the dollar value and nature of the procurement. The solicitation is to be furnished to others upon request.

c. The department will publicize the procurement by advertising in appropriate media, providing the date and time set for public opening of submitted responses, a general description of the item to be procured, and the name and address of the person to contact to obtain a copy of the solicitation.

20.4(3) *Response instructions.* Each bidder is to prepare the response to the solicitation in the manner prescribed and furnish all information and samples requested in the solicitation. All bidders are to adhere to the following when preparing and submitting responses:

a. Response preparation. Responses are to be submitted electronically in a secure authorized system as instructed in the solicitation. Telephonic, written, email or facsimile responses are not to be considered.

b. Information to be provided by bidder. In the space provided, the bidder is to denote brand name, manufacturer's name, model number and any other necessary information to assist in identifying each item the bidder proposes to supply.

c. New merchandise. Unless otherwise specified, all items offered are to be new, of the latest model or manufacture, and at least equal in quality to that specified.

d. Response price. Where requested, the unit and total price for each separate item, and the total price for all items, is to be provided in the bidder's response. Alternate prices for approved substitutions may be submitted by attaching a response marked as an alternate to the original response. In case of error, the unit price prevails. If unit price is not requested in the solicitation, the total price per item prevails.

e. Discounts. Bidders are to quote net discount price. No other discounts are to be considered in making the award.

f. Time of acceptance. The bidder is to hold the offered prices open for action by the department at least 30 days past the time set for public opening of submitted responses.

g. Escalator clauses. Unless specifically provided for in the solicitation, a response containing an escalator clause are not to be considered.

h. Federal and state taxes. Except for specific items that will be noted in the solicitation, the department is exempt from payment of federal and state taxes. These taxes are not to be included in the bidder's response. Exemption certificates are to be furnished to bidders upon request.

i. Delivery dates. In the space provided, the bidder is to show the earliest date on which delivery can be made. When the solicitation shows the acceptable delivery date for an item, the proposed delivery date may be used as a factor in determining the successful bidder.

j. Ties and reservations. No ties or reservations by the bidder are permitted. Any tie or reservation stipulated by the bidder shall be sufficient grounds to reject the submitted response.

k. Changes and additions. No changes in or additions to the solicitation are to be permitted unless a written request for a change or an addition is submitted to the department's purchasing section in sufficient time to allow an appropriate analysis and response to all bidders, and the change or addition is approved by the purchasing section. The purchasing section will notify all bidders of approved changes or additions by means of addenda. Any unauthorized change in or addition to the solicitation is to be sufficient grounds to reject the submitted response.

l. Response submission. All responses are to be submitted electronically prior to the time set for public opening of submitted responses. Responses received are to be dated and time-stamped electronically by the purchasing section showing the date and hour received. By submitting a response, the bidder:

(1) Agrees that the contents of the response will become part of the contract if the bidder receives the award.

(2) Certifies that the bidder has become familiar with the contents and requirements of the solicitation.

m. Bid bond. A bid bond may be necessary as security that the bidder will execute the contract if awarded. If necessary, each response is to be supported by a bid bond in the form and amount prescribed in the solicitation. Responses not so supported are not to be read.

n. Withdrawal of responses prior to opening. Responses may be withdrawn prior to the time set forth in the solicitation. Prior to opening, a bidder who withdraws the response to a solicitation may submit a new response if desired.

o. Modification or withdrawal of responses after opening. After opening, no response is to be modified. A response may be withdrawn after opening only if:

(1) The bidder submits, at least three days prior to award, a sworn statement asserting that the response contains a substantial inadvertent error and that the bidder would suffer a serious financial loss if the bidder were to perform under the response, and

(2) The purchasing director approves the withdrawal. The purchasing director may base the decision to approve or deny the withdrawal on any factors the purchasing director deems relevant, including but not limited to the best interests of the agency, possible prejudice to other bidders or the bidding process, and the extent of financial hardship on the bidder if withdrawal is not allowed.

20.4(4) *Public opening of responses.* Responses are to be opened publicly and read aloud at the time stipulated in the solicitation.

20.4(5) *Consideration of responses.* The department reserves the right to accept or reject any or all responses. Individual responses may be rejected for any of the following reasons:

a. Noncompliance with the requirements of this rule or of the solicitation.

b. Financial insolvency of the bidder.

c. Evidence of unfair bidding practices.

d. For any other reason stated in this rule.

20.4(6) *Recommendation of award.*

a. Time frame. Unless otherwise specified by the department in the solicitation, an award is to be made within 30 days after the date and time set for public opening of submitted responses if it is in the best interest of the state. If an award is not made within the applicable time frame, the procurement is to be canceled unless an extension of time is mutually agreed to by the department and the apparent successful bidder.

b. Tied responses. Responses that are equal in all respects and are tied in price are to be resolved among the tied bidders by giving first preference to an Iowa bidder and second preference to the bidder who satisfactorily performed a contract the previous year for the same item at the same location. If the tie involves bidders with equal standing, the award is to be determined by lot among these bidders. A tied bidder or the bidder's representative may witness the determination by lot.

c. Tabulation of responses. A tabulation of responses with an award recommendation is to be sent to all interested parties including bidders at least ten days prior to award.

d. Protests. Any protest of the recommended award is to be submitted in writing to: Director of the Purchasing Section, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. A written protest must be received by the director of purchasing within five days after the recommended award has been posted. The protest is to be considered by the authority making the award. This is not a contested case as defined in Iowa Code section 17A.2.

e. Return of bid bond. Unsuccessful bidders' bid bonds shall be promptly returned by the department after award is made. The bid bond of the successful bidder shall be returned in accordance with subrule 20.4(7).

20.4(7) *Contract execution and performance.*

a. Execution. The successful bidder is to make good effort to enter into (execute) a formal contract with the department within 14 days after award.

b. Performance bond and certificate of insurance. A performance bond or certificate of liability and property damage insurance, or both, may be needed for those contracts involving services or specially constructed equipment. If needed, the performance bond and certificate of insurance are to be filed with the department promptly after award and prior to contract execution.

c. Return of awarded bidder's bid bond. The bid bond of the successful bidder is to be returned following execution of the contract. However, if the successful bidder fails to execute the contract and file an acceptable performance bond and certificate of insurance (if needed) promptly after award and prior to contract execution, or fails to comply with Iowa Code chapter 490, the award may be annulled and the bid bond forfeited.

d. Assignment of contract. The contractor is not to assign the contract to another party without written authorization from the department's purchasing section.

e. Strikes, lockouts or acts of God. If the contractor's business or source of supply has been disrupted by a strike, lockout or act of God, the contractor is to promptly advise the department's purchasing section. The department may elect to cancel the contract without penalty to either the contractor or to the department.

f. Payment. Unless otherwise stated in the contract, payment terms shall be net following the department's receipt and acceptance of the item(s) procured and receipt of an original invoice, in accordance with Iowa Code section 8A.514(3).

g. Liquidated damages. The contract terms may provide for liquidated damages to be assessed if the contractor fails to complete the contract within the contract period or for any other reason as specified in the contract.

20.4(8) *Additional requirements.*

a. The department's standard specifications for highway and bridge construction, as available on the department's website at www.iowadot.gov, where applicable and not in conflict with this rule or with the needs of a particular procurement, shall apply to formal solicitation procurement activities.

b. If there are federal funds involved in a particular procurement, and the federal procurement regulations conflict with this rule, then the federal procurement regulations shall apply.

c. Procurement of motor vehicles is to be in accordance with Iowa Code section 8A.311(20).

761—20.5(307) Informal solicitation procedures.

20.5(1) *Bidders lists.* The department will use its current bidders lists (more information can be found in subrule 20.4(1)) to the extent feasible and practicable. However, the solicitation will also be offered to any qualified bidder that has requested an opportunity to participate.

20.5(2) *Form of solicitation.* The solicitation is to be as detailed and complete as practicable for the time and resources available.

20.5(3) *Form of response.* Responses are to be submitted in writing or electronically when practicable. Written responses will prevail over oral responses in case of discrepancies, disputes or errors. Following is the order of preference:

1. Original, signed submitted response.
2. Electronically submitted response (facsimile, email, Internet).
3. Oral response (e.g., telephonic).

20.5(4) *Award.* The award is to be offered to that responsible bidder whose response meets the requirements of the solicitation and is the most advantageous to the department. An Iowa bidder will be given preference over an out-of-state bidder when responses are equal in all respects and are tied in price.

761—20.6(307) Professional and technical services. This rule applies to professional and technical services procured through the purchasing section using formal solicitation, informal solicitation or negotiation methods outlined in rules 761—20.3(307) to 761—20.6(307). The purchasing section will use the request for proposal (RFP) process, excluding cost evaluation, to ensure qualification-based selection for architectural, landscape architectural, and engineering services. Professional and technical services procured by the project management bureau are covered by rule 761—20.9(307).

20.6(1) *RFP.* A solicitation prepared by the department will include at least the minimum needs for the type of goods or services sought. The solicitation is sent to prospective offerors and is publicly posted on the department's website.

20.6(2) *Evaluation committee.* A committee is established for the purpose of reviewing and evaluating proposed responses based on a set of criteria as outlined in the RFP. "Evaluation criteria" will define categories with assigned weighted values to be used as a scoring measure to determine the best overall solution for the department based on technical expertise and price, including but not limited to:

a. Overall content of written submitted proposal information.

b. Business knowledge.

c. Work experience in mandatory skill sets.

d. Presentation or demonstration.

e. Cost (will not be used for the selection of architectural, landscape architectural, or engineering services).

20.6(3) *Award.* The award is to be offered to a firm whose properly submitted compliant response best meets the needs of the solicitation and receives the highest overall score of the weighted criteria.

761—20.7(307) Sole source or emergency selection. Sole source or emergency selection applies to all services, including professional and technical services. The department will fully document and include in the contract file the justification for use of sole source or emergency selection, the basis on which a particular firm is selected and that appropriate approvals were obtained.

20.7(1) *Sole source selection.* The department may select a single firm qualified to perform the work with which to negotiate when one of the following conditions exists:

a. Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more likely to most satisfactorily complete the work than another firm.

b. The services involve work that is of such a specialized character or nature, or related to a specific geographical location, that only a single firm, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.

20.7(2) *Emergency selection.* The department may select a single firm qualified to perform the work when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:

a. A condition that threatens the public health, welfare or safety.

b. A need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.

c. A situation in which the department must act to preserve critical services or programs.

761—20.8(307) Conflicts with federal requirements. If any provision of this chapter would cause a denial of federal funds or services or would otherwise be inconsistent with federal law, federal law shall be adhered to, but only to the extent necessary to prevent denial of the federal funds or services or to eliminate the inconsistency with federal law.

761—20.9(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services. This rule prescribes procedures followed by the project management bureau for the procurement of architectural, landscape architectural, surveying, general engineering consultant, construction inspection, engineering and related professional and technical services by negotiation where selection is based on qualifications in compliance with 23 CFR Part 172. Contract costs are negotiated after a qualification-based selection.

20.9(1) *Registration of firms providing professional and technical services.*

a. A firm wishing to provide professional and technical services to the department as a consultant may register to receive information through the GovDelivery portal available at the department's website at www.iowadot.gov. The firm is responsible for keeping the firm's information updated. For information, persons may contact the consultant coordinator at the Project Management Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by telephone at 515.239.1803.

b. The department will maintain a list of work categories, descriptions and requirements for each work category online.

20.9(2) *Request for professional and technical services.* Prior to selecting a firm with which to initiate negotiations under this rule, the department will document the need for outside services, a description of the needed services, the time frame within which the work must be performed, and the

method of selection to be used. One of the following methods are to be used to select a firm with which to initiate negotiations:

a. Complete process. More information can be found in subrule 20.9(3).

b. Small contract process. More information can be found in subrule 20.9(4).

c. Sole source or emergency selection. More information can be found in rule 761—20.7(307).

20.9(3) *Complete process.* The complete process method will use the following process and will be used unless another selection method is justified.

a. RFP. The department will prepare an RFP that will include the scope of the work, duration of the contract, list of applicable work categories, evaluation criteria (excluding cost), any established disadvantaged business enterprise or targeted small business goal for the proposed work, type of contract anticipated, submission details including the point of contact for the RFP for any questions, the time by which the RFP should be received by the department and anticipated date of selection. The RFP will not request any cost information to be submitted by the proposing firms.

b. Website.

(1) The RFP will be posted on the department of administrative services' website no later than 48 hours prior to the issuance of the RFP.

(2) The RFP will be posted on the department's website. The notification of the RFP being posted will be sent to all users who have signed up to receive the notification via GovDelivery. The notification will include the link to the website where the RFP is posted. More information can be found in subrule 20.9(1).

(3) The department will post any questions received on the RFP and answers thereto on the website indicated in the GovDelivery notification.

c. Selection committee. The department will appoint a selection committee to become familiar with the RFP, review the firms that have responded to the RFP to determine if they meet the requirements of the work to be performed, and evaluate the firms that meet the qualifications per the evaluation criteria. The selection committee will, if necessary, interview the firms, score the firms, document the committee's decision and provide the scoring to the consultant steering committee.

d. Evaluation criteria. The selection committee is responsible for establishing criteria for evaluating each firm submitting a proposal, assigning weighted values to the criteria, and rating each firm on each criterion. Evaluation criteria are tailored to the needed services. Typical evaluation criteria are listed below. The list is intended as a guideline only; it is not exhaustive, nor is each criterion mandatory.

(1) Staffing expertise consistent with special project needs.

(2) Past experience with similar types of work.

(3) Current workload and commitment of key personnel.

(4) Specific qualifications of key staff who will be forming the firm's project team.

(5) Resources the firm has available and proposes to use on the project, including the firm's use of equipment and automated technology and the firm's compatibility with equipment and technology used by the department.

(6) Identification of proposed subconsultants and the work the subconsultants will perform.

e. Consultant steering committee. A consultant steering committee is responsible for reviewing the firms as scored by the selection committee, determining the order of preference for negotiations, and documenting its decision. The number of firms selected is to include at least two alternate firms. The committee is to document its reasoning when the number of selected firms is less than the minimum. The consultant steering committee is to consider not only the selection committee's scoring but other factors such as:

(1) A firm's ability to complete required tasks in the time allotted, taking into account other work currently under contract.

(2) The volume of work a firm has with the department, both existing and potential.

(3) The department's goal of having a breadth of experienced firms capable of providing quality services to the department.

(4) Other items unique to the particular contract.

f. Completion of selection process. After selection committee and consultant steering committee activities are complete, the department will determine whether negotiations may begin. If negotiations are approved, the department will proceed to negotiate with the firm that is first in order of preference.

g. Notification to firms. The department will post the results of the selection on the website identified in the GovDelivery notification. For firms not included on the ranked list of firms, the department will also provide a matrix showing the high, low and average scores for each item evaluated and that firm's score for each item.

20.9(4) *Small contract process.* The small contract process may be used to identify a single firm with which to negotiate when the estimated work under the contract can normally be completed within a 12-month period and the estimated cost of the contract will not exceed $150,000.

a. Selection committee. The department will appoint a selection committee to identify at least three firms that meet the requirements of the work categories involved in performing the work; document the names of the firms considered, if necessary; interview the firms; select a firm with which to initiate negotiations; and document the committee's decision.

b. Completion of selection process. After selection committee activities are complete, the department will determine whether negotiations may begin. If negotiations are approved, the department will proceed to negotiate with the selected firm.

20.9(5) *Selection dispute resolution.* Any dispute of the recommended selection is to be submitted in writing to the consultant coordinator. A written notice of the dispute with supporting evidence must be received by the consultant coordinator within 15 calendar days from the date the selection is posted on the department's website. This is not a contested case as defined in Iowa Code section 17A.2. The department will inform the selected firm(s) of the dispute and inform the firm(s) that the department reserves the right to proceed with negotiations with the selected firm(s) pending resolution of the dispute or claim.

20.9(6) *Negotiation of contract.* The purpose of negotiations is to develop a contract that is mutually satisfactory to the department and the selected firm.

a. The firm must submit a detailed cost proposal, including a detailed cost proposal for each proposed subcontract. The department will prepare an independent estimate of the cost of the proposed services, including a detailed estimate of the firm's staff hours needed to complete the contract. Significant differences are to be evaluated and resolved to the satisfaction of both parties. If it is impractical to make an independent estimate, the department will evaluate the acceptability of the firm's cost proposal on the basis of the reasonableness of the individual elements of the price proposed.

b. The department may perform a preaudit. A preaudit typically includes:

(1) An analysis of the firm's cost proposal and financial records for the method of accounting in place to ensure that the firm has the ability to adequately segregate and accumulate reasonable and allowable costs to be charged against the contract.

(2) An analysis of the firm's proposed direct costing rates and indirect overhead factors to ensure the firm's propriety and allowability.

c. For contracts with federal funding, the department will verify federal suspension and debarment actions and eligibility status of firms prior to entering into an agreement or contract.

20.9(7) *Unsuccessful negotiations.*

a. If a mutually satisfactory contract cannot be negotiated, the department will formally terminate the negotiations and notify the firm in writing. Termination of negotiations is without prejudice and at the department's discretion. The substance of terminated negotiations is confidential.

b. The department will then initiate negotiations with the firm given next preference, and this procedure may be continued until a mutually satisfactory contract has been negotiated. If a satisfactory contract cannot be negotiated with any of the selected firms, the department will either:

(1) Direct the selection committee to select one or more firms with which to continue negotiations, or

(2) Redefine the scope of the project or work and start over. More information can be found in subrule 20.9(2). Once negotiations are terminated, negotiations cannot be reopened with the same firm.

20.9(8) *Evaluation of performance.*

a. The department will evaluate all firms under this rule annually based on the contracts that were active during the fiscal year. Both the firm's performance and quality of the final product shall be evaluated. The evaluation considers:

(1) The quality and adequacy of work performed.

(2) The ability to meet established schedules and budgets.

(3) General administration of the contract, including substantiation of cost billings, payments to subconsultants, and documentation of claims.

(4) Cooperation shown by the firm in responding to requests for information and in revising procedures and products according to directions.

(5) Coordination exhibited by the firm in communicating with the department, subconsultants, agencies and others to accomplish tasks and resolve problems.

(6) Ingenuity displayed in solving unique and unusual design problems encountered during performance of contract objectives.

(7) The ability to obtain an acceptable end product with appropriate department staff guidance.

b. The firm is to be given an opportunity to review, comment on and sign the evaluation.

These rules are intended to implement Iowa Code sections 8A.302(1), 8A.311(20), 8A.514(3), 73.15 to 73.21, 307.12(1)*"j"* and 307.21.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 25
"Competition With Private Enterprise"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 23A.2
State or federal law(s) implemented by the rulemaking: Iowa Code sections 23A.1 and 23A.2

Public Hearing

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

October 11, 2024 11 to 11:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 562 451 240

Public Comment

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

Veronica Tolander
800 Lincoln Way
Ames, Iowa 50010
Email: veronica.tolander@iowadot.us

Purpose and Summary

This proposed chapter defines exemptions from Iowa Code section 23A.2(1). The intended benefit is cost savings to the Department by allowing competition with private enterprise in some circumstances.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The proposed chapter does not create additional costs for any class of persons.

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

The proposed chapter positively impacts the public.

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

- Quantitative description of impact:

The proposed chapter does not have a quantitative impact.

- Qualitative description of impact:

The proposed chapter has a benefit to the public by allowing competition between public and private enterprises under certain circumstances, creating a larger potential bidding pool for niche areas.

3. Costs to the State:

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

There are no additional implementation or enforcement costs.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

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

The benefit of the proposed chapter is a potential cost savings to the Department by increasing the number of eligible bidders. The cost of inaction is an increased cost to the Department because bidding pools would remain deficient. In some circumstances, private enterprise alone is unable to meet the project requirements of the Department. There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules.

6. Alternative methods considered by the agency:

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

The Department did not seriously consider alternatives for the proposed rules. When the deficiency was identified, this was deemed as the necessary path forward.

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

No alternatives for the proposed rules were seriously considered.

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?

Registered targeted small businesses are exempt from competition for up to $25,000.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
COMPETITION WITH PRIVATE ENTERPRISE

761—25.1(23A) Interpretation. This chapter is not to be interpreted to mean that the department will provide a good or service with or without qualification, restriction, or charge.

761—25.2(23A) Exemptions. Activities related to the items listed in this rule are exempted from the provisions of Iowa Code section 23A.2(1).

25.2(1) Transportation-related printing, publications and electronically generated materials, including but not limited to: forms; brochures; booklets; manuals; directories; periodicals; county, city

and state transportation maps; video and audio materials; computer tapes and discs; microfilm and other instructional and informative materials.

25.2(2) Copies of records or other services provided to meet the standards of Iowa Code chapter 22.

25.2(3) Transportation-related studies, planning and research.

25.2(4) Disposal of surplus, obsolete or junked materials and supplies and equipment.

25.2(5) Matters of intergovernmental cooperation. Cooperating with other government bodies does not involve providing goods or services to the public except in the broadest sense. The term "government bodies" includes regional transit systems. Activities that involve intergovernmental cooperation include but are not limited to the following:

a. Use or consumption of departmental facilities, equipment, materials or supplies by other government bodies, including loans, rentals and sales of equipment, materials and supplies.

b. Services provided to or performed for other government bodies. These services include:

(1) Vehicle maintenance and repair services provided to other state agencies.

(2) Purchasing services provided to other government bodies.

(3) Purchases made by other government bodies through state contracts.

(4) Disposal of surplus, obsolete or junked materials and supplies and equipment belonging to other state agencies, counties or cities.

(5) Other services performed for government bodies. These services cover a wide range of activities and are performed primarily for county and city highway departments, agencies having park or institutional roads, county treasurers, public transit systems, publicly owned airports, law enforcement agencies, regional planning agencies, and transportation-related boards.

25.2(6) Acquisition and disposal of land and improvements or mitigation banks acquired for highways or facilities use.

25.2(7) Lease of right-of-way.

25.2(8) Design, construction, reconstruction, inspection and maintenance of highways, including but not limited to signs erected in the right-of-way and acknowledgment signs used in the adopt-a-highway program.

25.2(9) Use or consumption of specialized departmental equipment, materials, supplies or services to complete a contract with the department if the goods or services are not readily available on the open market and the department can provide the goods or services at a competitive price.

25.2(10) Use of departmental facilities to complete a contract with the department.

25.2(11) Activities related to emergencies, including but not limited to providing assistance to the public.

25.2(12) Goods or services for use or consumption by the department.

25.2(13) Use of departmental facilities or services by persons providing services to or representing departmental employees, including but not limited to the following services or persons: food, credit union and employee organizations.

25.2(14) Use of departmental conference rooms or grounds by civic groups and nonprofit organizations.

25.2(15) Personal protective items purchased by departmental employees through state contracts.

25.2(16) Goods or services promoting transportation or transportation safety.

25.2(17) Development, implementation, and licensing of software for use by governmental agencies, whether in Iowa or elsewhere, designed for crash data reporting and analysis; generating uniform citations and other forms for use in public safety; and transmission of such data, analysis, and forms to the appropriate agencies.

25.2(18) Development, implementation, and licensing of systems for use by governmental agencies, whether in Iowa or elsewhere, designed for situational incident response, resource management, and interagency communications.

25.2(19) Any other activity permitted or required by law.

These rules are intended to implement Iowa Code sections 23A.1 and 23A.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 131
"Signing on Primary Highways"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 314.31
State or federal law(s) implemented by the rulemaking: Iowa Code section 314.31

Public Hearing

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

October 11, 2024 9 to 9:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 498 055 690

Public Comment

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

Chris Poole
800 Lincoln Way
Ames, Iowa 50010
Email: chris.poole@iowadot.us

Purpose and Summary

This proposed chapter lays out uniform requirements, responsibilities, and procedures for requesting the installation of Medal of Honor signs on U.S. Route 20 across Iowa. The purpose of these signs is to raise awareness of the brave members of the U.S. armed forces that defend our country.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Private entities that apply for signage will bear the costs of the proposed rulemaking.

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

All Iowans will benefit from signs that raise awareness of the U.S. armed forces.

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:

Fabrication and installation of a typical Medal of Honor sign costs the applicant approximately $400.

- Qualitative description of impact:

The U.S. armed forces benefit from the increased awareness.

3. Costs to the State:

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

None. Responding to requests and contacting applicants when repairs are needed can be handled by existing staff as part of regular assigned duties.

- Anticipated effect on state revenues:

None.

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

The benefits of continuing to allow the installation of Medal of Honor signs on U.S. Route 20 outweigh the costs of implementing the rulemaking.

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

The process for signing the Iowa Medal of Honor Highway is well-established, noncontroversial, and very similar to other types of signing programs administered by the Department that are covered in a Department operational manual. As such, the process for signing the Medal of Honor Highway could also be covered in a Department operational manual. This would allow for Iowa Code section 314.31 to be repealed and Chapter 131 to be rescinded.

6. Alternative methods considered by the agency:

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

None. This chapter is required by Iowa Code section 314.31.

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

Not applicable.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 131 and adopt the following **new** chapter in lieu thereof:

CHAPTER 131
SIGNING ON PRIMARY HIGHWAYS

761—131.1(314) Contact information. Information regarding the signing addressed in this chapter is available from: Traffic and Safety Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Submissions to the traffic and safety bureau may also be sent or delivered to this address. Additional information and guidance may be found at www.iowadot.gov/traffic/Library/Traffic-and-Safety-Manual.

761—131.2(314) Signing for Iowa medal of honor highway. This rule establishes the conditions and procedures for private entities to purchase and pay for the installation of signs designating the Iowa medal of honor highway.

131.2(1) *Definition.*

"Iowa medal of honor highway" means the segment of the highway known as United States Highway 20, as designated as of June 17, 2020, that crosses this state from Sioux City to Dubuque.

131.2(2) *Conditions.*

a. The number of signs within the highway right-of-way is limited to one sign at each end of the Iowa medal of honor highway for traffic entering the state and one sign at each entry point of the corporate limits of each city through which the Iowa medal of honor highway passes.

b. Each sign is to match the design approved and provided by the department, and the sign materials are to comply with departmental standard specifications as they exist at the time of fabrication. The departmental standard specifications can be found on the department's electronic reference library at www.iowadot.gov/erl.

c. Once signs are installed at one of the approved locations, no additional requests will be accepted for that location. When signs have been installed at all locations identified in paragraph 131.2(2)*"a,"* no further requests will be accepted.

d. The applicant may purchase a sign from the department's sign shop or from a private sign fabricator. If an applicant chooses to obtain a sign from a private sign fabricator, the department will furnish the sign design and approve the construction prior to purchase. The department will also inspect the sign as stated in subrule 131.2(5).

e. Signs designating the Iowa medal of honor highway are furnished and paid for by the applicants, including any replacements needed due to sign deterioration or damage. Each applicant is responsible for providing the traffic and safety bureau with the applicant's current contact information so the applicant can be contacted when a replacement sign is needed. Failure to provide current information may result in removal of all signs the applicant purchased. This would allow a new private entity to sponsor the signing.

f. The applicant is responsible for the cost to install the sign, including the posts and hardware.

g. The department will install the sign.

131.2(3) *Procedures.* Requests to purchase or install a sign are submitted to the traffic and safety bureau and contain the following:

a. The applicant's name and contact information.

b. A description of the location where the sign is to be installed.

c. A statement as to whether the sign will be purchased from the department or from a private sign fabricator.

131.2(4) *Approval.* If the request complies with this rule, the traffic and safety bureau will respond to the applicant with approval of the proposed location or modified location and an estimate of the costs for the sign and installation. Following inspection of the sign in compliance with subrule 131.2(5), the department will install the sign and bill the applicant.

131.2(5) *Inspection.* If a sign is not purchased from the department's sign shop, the applicant is to deliver the sign to the department's sign shop for inspection. Upon receipt of the sign, the department will inspect the sign for compliance with the approved sign design and departmental specifications and notify the applicant.

These rules are intended to implement Iowa Code section 314.31.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 180
"Quotation Process for Governmental Entities for
Public Improvement for Vertical Infrastructure"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 314.1A

State or federal law(s) implemented by the rulemaking: Iowa Code sections 26.2, 26.14, 314.1A, 314.1B, 573.2 and 573.28

Public Hearing

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

October 11, 2024	Microsoft Teams link
1 to 1:30 p.m.	Or dial: 515.817.6093
	Conference ID: 572 562 717

Public Comment

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

Veronica Tolander
800 Lincoln Way
Ames, Iowa 50010
Email: veronica.tolander@iowadot.us

Purpose and Summary

This proposed chapter establishes the process by which governmental entities are to obtain and evaluate competitive quotations relating to public improvement projects for vertical infrastructure. The intended benefit is to ensure competition and equal opportunity through a standardized process and to keep vendors accountable by permitting retained funds.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The proposed chapter does not create additional costs for any class of persons.

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

The proposed chapter does not create additional benefits for any class of persons.

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

- Quantitative description of impact:

The proposed chapter does not have a quantitative impact.

- Qualitative description of impact:

The proposed chapter does not have a qualitative impact.

3. Costs to the State:

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

There are no additional implementation or enforcement costs.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

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

The benefit of the proposed chapter is consistency and transparency of the process to ensure competition when governmental entities seek quotations for public improvement projects on vertical infrastructure. The cost of inaction is lack of competition and equal opportunity in the solicitation of quotes. There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules. To be compliant with competitive bidding, the chapter clarifies when bids are to be formally or informally obtained.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives to the proposed rules. The Department is required by the Iowa Code to adopt rules prescribing how governmental entities need to administer competitive quotations for public improvement projects.

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

No alternatives to the proposed rules were considered.

Small Business Impact

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

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

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

This chapter does not affect small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 180 and adopt the following **new** chapter in lieu thereof:

CHAPTER 180
QUOTATION PROCESS FOR GOVERNMENTAL ENTITIES FOR PUBLIC IMPROVEMENT FOR VERTICAL INFRASTRUCTURE

761—180.1(26,314) Purpose and contact information.

180.1(1) The purpose of these rules is to prescribe the manner by which governmental entities are to administer competitive quotations for contracts pertaining to a public improvement for vertical infrastructure, in accordance with Iowa Code section 26.14.

180.1(2) Questions regarding this chapter may be directed to the Resources and Acquisitions Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1170.

761—180.2(26,314) Definitions.

"Estimated total cost" means the same as defined in Iowa Code section 26.2.

"Governmental entity" means the same as defined in Iowa Code section 26.2.

"Public improvement for vertical infrastructure" is a "public improvement" as defined in Iowa Code section 26.2(3)*"a"* and *"b"* but excludes those improvements in Iowa Code section 26.2(3) *"b"*(1) through 26.2(3)(6).

"Responsible quotation" means a quotation submitted by a contractor who is capable of performing the work. To be considered responsible, the contractor must possess the necessary financial and technical capability to perform the work, as well as the ability to complete the work as demonstrated by past performance or other appropriate considerations.

"Responsive quotation" means a quotation in which the contractor agrees to do everything required by the governmental entity's solicitation of quotations and by the plans and specifications and other related documents without any conditions, qualifications or exclusions.

761—180.3(314,573) Solicitation of quotations.

180.3(1) A governmental entity is to solicit competitive quotations for a public improvement for vertical infrastructure when the estimated total cost of the public improvement for vertical infrastructure exceeds the competitive quotation threshold established in Iowa Code section 26.14, as adjusted pursuant to Iowa Code section 314.1B, but is less than the competitive bid threshold established in Iowa Code section 26.3, as adjusted pursuant to Iowa Code section 314.1B. The adjusted thresholds are published on the department's website at www.iowadot.gov.

180.3(2) The governmental entity is to make a good-faith effort to obtain quotations for the work from at least two contractors regularly engaged in such work prior to letting a contract. Quotations are to be obtained by means of either an oral or a written solicitation directed to not less than two contractors.

180.3(3) Each solicitation is to include a description of the work to be performed, and plans and specifications for the work prepared by an architect or engineer if required by Iowa Code chapter 542B or 544A (additional guidelines can be found in 193B—Chapter 5 or rule 193C—1.5(542B). In its solicitation, the governmental entity is to advise each contractor that it has an opportunity to inspect the work site. Each contractor requesting to inspect the work site is to be provided an equal and adequate opportunity to do so.

180.3(4) Additional information deemed pertinent by the governmental entity, or requested by a contractor, may be provided by the governmental entity if the same information is provided to all contractors from which quotations are solicited. If the information is provided in written form to a contractor, it is to be provided in the same form to all contractors from which quotations are solicited.

180.3(5) In its solicitation, the governmental entity is to:

a. Specify the required form and content of quotations (more information can be found in rule 761—180.5(314).

b. Request quotations to be filed by a particular time, at a particular location and with a particular office or representative of the governmental entity.

c. Establish the acceptable method(s) for delivery of quotations. The governmental entity may specify any or all of the following methods of delivery: mail, electronic mail, or delivery in-hand.

180.3(6) In accordance with Iowa Code section 573.2, the governmental entity is to utilize the solicitation to inform quoting contractors that the awarded contractor is to provide a performance and payment bond to secure the performance and timely completion of the work and to secure the payment of subcontractors and suppliers.

180.3(7) In its solicitation, the governmental entity may stipulate that each quoting contractor:

a. Provide along with its quotation a bid bond, or other bid security or evidence of its responsibility, to assure that it will enter into a contract to perform the work and that it will provide the necessary performance and payment bond.

b. Commit to the execution of a contract for the work.

c. Commit to commencement and completion dates for the work as directed by the governmental entity.

d. File evidence of insurance, as specified by the governmental entity, with its quotation, or commit to filing such evidence of insurance upon award of the contract to perform the work.

180.3(8) In its solicitation, the governmental entity may provide that it will issue special sales tax exemption certificates to contractors and subcontractors, pursuant to Iowa Code section 423.3(80).

761—180.4(314) Submission of competitive quotation by governmental entity. The governmental entity may itself file a competitive quotation to perform the work. The governmental entity's quotation is to be filed in the same manner as quotations are to be filed by contractors except as provided in subrule 180.5(3).

761—180.5(314) Form and content of competitive quotations.

180.5(1) A competitive quotation filed by a contractor or by the governmental entity is to be in writing and include the total price for labor, equipment, materials and supplies necessary to perform the work. A contractor may include in its quotation or in individual quotation items a breakdown of costs for labor, materials, equipment and supplies. Competitive quotations filed by contractors are to include all other information, documentation or commitments requested by the governmental entity in its solicitation of quotations.

180.5(2) If the governmental entity in its solicitation indicates its intention to file a competing quotation, contractors are to also separately identify in their quotations the premium cost for the necessary performance and payment bond and an estimate of the sales and fuel taxes they will incur in performing the work. However, if in its solicitation the governmental entity provides for the issuance of sales tax exemption certificates to the contractor and subcontractors performing the work, quoting contractors are not to include or separately identify estimated sales tax in their quotations.

180.5(3) A quotation submitted by a governmental entity need not include the information, documents or commitments in subrule 180.3(7). A performance and payment bond is not mandatory for a governmental entity.

180.5(4) The governmental entity may insist that quotations from contractors be submitted on a form prescribed by the governmental entity, provided the form complies with these rules.

761—180.6(314) Evaluation of competitive quotations.

180.6(1) If a quoting contractor does not file a quotation in the form specified by the governmental entity, or does not provide all information or documentation or make all commitments requested by the governmental entity, or does not sign the quotation if required by the governmental entity, the quotation will be determined to be nonresponsive and be rejected by the governmental entity.

180.6(2) If the governmental entity submits a quotation to perform the work, paragraphs 180.6(2)*"a"* through *"c"* are applicable. If the governmental entity does not submit a quotation, these paragraphs do not apply.

a. Because the governmental entity is not required to pay sales tax or fuel tax or to submit a performance and payment bond in connection with work performed by governmental employees using

governmental equipment, each contractor's total quotation is to be adjusted to deduct the amounts identified in the quotation for estimated sales and fuel taxes and the bond premium. The amount of each contractor's adjusted quotation is to then be compared to the amount of the quotation submitted by the governmental entity for the purpose of determining if the governmental entity's quotation is the lowest responsive, responsible quotation.

b. If in its solicitation the governmental entity provides for the issuance of sales tax exemption certificates to the contractor and subcontractors performing the work, quoting contractors are not to include or separately identify estimated sales tax in their quotations, and the governmental entity is not to deduct estimated sales tax from the contractors' quotations for the purpose of determining if the governmental entity's quotation is the lowest responsive, responsible quotation.

c. The governmental entity may request that the contractor to which the work is awarded provide documentation of the premium cost incurred by it for the performance and payment bond and of all sales and fuel taxes paid by it and its subcontractors in connection with the work. The governmental entity may decline to pay the amounts identified by the contractor in its quotation for the bond premium and estimated sales and fuel taxes if these amounts are not properly documented as having been paid.

761—180.7(314) Award of contract and subsequent procedures.

180.7(1) Except as provided in subrule 180.7(3), the governmental entity is to award the contract for the work to the contractor submitting the lowest responsive, responsible quotation, subject to Iowa Code section 26.9, or the governmental entity may reject all of the quotations. A contract is to be considered awarded when the governmental entity unconditionally accepts and approves the lowest responsive, responsible quotation. The governing body of the governmental entity is to record the approved quotation in its meeting minutes.

180.7(2) The governing body of a governmental entity may delegate the authority to award and execute contracts, or to award contracts and authorize the work to proceed, to an officer or employee of the governmental entity, provided that an award approved outside a meeting of the governing body is to be reported in the meeting minutes of the next regular meeting of the governing body.

180.7(3) If no quotations are received from contractors to perform the work or if the governmental entity's estimated cost to do the work with its employees, as reflected in its quotation, is less than the lowest responsive, responsible quotation received from a contractor, the governmental entity may authorize its employees to perform the work.

180.7(4) Upon the submission of the necessary performance and payment bond by the contractor to which the contract has been awarded and upon approval of the bond by the governmental entity, the governmental entity is to execute a contract to perform the work or shall authorize the contractor to proceed with the work.

180.7(5) Upon execution of the contract by the contractor and the governmental entity or upon authorization to proceed by the governmental entity and acknowledgment thereof by the contractor, the governmental entity releases the bid bonds or other quotation security submitted with the quotations received.

180.7(6) If the governmental entity is a city and the cost of the work will exceed the amount provided for in Iowa Code section 380.4, the governing body is to pass a resolution approving the expenditure.

761—180.8(314,573) Retained funds. In addition to requiring the contractor to submit a performance and payment bond, the governmental entity also retains funds from each payment to the contractor for the benefit of subcontractors and suppliers, and applies or releases such funds, in accordance with Iowa Code chapter 573.

These rules are intended to implement Iowa Code sections 26.2, 26.14, 314.1A, 314.1B, 573.2, and 573.28.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 301
"Driver's Privacy Protection—Motor Vehicle Records"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321A.3 and 321.11

State or federal law(s) implemented by the rulemaking: 18 U.S.C. §2721 et seq. and Iowa Code sections 321.1, 321.10, 321.11, 321.13 and 321A.3

Public Hearing

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

October 11, 2024 1 to 1:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 785 942 699

Public Comment

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

Kasey Lee
6310 SE Convenience Boulevard
Ankeny, Iowa 50021
Email: kasey.lee@iowadot.us

Purpose and Summary

The purpose of this proposed chapter is to implement Iowa Code section 321.11, which explains Iowa's adoption of the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. §2721 et seq.), and Iowa Code section 321A.3, which requires the Department to provide operating record abstracts upon request. The chapter explains the requirements, procedures, and exceptions for requesting personal information and highly restricted personal information contained in motor vehicle records, including crash reports, vehicle information, and driver record information. This chapter also explains the requirements for obtaining bulk data that does not include personal information from the Department's Motor Vehicle Division.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The chapter provides guidance for individuals and entities requesting personal information and highly restricted personal information contained in motor vehicle records or bulk data that do not include personal information. Entities seeking bulk data, audio files, or other file types may incur reasonable costs to obtain that data. The costs are identified in rule 761—301.7(321) for clarity and transparency.

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

Persons or entities that request personal information and highly restricted personal information contained in motor vehicle records, persons who have their own personal information and highly restricted personal information securely contained within the Department's records, and persons or

entities seeking bulk data from the Department's Motor Vehicle Division that do not contain personal information or highly restricted personal information 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:

Authorized entities requesting bulk data files incur a fee of $0.0003 per line of data or, alternatively, a reasonable fee commensurate with the file size and complexity.

- Qualitative description of impact:

Reorganizing, streamlining, and reducing redundancy in the proposed chapter will create a positive impact by producing a more user-friendly version of information the public relies on for understanding the requirements, procedures, and fees for requesting personal information, highly restricted personal information, or bulk data contained in motor vehicle records.

3. Costs to the State:

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

There are no additional implementation or enforcement costs in the proposed rules that were not already required as a result of the underlying statutes. The statute requires the Department to adopt rules regarding the disclosure of personal information and highly restricted personal information contained within motor vehicle records and requires the Department to furnish operating records and crash reports to eligible requesters.

- Anticipated effect on state revenues:

The Department estimates that approximately $90,951.60 will be collected annually in bulk data request fees that are not among the authorized fees identified in statute for operating records and crash reports.

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

The benefit of the proposed chapter is consistency and transparency for standards for obtaining personal information and highly restricted personal information as well as the fees required to obtain bulk data. The cost of the proposed rules is the same as the cost required by the underlying statute.

The cost of inaction is the inability for the public to quickly and efficiently understand the standards required for the disclosure of personal information and highly restricted personal information contained within motor vehicle records as well as the fees required to obtain bulk data. There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules, which is to provide information quickly and efficiently to the public regarding the required standards for the release of personal information and highly restricted personal information contained within motor vehicle records.

6. Alternative methods considered by the agency:

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

The Department considered different fee amounts for the bulk data fees established in rule 761—301.8(321).

The Department did not consider alternatives for the proposed rules governing the release of personal information and highly restricted personal information. Requirements for the release of personal information and highly restricted personal information are contained within federal law and the Iowa Code.

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

The Department conducted a survey of fee amounts collected among other state departments of motor vehicles (DMVs) and found that the fees collected by the Department are consistent with or

lower than other peer agencies. Additionally, the Department has not received negative feedback from requesters that the fee amounts for data requests were too high.

Small Business Impact

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

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

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

There is no impact on small business. The proposed rules apply equally to all individuals, entities, or businesses that request personal information or highly restricted personal information contained within motor vehicle records.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 301 and adopt the following **new** chapter in lieu thereof:

VEHICLES

CHAPTER 301
DRIVER'S PRIVACY PROTECTION—MOTOR VEHICLE RECORDS

761—301.1(321) Applicability and adoption. This chapter applies to personal information and highly restricted personal information in motor vehicle records of the department. The department adopts the Driver's Privacy Protection Act of 1994 (18 U.S.C. §2721 and 2725 effective as of October 23, 2000, and 18 U.S.C. §2722 through 2724 effective as of September 13, 1994) for motor vehicle records. The department does not provide the waiver procedure described in the Driver's Privacy Protection Act (codified as 18 U.S.C. §2721(d) effective as of October 23, 2000).

This rule is intended to implement Iowa Code section 321.11; 18 U.S.C. §2721 and 2725 effective as of October 23, 2000; and 18 U.S.C. §2722 through 2724 effective as of September 13, 1994.

761—301.2(321) Definitions. The definitions in Iowa Code section 321.1 and 18 U.S.C. §2725 effective as of October 23, 2000, are hereby adopted and incorporated. In addition:

"Certified abstract of operating record" means the same as described in Iowa Code section 321A.3(1).

"Driver's license" means the same as defined in Iowa Code section 321.1(20A).

"Express written consent" as used in Iowa Code section 321.11 means the same as "express consent" as defined in 18 U.S.C. §2725(5) effective as of October 23, 2000, and must either be notarized or accompanied by proof of identity of the requester.

"Law enforcement agency" includes, but is not limited to, county attorneys, federal district attorneys, attorneys general, state and federal departments of justice, and a division or unit of a governmental agency if the division's or unit's primary responsibility is to prevent or detect crime or enforce criminal laws.

"Motor vehicle record" as used in the Driver's Privacy Protection Act and this chapter means any record that pertains to a driver's license, nonoperator's identification card, certificate of title, registration receipt, or registration renewal receipt issued by the department or a county treasurer. This also includes information on individuals who do not currently hold a driver's license or nonoperator's identification card, including but not limited to operating records and records of driver sanctions.

"Proof of identity" means a copy of the individual's driver's license or nonoperator's identification card issued by the department or another state, the document discriminator number of a driver's license or nonoperator's identification card issued by the department, or an alternate form approved by the department.

"Requester" means an individual, organization or entity that seeks from the department access to personal information or highly restricted personal information contained in a motor vehicle record. A requester does not include an individual who is an authorized employee of the department or a county treasurer acting within the scope of the employee's office or employment.

"Sanction" means the same as defined in rule 761—615.1(321).

This rule is intended to implement Iowa Code sections 321.1 and 321.11; 18 U.S.C. §2721 and 2725 effective as of October 23, 2000; and 18 U.S.C. §2722 through 2724 effective as of September 13, 1994.

761—301.3(321) Information and addresses. Information and forms for records pertaining to motor vehicle records may be obtained at any driver's license service center or by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.237.3110; by email at privacy.agreements@iowadot.us; or on the department's website at www.iowadot.gov/mvd/vehicleregistration/records for vehicle records and www.iowadot.gov/mvd/driverslicense/records for driving records.

This rule is intended to implement Iowa Code section 321.11.

761—301.4(321) Requirements and procedures.

301.4(1) A requester seeking personal information or highly restricted personal information is required to:

a. Complete Form 431069, "Privacy Act Agreement for Request of Motor Vehicle Records," and submit the form to any driver's license service center or the motor vehicle division at the address in rule 761—301.3(321). Requests for information about another individual require completion of Parts A, B (if applicable), C, and D of Form 431069. Requests for an individual's own information require completion of Part A.

b. Provide proof of identity and proof of eligibility to access the information. The department may request additional information to confirm that the requester is eligible under Iowa Code section 321.11; 18 U.S.C. §2721 and 2725 effective as of October 23, 2000; 18 U.S.C. §2722 through 2724 effective as of September 13, 1994; and this chapter to access the information.

301.4(2) A law enforcement agency that requests personal information or highly restricted personal information is to either follow the process in subrule 301.4(1) or complete and submit Form 431200, "Certified Motor Vehicle Record Request Form for Use by County Attorney's Offices and Law Enforcement Agencies," to any driver's license service center or the motor vehicle division at the address in rule 761—301.3(321). Alternately, a law enforcement agency may enter into a memorandum of understanding with the department for the purposes of requesting personal information or highly restricted personal information.

301.4(3) Personal information and highly restricted personal information, except for an individual's photograph or image, may be disclosed with the express written consent of the individual or vehicle owner to whom such information applies. When the requester has obtained the written consent of the individual or vehicle owner to whom the information applies, the requester must attach that written consent on a completed Form 431069, "Privacy Act Agreement for Request of Motor

Vehicle Records," and submit the form to any driver's license service center or the motor vehicle division at the address in rule 761—301.3(321).

301.4(4) The statutory fee, if applicable, is due at the time the request for a motor vehicle record is submitted.

301.4(5) Requested information will be provided to the requester electronically unless the requester specifies otherwise. The department shall not release any personal information or highly restricted personal information if the request is made by plate number or validation sticker number, except as provided in Iowa Code section 321.11.

301.4(6) All requesters who obtain personal information or highly restricted personal information from the department are required to comply with Iowa Code section 321.11 and the Driver's Privacy Protection Act.

This rule is intended to implement Iowa Code sections 321.10, 321.11 and 321.13; 18 U.S.C. §2721 and 2725 effective as of October 23, 2000; and 18 U.S.C. §2722 through 2724 effective as of September 13, 1994.

761—301.5(321) Online motor vehicle records access. Online access to motor vehicle records may be available to recurring authorized requesters upon approval by the department and upon payment of any applicable fees. The requester must complete and submit Form 430030 using a method provided for in rule 761—301.3(321), including any required attachments.

This rule is intended to implement Iowa Code section 321.11; 18 U.S.C. §2721 and 2725 effective as of October 23, 2000; and 18 U.S.C. §2722 through 2724 effective as of September 13, 1994.

761—301.6(321,321A) Certified abstract of operating records.

301.6(1) A certified abstract of the operating record includes the information that is on the face of an individual's driver's license, plus information on the individual's sanctions, reportable vehicle accidents, and convictions. The certified abstract of operating record does not include the individual's photograph, social security number, or medical or disability information.

a. In accordance with Iowa Code section 321A.3, a certified abstract of operating record can be obtained by following the process outlined in rule 761—301.4(321).

b. The statutory fee, if applicable, is due at the time of the request.

301.6(2) The single-use restriction in Iowa Code section 321A.3(8) applies only to the certified abstract of operating records and to persons who are subject to the fee listed in Iowa Code section 321A.3(1).

301.6(3) Any person who obtains a certified abstract of operating record from the department is required to comply with Iowa Code section 321.11 and the Driver's Privacy Protection Act.

This rule is intended to implement Iowa Code sections 321.11, 321.13 and 321A.3; 18 U.S.C. §2721 and 2725 effective as of October 23, 2000; and 18 U.S.C. §2722 through 2724 effective as of September 13, 1994.

761—301.7(321) Fees for records. In addition to the statutory fees, the following fees related to motor vehicle records of the department provided pursuant to Iowa Code section 321.10 or 321.11 may include:

301.7(1) A $5 fee for an audio recording of a contested case hearing.

301.7(2) A $0.0003-per-record or -line of data bulk data request fee. However, no fee will be assessed to requesters that are government entities.

301.7(3) A one-time programming set-up fee for online data access or electronic data transfers, not to exceed the costs incurred in the set-up.

301.7(4) Fees commensurate with file size and complexity for other data file requests.

This rule is intended to implement Iowa Code sections 321.10 and 321.11.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 450
"Equipment and Inspection Requirements for Certain Motor Vehicles"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)"j" and 321.438

State or federal law(s) implemented by the rulemaking: Iowa Code sections 307.12(1)"j," 321.1, 321.23, 321.438 and 321.445

Public Hearing

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

October 10, 2024	Microsoft Teams Link
9 to 9:30 a.m.	Or dial: 515.817.6093
	Conference ID: 683 911 093

Public Comment

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

Sara Siedsma
6310 SE Convenience Boulevard
Ankeny, Iowa 50021
Email: sara.siedsma@iowadot.us

Purpose and Summary

The purpose of the proposed chapter is to implement Iowa Code section 321.23, which authorizes the registration and titling of specially constructed or reconstructed vehicles, street rods, or replica vehicles in Iowa. The proposed chapter also implements Iowa Code section 321.438, which requires the Department to establish a minimum measurable standard of transparency for windshields, windows and sidewings and Iowa Code section 321.445 regarding exemptions from seat belt requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs or fees associated with this chapter; rather, it provides guidance on the process for individuals who wish to register and title a specially constructed or reconstructed vehicle, a street rod, or a replica vehicle in Iowa. The chapter also implements Iowa Code section 321.438 requiring the Department to establish a minimum measurable standard of transparency for windshields, windows and sidewings. The chapter does not require any fees or costs beyond installing and maintaining statutorily required motor vehicle equipment.

Individuals purchasing a used vehicle with windows containing after-market tint below the minimum standard of transparency set by the proposed chapter may incur a cost to remove or lessen the tint. Notably, the Department is required to set a minimum standard of transparency under Iowa Code section 321.438, and the proposed standard aligns with Federal Motor Vehicle Safety Standard

(FMVSS) No. 205 applicable to originally installed motor vehicle windows and windows manufactured as replacement windows.

There are no costs related to seat belt exemptions beyond that which is attributable to the underlying statute.

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

Persons seeking to title and register a specially constructed or reconstructed vehicle, a street rod, or a replica vehicle in Iowa will benefit from these rules by knowing what motor vehicle equipment is required prior to the required inspection under Iowa Code section 321.23. Persons operating a motor vehicle on Iowa roadways will benefit from knowing the minimum measurable standard of transparency for windshields, windows and sidewings. Persons seeking a seat belt exemption will benefit from clarity and transparency on the form and process to follow.

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 are no additional quantitative impacts that were not already anticipated as a result of the underlying statute.

- Qualitative description of impact:

Reorganizing, streamlining, and reducing redundancy in the proposed chapter will create a positive impact by producing a more user-friendly version of the information the public relies on for understanding how to register and title a specially constructed or reconstructed vehicle, a street rod, or a replica vehicle in Iowa; what the minimum measurable standard of transparency is for windshields, windows and sidewings; and how to demonstrate compliance with seat belt exemption requirements.

3. Costs to the State:

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

There are no additional implementation or enforcement costs in the proposed rules that were not already required as a result of the underlying statutes. The statute requires the Department to inspect specially constructed or reconstructed vehicles, street rods, or replica vehicles prior to registration and titling; requires the Department to establish a minimum measurable standard of transparency for windshields, windows and sidewings; and requires the Department to provide a form and adopt rules for seat belt exemption requirements.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond those of the underlying statute.

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

The benefit of the proposed chapter is consistency and transparency on the processes and requirements for registering and titling a specially constructed or reconstructed vehicle, a street rod, or a replica vehicle in Iowa; what the minimum measurable standard of transparency is for windshields, windows and sidewings; and what the form and processes are for seat belt exemptions. The costs of the proposed rules are the same as the costs required by the underlying statute.

The cost of inaction is the inability for the public to quickly and efficiently understand what is required to title and register specially constructed or reconstructed vehicles, street rods, or replica vehicles in Iowa; what the minimum measurable standard of transparency is for windshields, windows and sidewings; and how to comply with the statutory seat belt exemption requirements. There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules, which is to quickly and efficiently provide information to the public regarding what is required to title and register specially constructed or reconstructed vehicles, street rods, or replica vehicles in Iowa;

what the minimum measurable standard of transparency is for windshields, windows and sidewings; and what the forms and processes are for seat belt exemptions.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives to the proposed rules. Required motor vehicle equipment is set forth in the Iowa Code, and Iowa's minimum measurable standard of transparency for windshields, windows and sidewings aligns with FMVSS No. 205 applicable to originally installed motor vehicle windows and windows manufactured as replacement windows.

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

No alternatives to the proposed rules were considered.

Small Business Impact

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

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

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

There is no impact on small business. The proposed rules apply equally to personally owned vehicles as well as vehicles owned by a business. The same eligibility criteria and equipment requirements apply.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 450 and adopt the following **new** chapter in lieu thereof:

CHAPTER 450
EQUIPMENT AND INSPECTION REQUIREMENTS FOR CERTAIN MOTOR VEHICLES

761—450.1(307,321) Addresses information and application.

450.1(1) *Information.* Information for inspections may be obtained from the Bureau of Investigation and Identity Protection, Iowa Department of Transportation, 6310 SE Convenience Boulevard, Ankeny, Iowa; by email at www.iowadot.gov/biip/contact-us; or on the department's website at www.iowadot.gov/mvd/vehicleregistration/vehicle-inspections-for-titling.

450.1(2) *Definitions.* The definitions in Iowa Code section 321.1 and rule 761—400.16(321) are hereby made part of this chapter. In addition:

a. The exchange of compatible body parts does not meet the definition of a specially constructed, reconstructed, street rod, or replica motor vehicle; or of a specially constructed or reconstructed motorcycle or motorized bicycle; or of a specially constructed, reconstructed, street rod, or replica autocycle.

b. The removal, addition, or substitution of reconstructed motor vehicle parts that modifies the vehicle's external appearance so that it does not reflect the original make or manufacturer model for

that model does meet the definition of a specially constructed, reconstructed, street rod, or replica motor vehicle.

c. The removal, addition, or substitution of a reconstructed motorcycle or motorized bicycle part that modifies the vehicle's external appearance so that it does not reflect the original make or manufacturer model does meet the definition of a specially constructed, reconstructed, street rod, or replica motorcycle or motorized bicycle.

EXEMPTION: The conversion of a manufactured motorcycle from two-wheel to three-wheel operation by the addition or substitution of a bolt-on conversion kit does not meet the definition of a reconstructed motorcycle.

d. The removal, addition, or substitution of reconstructed autocycle parts that modifies the autocycle's external appearance so that it does not reflect the original make or manufacturer model for that model does constitute a specially constructed, reconstructed, street rod, or replica autocycle.

450.1(3) *Application.*

a. After receiving the application forms and exhibits outlined in rule 761—400.16(321), the department shall:

(1) Examine the vehicle and ownership documents.

(2) Determine if the motor vehicle complies with this rule, that the integral parts and components have been identified as to ownership, and that the application forms have been completed properly.

(3) If the provisions of paragraph 450.1(3)*"b"* are met, assign an identification number to the vehicle and certify that the motor vehicle is eligible for titling and registration.

b. If the frame or unibody specified on an application for a specially constructed, reconstructed, street rod, or replica motor vehicle; a specially constructed or reconstructed motorcycle or motorized bicycle; or a specially constructed, reconstructed street rod or replica autocycle is manufactured or designated "not for highway use," the application shall not be approved.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.1 and 321.23.

761—450.2(307,321) Equipment requirements for specially constructed, reconstructed, street rod, and replica motor vehicles other than autocycles, motorcycles and motorized bicycles. The following standards are minimum requirements to meet the definition of a specially constructed, reconstructed, street rod, and replica motor vehicle other than autocycles, motorcycles and motorized bicycles:

450.2(1) *Defroster and defogging device.* If the motor vehicle is a closed motor vehicle, it is equipped with a device capable of defogging or defrosting the windshield area.

450.2(2) *Door latches.* The motor vehicle that is equipped with doors leading directly into a compartment that contains one or more seating accommodations is equipped with mechanically actuated door latches that firmly and automatically secure the door when pushed closed and that allow each door to be opened from the inside by the actuation of a convenient lever, handle or other nonelectric device. Interior handles must be visible.

450.2(3) *Floor pan.* The motor vehicle is equipped with a floor pan under the entire passenger-carrying compartment that supports the weight of the number of occupants that the vehicle is designed to carry. The floor pan shall be so constructed that it prevents the entry of exhaust fumes.

450.2(4) *Glazing.*

a. Windshields. The motor vehicle is equipped with a laminated safety glass windshield that complies with and bears the approval marking of the American National Standards Institute (ANSI) Z 26.1-1996 Standard as set forth in 49 C.F.R. §571.205 effective October 1, 2023. The windshield shall be in such a position that it affords continuous horizontal frontal protection to the driver and front seat occupants. The minimum vertical height of the unobstructed windshield glass shall be 6 inches. This paragraph does not preclude the use of a windshield that can be folded down to a horizontal position, provided that the windshield can be firmly fastened in both the vertical and horizontal positions.

b. *Side and rear glass.* Side and rear glass is not required in motor vehicles. If present, however, this glass must be either laminated or tempered safety glass bearing the approval of the ANSI Z 26.1-1996 Standard as set forth in 49 C.F.R. §571.205 effective October 1, 2023.

450.2(5) *Driver visibility.* The motor vehicle provides the driver with a minimum outward horizontal vision capability of 90 degrees each side of a vertical plane passing through the fore and aft centerline of the vehicle. This plane of vision may be interrupted by window framing and windshield door support posts not exceeding 4 inches in width at each side location.

450.2(6) *Hood latches.* If a motor vehicle is equipped with a front-opening hood, that hood is equipped with a primary and secondary latching system to hold the hood in a closed position.

450.2(7) *Instruments and controls.* The motor vehicle is equipped with:

a. An operating speedometer calibrated to indicate "miles per hour."

b. An operating odometer calibrated to indicate "total miles driven."

c. A steering wheel circular or nearly circular in shape, having an outside diameter of not less than 13 inches.

d. An accelerator control system that returns the engine throttle to an idle position automatically when the driver removes the actuating force from the accelerator control.

450.2(8) *Brakes.* The motor vehicle is equipped with brakes acting upon all wheels, service brakes, and parking brakes that comply with Iowa Code sections 321.430 and 321.431.

450.2(9) *Rearview mirror.* The motor vehicle is equipped with two rearview mirrors, each having substantial unit magnification. One is mounted on the inside of the vehicle in such a position that it affords the driver a clear view to the rear. The other is mounted on the outside of the vehicle on the driver's side in such a position that it affords the driver a clear view to the rear. When an inside mirror does not give a clear view to the rear, a right-hand outside mirror is required in lieu thereof. The mirror mounting provides a stable support for the mirror and provides for mirror adjustment by tilting in both horizontal and vertical directions. Each mirror has a minimum of 10 square inches of reflective surface.

450.2(10) *Seat belts.* The motor vehicle complies with Iowa Code section 321.445(1).

450.2(11) *Seating.* All bench-type and individual seats in motor vehicles are firmly anchored to structural components or body parts.

450.2(12) *Exhaust system.* The motor vehicle has an exhaust system meeting the following requirements:

a. The system is free of leaks, including the exhaust manifold (or headers), piping forward of the muffler, the muffler(s), and tail piping.

b. Exhaust fumes are emitted to the extremity of the vehicle, behind the rear wheels, or to the extremity of the vehicle within 6 inches in front of the rear wheels. Exhaust fumes from trucks, other than enclosed vans, may be emitted to the rear of that part of the vehicle designed for and normally used for carrying the driver and passengers.

c. Each exhaust system is equipped with a muffler that prevents excessive noise.

d. No part of the exhaust system passes through any area of the vehicle that is used as a passenger-carrying compartment, and is constructed that persons entering the vehicle cannot make contact with the exhaust system.

e. All exterior side exhaust pipes are fully shielded and any vertical truck exhaust stacks are shielded to the top of the cab.

450.2(13) *Frame.* The motor vehicle is equipped with a frame consisting of wall box tubing, round tubing, wall channel or unitized construction capable of supporting the vehicle, its load and the torque produced by the power source.

450.2(14) *Fuel system.* The motor vehicle has a fuel system in which all components are securely fastened with fasteners designed for this purpose, including the tank, tubing, hoses, clamps, etc. The filler from the system is located in a position not within the passenger-carrying compartment and is capped. The system is leakproof, and fuel lines are positioned so as not to come in contact with high temperature surfaces or moving parts.

450.2(15) *Steering and suspension.*

a. The motor vehicle does not have any parts extending below the wheel rims in their lowest position, except for tires and electrical grounding devices designed for this purpose.

b. The steering system remains unobstructed when turned from lock to lock.

c. The steering wheel has no less than two turns and no more than six turns when turning the road wheels from lock to lock.

d. While in a sharp turn at a speed between 5 and 15 MPH, release of the steering wheel results in a distinct tendency for the vehicle to increase its turning radius.

e. The motor vehicle is not constructed so that the weight on any axle is less than 20 percent of the gross weight of the vehicle and load.

f. The motor vehicle is equipped with a damping device at each wheel location providing a minimum relative motion between the unsprung axle and the chassis of plus or minus 2 inches.

g. When each corner of the vehicle is depressed and released, the damping device stops vertical body motion within two cycles.

h. There is no heating or welding on coil springs, leaf springs, or torsion bars.

450.2(16) *Tires.* Tires comply with Iowa Code section 321.440. Each tire has a load-bearing capacity in keeping with the size and weight of the vehicle.

450.2(17) *Lighting and electrical system.* The motor vehicle is equipped with approved lighting devices in sufficient number, type, and locations to meet the requirements of Iowa Code sections 321.384 through 321.423, including headlamps, rear lamps, license plate lamp, rear reflectors, parking lamps, stop lamps, turn signals, and high-low beam indicator. In addition, the motor vehicle is equipped with:

a. A driver-controlled switch capable of selecting high and low beams (dimmer switch).

b. A motor vehicle more than 40 inches in width is equipped with turn signal lamps and have a manually operated switch controlled by the driver that causes the turn signal lamps to function. This switch is self-canceling.

c. A horn that complies with Iowa Code section 321.433.

d. All wiring is done in an orderly and workmanlike fashion, with no wiring in contact with high temperature surfaces or moving parts.

e. Headlamps are in a plane that is perpendicular to a vertical plane through the longitudinal centerline of the vehicle. The headlamps are mounted not less than 24 inches, nor more than 54 inches, above the road surface when measured to the headlamp center.

f. A tail lamp or lamps are mounted on the rear of the motor vehicle or vehicle, exhibiting a red light plainly visible from a distance of 500 feet to the rear. The tail lamp or lamps are mounted not less than 15 inches, nor more than 72 inches, above the roadway.

g. All original lamps and lighting equipment provided on the motor vehicle by the manufacturer are maintained in working condition or shall be replaced with equivalent equipment.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.23.

761—450.3(307,321) Minimum requirements for constructing and equipping specially constructed or reconstructed motorcycles or motorized bicycles. The following standards are minimum requirements to meet the definition of a specially constructed or reconstructed motorcycle or motorized bicycle as defined in Iowa Code section 321.1:

450.3(1) *Upgrade pulls—minimum speed.* Iowa Code section 321.382 applies.

450.3(2) *Frame/chassis.* The motorcycle or motorized bicycle frame/chassis, including the suspension components and engine mountings, is of sufficient strength, capable of supporting the combined weight of all vehicle components and riders for which the vehicle was designed.

450.3(3) *Front end assembly.*

a. Trail (extended fork measured in inches). The reconstructed or specially constructed motorcycle or motorized bicycle does not have the front fork so extended as to place the center of the front wheel axle farther than 36 inches from a vertical plane through the steering axis.

b. Rake (extended fork measured in degrees). The reconstructed or specially constructed motorcycle or motorized bicycle does not have the front fork so extended as to exceed a 45-degree angle between the fork assembly and a vertical plane through the steering axis.

c. Extensions. The reconstructed or specially constructed motorcycle or motorized bicycle is not equipped with extension slugs. However, one-piece extension tubes and springer units, if approved, are acceptable.

d. Wheelbase. The reconstructed or specially constructed motorcycle or motorized bicycle does not have an overall wheelbase, measured from the center of the front axle to the center of the rear axle, of less than 40 inches.

e. Motorcycle front end geometry. A representation of the front end geometry of a motorcycle is depicted in the Appendix to this rule.

450.3(4) *Brakes.* The motorcycle and motorized bicycle is equipped with at least a rear brake. If the vehicle is also equipped with a front brake, all control cables, lines and hoses are located and secured so as not to become pinched between the fork and frame members when the wheel is turned completely to the left or right. Brake-actuating devices are in a readily accessible location, unencumbered by vehicle components. A suitable mechanism is provided for the purpose of automatically returning the actuating devices to a normal position upon release.

450.3(5) *Tires, wheels, rims.* The motorcycle tires are of pneumatic design with a minimum width of two and twenty-five hundredths inches and designed for highway use. Wheel rim diameters are not less than 10 inches and rims otherwise comply with applicable federal standards.

450.3(6) *Steering and suspension.*

a. Stability. The motorcycle or motorized bicycle steering and suspension provides the operator with the means of safely controlling vehicle direction.

b. Wheel alignment. The rear wheel of a two-wheel motorcycle or motorized bicycle tracks behind the front wheel within 1 inch with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three-wheel motorcycle or motorized bicycle, the two wheels mounted on the rear axle have a wheel track distance not less than 30 inches and the midpoint of the rear wheel track distance is within 1 inch of the front wheel track when the vehicle is proceeding on a straight course.

c. Steering.

(1) The steering head is provided with a bearing or similar device that will allow the steering shaft to turn freely in rotational motion only. All handlebar-mounted control cables, wires, lines and hoses are located and secured so as not to become pinched between the fork and frame members when the wheel is turned completely to the right or the left.

(2) A steering wheel may be used on a three-wheel reconstructed or specially constructed motorcycle or motorized bicycle provided:

1. The steering wheel is circular or nearly circular in shape, having an outside diameter of not less than 13 inches.

2. The steering wheel has no less than two turns and no more than six turns when the road wheels are turned from lock to lock.

d. Handlebars. Handlebars are of sturdy construction, adequate in size (length) to provide proper leverage for steering, and capable of withstanding a minimum force of 100 pounds applied to each hand grip in any direction. The handlebars provide a minimum distance of 18 inches between grips after final assembly.

e. Hand grips. The motorcycle or motorized bicycle has handlebars equipped with hand grips of nonslip design or material.

f. Suspension. The motorcycle or motorized bicycle is equipped with a suspension system, and the suspension system applies to at least the front wheel. The suspension system(s) is designed for the purpose of maximum vehicle stability.

450.3(7) *Fuel system.* All fuel system components, including the tank, pump, tubing, hoses, clamps, etc., are securely fastened to the motorcycle or motorized bicycle so as not to interfere with

vehicle operation and are leakproof when the vehicle is in its normal operating attitude. Fuel lines and tank are positioned in a manner so as to prevent their contact with the engine head, manifold, exhaust system, or other high temperature surfaces or moving components. The fuel system is adequately vented and provided with a fuel shutoff valve located between the fuel supply and the engine.

450.3(8) *Exhaust system.* The motorcycle or motorized bicycle with an internal combustion engine is equipped with an exhaust system incorporating a muffler or other mechanical device for the purpose of reducing engine noise. Cutouts and bypasses in the exhaust system are prohibited. The system is leakproof and all components are securely attached to the vehicle and located so as not to interfere with the operation of the motorcycle or motorized bicycle. Shielding is provided to prevent inadvertent contact with the exhaust system by the operator and/or passenger during normal operations.

450.3(9) *Mirrors.* The motorcycle and motorized bicycle is equipped with at least one mirror of unit magnification, securely affixed to the handlebar and capable of adjustment within a range that will reflect an image that includes at least the horizon and the road surface to the rear of the motorcycle or motorized bicycle. The mirror consists of a minimum reflective surface of 10 square inches. All mirrors are regular in shape (circular, oval, rectangular, or square) and do not contain sharp edges or projections capable of producing injury.

450.3(10) *Seat or saddle.* A seat or saddle securely attached to the vehicle is provided for the use of the operator. The seat or saddle is not less than 20 inches above a level road surface when measured to the lowest point on top of the seat or saddle cushion with the driver seated in a driving position. The seat or saddle adjustment locking device prevents relative movement of the seat from its selected and secured position under all normal vehicle operating conditions.

450.3(11) *Horn.* The motorcycle or motorized bicycle complies with Iowa Code sections 321.432 and 321.433.

450.3(12) *Speedometer and odometer.* The motorcycle or motorized bicycle is equipped with a properly operating speedometer and odometer calibrated in miles per hour and miles respectively and is fully illuminated when the headlamp(s) is activated.

450.3(13) *Lighting equipment.* The motorcycle or motorized bicycle is equipped with at least one headlamp but not more than two, mounted securely. Headlamp(s) are mounted not less than 24 inches, nor more than 54 inches, above the level road surface. A headlight beam indicator light is located within the operator's field of vision and illuminated automatically when the high beam of the headlamp is actuated. The motorcycle or motorized bicycle is equipped with a tail and brake light assembly and a license plate light. All original lamps and lighting equipment provided on the motor vehicle by the manufacturer are maintained in working condition or are replaced with equivalent equipment.

450.3(14) *Footrest.* The motorcycle is equipped with two footrests, one on each side of the vehicle and footrests are provided for each designated seating position. Footrests are located so as to provide reasonable accessibility. Footrests are able to fold upward if they protrude beyond the side of the motorcycle's fixed items. The motorized bicycle is equipped with either two footrests or two pedals, one on each side of the vehicle, to provide reasonable accessibility.

450.3(15) *Highway bars.* If a motorcycle or motorized bicycle is so equipped, highway bars (alternate footrests) are located at a maximum distance of 26 inches from the foot controls and do not interfere with the operation of the foot controls.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.23.

761—450.4(307,321) Minimum requirements for constructing and equipping specially constructed or reconstructed autocycles. Minimum requirements to meet the definition of a specially constructed or reconstructed autocycle as defined in Iowa Code section 321.1 are as follows:

450.4(1) *Seat belt.* The autocycle complies with Iowa Code section 321.445(1).

450.4(2) *Seat.* A seat that is firmly attached to the autocycle and does not require the operator to straddle or sit astride is provided for the use of the operator.

450.4(3) *Lighting equipment.* The autocycle is equipped with at least one headlamp, at least one taillight, and either a taillight or a separate white light that illuminates the license plate if a taillight does not. All original lamps and lighting equipment provided on the autocycle by the manufacturer are maintained in working condition or are replaced with equivalent equipment.

450.4(4) *Warning devices.* The autocycle is equipped with at least one red reflector, either separate or as part of the taillight or taillights.

450.4(5) *Brakes.* The autocycle is equipped with a braking system, other than a parking brake, in accordance with Iowa Code section 321.431.

450.4(6) *Horn.* The autocycle is equipped with a horn that complies with Iowa Code section 321.433.

450.4(7) *Exhaust system.* The autocycle with an internal combustion engine is equipped with a muffler and emission control system in accordance with 49 CFR 393.83 as amended through October 1, 2023. When a muffler and emission control system is factory equipped, neither may be removed.

450.4(8) *Mirrors.* The autocycle is equipped with a mirror that shall consist of a minimum reflective surface of 10 square inches. All mirrors are regular in shape (circular, oval, rectangular, or square) and do not contain sharp edges or projections capable of producing injury.

450.4(9) *Tires.* The autocycle is equipped with tires that comply with the requirements of Iowa Code section 321.440.

450.4(10) *Floor pan.* The autocycle is equipped with a floor pan under the entire passenger-carrying compartment. The floor pan supports the weight of the number of occupants that the autocycle is designed to carry. The floor pan is so constructed that it prevents the entry of exhaust fumes.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.23.

761—450.5(321) Front windshields, windows or sidewings.

450.5(1) "Excessively dark or reflective" means that the windshield, front side window or front sidewing does not meet a minimum standard of transparency of 70 percent light transmittance.

450.5(2) Motor vehicles operating with a dark window exemption issued prior to July 4, 2012, are subject to the provisions of rule 761—450.7(3) in effect April 13, 2022.

This rule is intended to implement Iowa Code section 321.438.

761—450.6(307,321) Seat belt exemptions.

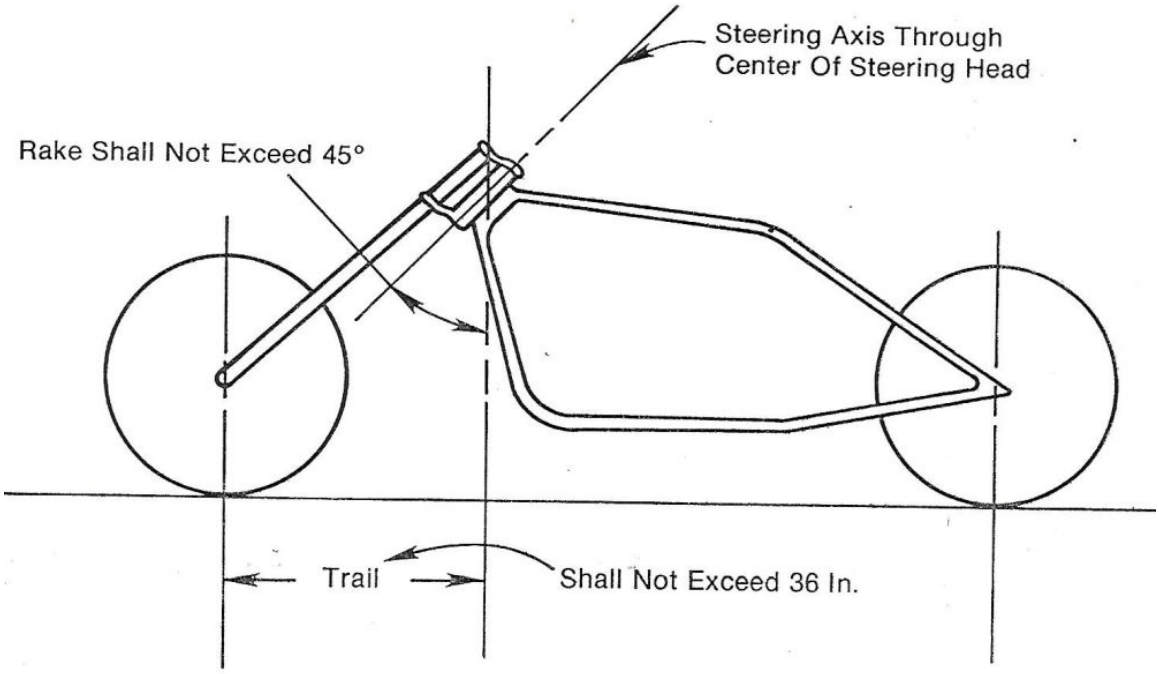
450.6(1) A person who is unable to wear a safety belt or safety harness for physical or medical reasons may obtain a form to be signed by the person's health care provider licensed under Iowa Code chapter 148 or 151. Form No. 432017, "Iowa Medical Safety Belt Exemption," is available from the motor vehicle division.

450.6(2) Iowa Code sections 321.445(1) and 321.445(2) shall not apply to the front seats and front seat passengers of motor vehicles owned, leased, rented or primarily used by a person with a physical disability who uses a collapsible wheelchair.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.445.

APPENDIX TO RULE
761—450.3(321)

MOTORCYCLE FRONT END GEOMETRY



Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 454
"Towing Wrecked or Disabled Vehicles"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)"j" and 321.463

State or federal law(s) implemented by the rulemaking: Iowa Code section 321.463 and 23 U.S.C. §141(a) and (b)

Public Hearing

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

October 9, 2024 1 to 1:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 821 597 958

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 Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashley Hochberger
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.290.2864
Email: ashley.hochberger@iowadot.us

Purpose and Summary

Proposed Chapter 454 aims to provide a clearer definition of the terms "tow" and "wrecked or disabled vehicle" within the context of Iowa Code section 321.463. Specifically, the chapter limits the weight exemption under Iowa Code section 321.463 to situations where a disabled vehicle is being removed from a crash scene to a location for repair or storage.

Additionally, this chapter ensures compliance with federal law (specifically 23 U.S.C. §141(a) and (b)), which pertains to the enforcement of vehicle size and weight laws.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:
  - Tow truck operators: if tow truck operators' vehicles exceed weight limits, they may incur costs associated with adjustments or modifications.
  - Vehicle owners and drivers: vehicle owners and drivers relying on tow services may experience indirect costs. These costs could result from higher fees charged by tow companies due to compliance efforts.
  - Department of Public Safety: Agencies responsible for enforcing the chapter bear administrative costs. These include costs related to monitoring compliance, processing applications, and conducting inspections.
  - Road users and the public: improved safety benefits all road users.
- Classes of persons that will benefit from the proposed rulemaking:

Tow truck operators, vehicle owners and drivers, road users, the public and the State benefit from this rulemaking. Defining these terms more precisely aims to prevent misuse of weight exemptions by tow trucks. The rulemaking ensures that only legitimate cases involving disabled vehicles are eligible for the exemption. Ultimately, this benefits safety and infrastructure by preventing overweight tow trucks from operating on Iowa roads.

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:

If Iowa fails to comply with federal requirements, there would be a potential funding loss of approximately $44.5 million from federal-aid highway funds. Additionally, there would be an impact on safety and infrastructure. For example, the rulemaking aims to enhance safety by regulating tow truck weight exemptions more effectively. In turn, improved safety contributes to fewer accidents and injuries and less property damage.

- Qualitative description of impact:

By precisely defining terms like "tow" and "wrecked or disabled vehicle," the rulemaking ensures that weight exemptions apply only to legitimate cases, therefore adding a safety enhancement. Safer roads result from better-regulated tow truck operations, reducing the risk of accidents and injuries.

The proposed rulemaking would also have an impact on infrastructure preservation. Preventing overweight tow trucks helps maintain road infrastructure. Fewer heavy vehicles means less wear and tear on roads and bridges.

Additionally, the rulemaking ensures Iowa's adherence to federal requirements (23 U.S.C. §141(a) and (b)).

3. Costs to the State:

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

There are no implementation or enforcement costs. The Department of Public Safety enforces this chapter as part of its regular duties.

- Anticipated effect on state revenues:

There are no actual costs to the Department or public for this chapter, given its narrow scope. However, either this chapter must remain intact or Iowa Code section 321.463 must be amended to comply with federal law to prevent a potential loss of approximately $44.5 million in federal funding.

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

The benefits of the proposed rulemaking include enhanced safety due to better-regulated tow truck weight exemptions and continued maintenance of road infrastructure by preventing overweight tow trucks.

Maintaining this chapter is essential to prevent the potential loss of approximately $44.5 million in federal funding. Compliance with federal requirements ensures Iowa's eligibility for federal-aid highway funds.

There is no benefit to inaction. The long-term effects of not having this chapter would include continued safety risks from unregulated tow truck operations; potential infrastructure damage due to overweight vehicles; and noncompliance with federal law, risking funding reduction.

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

The Department determined that there are no less costly or less intrusive methods for achieving the purpose of the rulemaking.

6. Alternative methods considered by the agency:

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

The Department determined that either the rules must be in effect or Iowa Code section 321.463 needs to be amended so that the rule is no longer needed.

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

The rules must stay in place unless the Legislature amends Iowa Code section 321.463 to define these terms so that the rule would no longer be necessary.

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 chapter does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 454 and adopt the following **new** chapter in lieu thereof:

CHAPTER 454
TOWING WRECKED OR DISABLED VEHICLES

761—454.1(307,321) Definitions. For the purpose of Iowa Code section 321.463, the following definitions are established:

"Tow" means the transportation by a vehicle designed to tow or transport wrecked or disabled vehicles directly from the scene of a crash, disablement, or impoundment to any place of repair, storage, or safekeeping.

"Wrecked or disabled vehicle" means a vehicle upon a highway involved in a crash or having mechanical failure, broken parts, or other defects, any of which prevent the vehicle from moving safely under its own power, or any vehicle impounded by the order of a peace officer.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.463 and 23 U.S.C. §141(a) and (b).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 615 "Sanctions"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 252J.8, 307.12(1)"j," 321.16, 321.180B, 321.194(10), 321.208, 321.210, 321.210A, 321.210D, 321.211, 321.213B, 321.513, and 321.560

State or federal law(s) implemented by the rulemaking: Iowa Code sections 17A, 232.52(2), 252J.1, 252J.8, 252J.9, 299.1B, 307.12(1)"j," 321.1, 321.16, 321.177, 321.178 through 321.216, 321.216C, 321.218, 321.261, 321.323A, 321.372, 321.445, 321.446, 321.491, 321.513, 321.555, 321.556, 321.560, 331.655, 321A.4 through 321A.11, 321A.17, 321A.31, 321J.9, 321J.12, 321J.17, 321J.21, 331.655 and 707.6A and 2024 Iowa Acts, Senate File 2109

Public Hearing

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

October 10, 2024 1 to 1:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 788 489 754

Public Comment

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

Sara Siedsma
6310 SE Convenience Boulevard
Ankeny, Iowa 50021
Email: sara.siedsma@iowadot.us

Purpose and Summary

The purpose of proposed Chapter 615 is to establish consistent requirements and transparency for the processes concerning all driver's license and driving privilege sanctions the Department is required or authorized to initiate under the Iowa Code (with the exception of commercial driver's license (CDL) disqualifications, operating while intoxicated (OWI) revocations, and financial responsibility law sanctions, which are covered in other applicable chapters). The chapter is intended to increase compliance with driver's license sanctions, which are by law intended to ensure highway safety.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons who are subject to a driver's license sanction required or authorized under the Iowa Code will bear the costs of the proposed rulemaking.

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

Persons who are subject to a driver's license sanction required or authorized under the Iowa Code will also benefit from the proposed rulemaking by having clear guidance on the following:

- The offenses that trigger a sanction.
- The due process and notice periods associated with each sanction.
- The effective date and length of each sanction.
- The requirements to reinstate a driver's license following the end of a sanction.
- The establishment of the driver improvement program, including sanctions eligible under the program.
- The eligibility and application requirements for a temporary restricted license (work permit).

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:

In FY 2023, the Department was able to accurately process all of the following transactions as provided under this chapter:

- Issuance of over 95,000 driver's license sanctions under Chapter 615.
- Assignment of over 6,000 drivers to the driver improvement program.
- Issuance of over 9,000 temporary restricted licenses (TRLs).

- Qualitative description of impact:

Reorganizing, streamlining, and reducing redundancy in the proposed chapter will create a positive impact by producing a more reader-friendly version of the information the public relies on to understand driver's license sanctions issued by the Department.

3. Costs to the State:

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

There are no costs incurred by the Department to implement the chapter beyond the costs attributable to the underlying statutes that authorize and/or require the Department to impose driver's license sanctions for certain offenses and to provide notice by first-class mail (and prepare certified affidavits of mailing attesting to the service of notice).

The Department of Inspections, Appeals, and Licensing also incurs cost to administer contested case hearings when an individual appeals a sanction imposed under this chapter. However, this is also attributable to the underlying statutes that afford appeal rights to individuals aggrieved by an agency action.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues beyond what is required by the underlying statutes.

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

The benefit of the proposed chapter is consistency and transparency on the Department's process for issuing driver's license sanctions. The costs of the proposed chapter are the same as the costs required by the underlying statutes.

The cost of inaction is the inability or diminished ability for the Department to issue all statutorily required and/or authorized driver's license sanctions, which could have an impact on highway safety for all. There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules, which are required by statute (such as legal service of notice, appeal procedures, and mandatory suspensions/revocations).

For the provisions of the chapter that are subject to the Department's discretionary authority, the Department reduced or removed several restrictions, including the following:

- Reducing/aligning the suspension length for failure to attend a driver improvement program and making the consequence for violation of a driver improvement program probation equivalent to the suspension length for the underlying offense committed. The current subrule requires a 90+ day

suspension, whereas the proposed rule requires the new suspension to be for the length of time of the originally imposed suspension (which, for most offenses under these provisions, is 60 days).

- Eliminating the requirement that a TRL applicant needs to attest to the fact that dependent child care is necessary for the person's employment, since the attestation is unnecessary.
- Eliminating the requirement that the applicant describe all vehicles operated on the TRL, since this is something that can be determined during roadside enforcement action if needed.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives to the proposed rules.

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

No alternatives to the proposed rules were considered.

Small Business Impact

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

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

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

There is no small business impact beyond what was already anticipated in the underlying statutes. The rules relate to individual-level driver's license sanctions and apply equally to individuals committing qualifying offenses.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 615 and adopt the following **new** chapter in lieu thereof:

CHAPTER 615
SANCTIONS

761—615.1(321) Definitions. The following definitions apply to this chapter:

"Accident free" as used in Iowa Code section 321.180B means the driver has not been involved in a contributive accident.

"Appropriate school authority" means the superintendent of a public school or the superintendent's designee; the chief administrator of an accredited nonpublic school, an alternative school, or an adult education program or designee; or the primary instructor of a student who receives competent private instruction or independent private instruction.

"Contributive accident" or *"contributed to an accident"* means the driver was involved in an accident for which there is evidence in departmental records that the driver performed an act which resulted in or contributed to the accident or failed to perform an act which would have avoided or contributed to the avoidance of the accident.

"Deny" or *"denial"* means a rejection of an application for a license or a refusal to issue, renew or reinstate a license.

"Involvement in a motor vehicle accident" as used in Iowa Code section 321.180B means involvement in a contributive accident.

"License" means "driver's license" as defined in Iowa Code section 321.1(20A) unless the context otherwise requires.

"Moving violation," unless otherwise provided in this chapter, means any violation of motor vehicle laws except:

1. Violations of equipment standards to be maintained for motor vehicles.
2. Parking violations as defined in Iowa Code section 321.210.
3. Child restraint and safety belt and harness violations under Iowa Code sections 321.445 and 321.446.
4. Violations of registration, weight and dimension laws.
5. Operating with an expired license.
6. Failure to appear.
7. Disturbing the peace with a motor vehicle.
8. Violations of Iowa Code section 321.20B for failure to provide proof of financial liability coverage.

"Sanction" means a license denial, cancellation, suspension, revocation, bar or disqualification.

This rule is intended to implement Iowa Code sections 321.1, 321.178, 321.180A, 321.189, 321.194, 321.210, 321.215, 321.445, 321.446 and 321.555.

761—615.2(321,321A,321J) Scope. This chapter of rules applies to any license. However:

615.2(1) Additional rules addressing denial, cancellation or disqualification of a commercial driver's license are found in 761—Chapter 607, "Commercial Driver Licensing."

615.2(2) Rules implementing Iowa Code chapter 321J are found in 761—Chapter 620, "OWI and Implied Consent."

615.2(3) Rules implementing Iowa Code chapter 321A are found in 761—Chapter 640, "Financial Responsibility."

This rule is intended to implement Iowa Code chapters 321, 321A and 321J.

761—615.3(307) Information and address. Applications, forms and information concerning license sanctions are available at any driver's license service center or at www.iowadot.gov. Assistance is also available by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; or by telephone at 515.244.9124.

This rule is intended to implement Iowa Code section 307.12(1)*"j."*

761—615.4(321) Habitual offender.

615.4(1) A person is determined to be a habitual offender under Iowa Code section 321.555(1) in accordance with the following point system:

a. Points are assigned to convictions as follows:

Conviction	Points
Perjury or the making of a false affidavit or statement under oath to the department of public safety	2 points
Driving while under suspension, revocation or denial (except Iowa Code chapter 321J)	2 points
Driving while under Iowa Code chapter 321J revocation or denial	3 points
Driving while barred	4 points
Operating a motor vehicle in violation of Iowa Code section 321J.2	4 points
An offense punishable as a felony under the motor vehicle laws of Iowa or any felony in the commission of which a motor vehicle is used	5 points

Failure to stop and leave information or to render aid as required by Iowa Code sections 321.261 and 321.263	5 points
Eluding or attempting to elude a pursuing law enforcement vehicle in violation of Iowa Code section 321.279	5 points
Serious injury by a vehicle in violation of Iowa Code section 707.6A(4)	5 points
Manslaughter resulting from the operation of a motor vehicle	6 points

b. Based on the points accumulated, the person is to be barred from operating a motor vehicle on the highways of this state as follows:

Points	Length of bar
6 – 7	2 years
8 – 9	3 years
10 – 12	4 years
13 – 15	5 years
16+	6 years

615.4(2) A person declared to be a habitual offender under Iowa Code section 321.555(2) is to be barred from operating a motor vehicle on the highways of this state for one year.

615.4(3) A revocation under Iowa Code section 321.560 will begin on the date the previous revocation expires.

This rule is intended to implement Iowa Code sections 321.555, 321.556 and 321.560.

761—615.5(321) Suspension of a habitually reckless or negligent driver.

615.5(1) The department may suspend a person's license for at least 60 days if the person is a habitually reckless or negligent driver of a motor vehicle. "Habitually reckless or negligent driver" means a person who has accumulated a combination of three or more contributive accidents and convictions for moving violations or three or more contributive accidents within a 12-month period.

615.5(2) In this rule, speeding violations specified in Iowa Code section 321.210(2)*"d"* and violations under Iowa Code section 321.276 are not included.

This rule is intended to implement Iowa Code section 321.210.

761—615.6(321) Suspension of a habitual violator.

615.6(1) The department may suspend a person's license when the person is a habitual violator of the traffic laws. "Habitual violator" means that the person has been convicted of three or more moving violations committed within a 12-month period.

615.6(2) The minimum suspension periods are as follows unless reduced by a driver's license hearing officer based on mitigating circumstances:

3 convictions in 12 months	90 days
4 convictions in 12 months	120 days
5 convictions in 12 months	150 days
6 convictions in 12 months	180 days
7 or more convictions in 12 months	1 year

615.6(3) In this rule, speeding violations specified in Iowa Code section 321.210(2)*"d"* and violations under Iowa Code section 321.276 are not included.

This rule is intended to implement Iowa Code section 321.210.

761—615.7(321) Suspension or denial for incapability. A person who is physically or mentally incapable of safely operating a motor vehicle is subject to license suspension or denial by the department.

615.7(1) Suspension or denial for incapability may be based on one or more of the following:

a. Receipt of a medical report or vision report stating that the person is not physically or mentally capable of safely operating a motor vehicle.

b. Failure of the person to appear for a required reexamination or failure to submit requested information within the specified time.

c. Ineligibility for licensing under Iowa Code sections 321.177(4) through 321.177(7).

615.7(2) A suspension or denial under this rule will remain in effect until the department receives satisfactory evidence that the licensee has been restored to capability.

615.7(3) A person whose license has been suspended or denied for incapability may be eligible for a special noncommercial instruction permit under rule 761—602.21(321).

615.7(4) A person who has a valid Iowa license that would otherwise be suspended for incapability shall, in lieu of a suspension, be denied further licensing if there is less than 30 days' validity on the license.

a. The denial will take effect when the license is no longer valid.

b. The license shall be surrendered to the department. The department shall issue a temporary driving permit that allows the person to drive until the effective date of the denial.

615.7(5) If a person who is denied licensing for incapability does not have a valid Iowa license, the department may refuse orally to issue a license, effective immediately, or may deny licensing in writing, effective on the date the denial notice is served.

This rule is intended to implement Iowa Code sections 321.177, 321.210, 321.212 and 321.216.

761—615.8(321) Suspension for unlawful use of a license. The department may suspend a person's license upon receipt of a conviction or written law enforcement report that the person has permitted unlawful or fraudulent use of the license. The suspension period will be at least 30 but no more than 60 days.

This rule is intended to implement Iowa Code sections 321.210, 321.212 and 321.216.

761—615.9(321) Suspension or revocation for out-of-state offense. The department may suspend or revoke a person's license when the department is notified by another state that the person committed an offense in that state that, if committed in Iowa, would be grounds for suspension or revocation. The notice may indicate either a conviction or a final administrative decision. The period of the suspension or revocation is to be the same as if the offense had occurred in Iowa.

This rule is intended to implement Iowa Code sections 321.205 and 321.210.

761—615.10(321) Suspension for a serious violation.

615.10(1) The department may suspend a person's license when the person has committed a serious violation of the motor vehicle laws.

615.10(2) "Serious violation" means that:

a. The person's conviction for a moving violation was accompanied by a written report from the arresting officer, the prosecuting attorney or the court indicating that the violation was unusually serious. The suspension period will be at least 60 days.

b. The person was convicted of a moving violation that contributed to a fatal motor vehicle accident. The suspension period will be at least 120 days.

c. The person was convicted for speeding 25 miles per hour (mph) or more above the legal limit. The minimum suspension period is as follows unless reduced by the department based on mitigating circumstances:

25 mph over the legal limit	60 days
26 mph over the legal limit	65 days
27 mph over the legal limit	70 days
28 mph over the legal limit	75 days
29 mph over the legal limit	80 days
30 mph over the legal limit	90 days
31 mph over the legal limit	100 days

32 mph over the legal limit	110 days
33 mph over the legal limit	120 days
34 mph over the legal limit	130 days
35 mph over the legal limit	140 days
36 mph over the legal limit	150 days
37 mph over the legal limit	160 days
38 mph over the legal limit	170 days
39 mph over the legal limit	180 days
40 mph over the legal limit	190 days
41 mph over the legal limit	210 days
42 mph over the legal limit	230 days
43 mph over the legal limit	250 days
44 mph over the legal limit	270 days
45 mph over the legal limit	290 days
46 mph over the legal limit	310 days
47 mph over the legal limit	330 days
48 mph over the legal limit	350 days
49 mph or more over the legal limit	one year

d. The person was convicted of violating Iowa Code section 321.372(3) or a similar ordinance of any political subdivision. The suspension period will be:

(1) 30 days for a first conviction.

(2) 90 days for a second conviction.

(3) 180 days for a third or subsequent conviction.

e. The person was convicted of violating Iowa Code section 321.323A or a similar ordinance of any political subdivision. The suspension period is established in Iowa Code section 321.323A(4)*"c."*

This rule is intended to implement Iowa Code sections 321.210, 321.323A, 321.372 and 321.491.

761—615.11(321) Suspension under the nonresident violator compact. The department may suspend a person's license when a report is received from another state under the nonresident violator compact that an Iowa licensee has failed to comply with the terms of a traffic citation. The suspension will continue until the department receives evidence of compliance with the terms of the citation, at which point the department shall issue a notice terminating the suspension.

This rule is intended to implement Iowa Code sections 321.210 and 321.513.

761—615.12(17A,321) Suspension for a charge of vehicular homicide; hearing and appeal process.

615.12(1) The department shall suspend a person's license when the department receives notice from the clerk of the district court that an indictment or trial information has been filed charging the person with homicide by vehicle under Iowa Code section 707.6A(1) or 707.6A(2). The suspension takes effect ten days after the department's suspension notice is issued.

615.12(2) In a contested case hearing, the sole issue is whether there is a possibility of a judgment being rendered against the person for homicide by vehicle under Iowa Code section 707.6A(1) or 707.6A(2). A suspension under this subrule will be upheld if there is evidence in department records that the indictment or trial information was found or approved by a grand jury, magistrate, or judge.

This rule is intended to implement Iowa Code chapter 17A and section 321.210D.

761—615.13(307,321) Suspension of a special minor's restricted license and minor's restricted work license.

615.13(1) *Suspension of a special minor's restricted license.*

a. Suspensions issued under Iowa Code section 321.194(7) may be concurrent. Each suspension requires a separate three-month waiting period pursuant to Iowa Code section 321.194(7)*"b."*

b. A written report submitted to the department by a peace officer, parent, guardian, custodian, or appropriate school authority will constitute evidence that the licensee violated the restrictions of the license.

c. A suspension issued under this subrule terminates when the person attains age 18.

615.13(2) *Suspension of a minor's restricted work license.* The department may suspend a minor's restricted license for at least 30 days upon receiving notice of the licensee's conviction for one moving violation or evidence that the licensee has violated the license restrictions.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.178 and 321.194 as amended by 2024 Iowa Acts, Senate File 2109, Sections 3 and 6.

761—615.14(321) Suspension for nonpayment of fine, penalty, surcharge or court costs.

615.14(1) A suspension issued by the department under Iowa Code section 321.210A shall continue until the department receives notice from a clerk of the district court that all appropriate payments have been made, the person has entered into an executed installment agreement under Iowa Code section 321.210B, or the notice to suspend was submitted in error. Upon receipt of such notice, the department shall terminate the suspension.

615.14(2) An informal settlement, hearing or appeal to contest the suspension is limited to a determination of whether the facts required by Iowa Code section 321.210A and this subrule are true. The merits of the conviction will not be considered.

This rule is intended to implement Iowa Code sections 321.210A and 321.210B.

761—615.15(232,299,307,321) Suspensions for juveniles.

615.15(1) *Suspension for juveniles adjudicated delinquent for certain offenses.*

a. Pursuant to Iowa Code section 321.213A, the department will suspend the license of a person for one year upon receipt of an adjudication and dispositional order from the clerk of the juvenile court.

b. The department may issue to a person suspended under this subrule a temporary restricted license in accordance with rule 761—615.28(321) if issuance is permitted under Iowa Code section 321.215 and the person is otherwise eligible for the license. To obtain a temporary restricted license that is valid for educational or employment purposes, the applicant must meet the requirements for issuance of a special minor's restricted license under Iowa Code section 321.194 and rule 761—602.26(321).

615.15(2) *Suspension for juvenile's failure to attend school.*

a. The department shall suspend the driver's license of a person of compulsory age upon receipt of notification from the appropriate school authority that the person is in violation of Iowa Code section 299.1B.

b. The suspension will continue until the person reaches the age of 18 or the department receives notification from the appropriate school authority that the person is no longer in violation of Iowa Code section 299.1B.

c. The department may issue to the person a minor's restricted work license pursuant to Iowa Code section 321.178 and rule 761—602.25(321) if the person is eligible for the license.

This rule is intended to implement Iowa Code sections 232.52(2); 299.1B; 307.12(1)*"j"*; 321.178 as amended by 2024 Iowa Acts, Senate File 2109, Section 3; 321.213, 321.213A, 321.213B and 321.215.

761—615.16(252J) Suspension upon receipt of a certificate of noncompliance.

615.16(1) *From child support recovery unit.*

a. The department shall suspend a person's Iowa-issued driver's license upon receipt of a certificate of noncompliance from the child support recovery unit.

b. The suspension shall continue until receipt of a withdrawal of the certificate of noncompliance from the child support recovery unit.

c. The filing of an application pursuant to Iowa Code section 252J.9 stays the suspension pending the outcome of the district court hearing.

615.16(2) Reserved.

This rule is intended to implement Iowa Code sections 252J.1, 252J.8 and 252J.9.

761—615.17(307,321) Suspension for violation of a license restriction. The department may suspend a person's license when the department receives satisfactory evidence of a violation of a restriction imposed on the license. The suspension period is at least 30 days for the first violation and at least 90 days for subsequent violations.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.193.

761—615.18(307,321,707) Mandatory revocation.

615.18(1) A revocation issued by the department pursuant to Iowa Code section 321.209 shall be at least one year except as provided in Iowa Code section 321.212.

615.18(2) For purposes of issuing a revocation under Iowa Code section 321.209(2), "felony" includes a conviction that meets at least one of the following criteria:

a. The record provides specific factual findings by the court that a motor vehicle was used in the commission of the offense,

b. The record is accompanied by information from the prosecuting attorney indicating that a motor vehicle was used in the commission of the crime, or

c. The record indicates that the elements of the offense actually required the use of a motor vehicle.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.209, 321.212, 321.261 and 707.6A.

761—615.19(307,321J) Extension of suspension or revocation period under Iowa Code chapter 321J. The department is to extend the period of license suspension or revocation for an additional like period when the person is convicted of operating a motor vehicle while the person's license is suspended or revoked under Iowa Code chapter 321J.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321J.21.

761—615.20(321) Effective date of sanction. Unless otherwise specified by statute or rule, a suspension, revocation, disqualification or bar shall begin 30 days after the department's notice of such action is served. However, a cancellation issued by the department under Iowa Code section 321.184, 321.185, 321.189, 321.191, or 321.201 will take effect ten days after the department's notice of cancellation is served.

This rule is intended to implement Iowa Code sections 321.208, 321.209, 321.210 and 321.556.

761—615.21(321,321J,331) Service of notice.

615.21(1) The department shall send a notice of a sanction by first-class mail to the person's mailing address as shown on departmental records.

615.21(2) In lieu of service by mail, the notice may be delivered by a peace officer, a departmental employee, or any person over 18 years of age.

a. The person serving the notice shall prepare a certificate of personal service certifying delivery, specifying the name of the receiver, the address and the date, or certifying nondelivery.

b. The department will pay fees for personal service of notice by a sheriff as specified in Iowa Code section 331.655. The department may also contract for personal service of notice when the department determines that it is in the best interests of the state.

615.21(3) The sanction shall become effective on the date specified in the notice.

615.21(4) The department may prepare an affidavit of mailing verifying the fact that a notice was mailed by first-class mail. To verify the mailing of a notice, the department may use its records in

conjunction with U.S. Postal Service records available to the department. The department's affidavit of mailing may be attested to and certified in accordance with Iowa Code section 622.1.

This rule is intended to implement Iowa Code sections 321.16, 321.211, 321.211A, 321.556, 321J.9, 321J.12 and 331.655.

761—615.22(17A,321,321J) Hearing and appeal process.

615.22(1) *Applicability.* This rule applies to:

a. License denials, cancellations and suspensions under Iowa Code sections 321.177 through 321.215 and 321A.4 through 321A.11 except suspensions under Iowa Code sections 321.213A and 321.213B.

b. License suspensions and revocations under Iowa Code sections 321.218 and 321J.21.

c. License revocations under Iowa Code sections 321.193 and 321.205.

d. Disqualifications from operating a commercial motor vehicle under Iowa Code section 321.208.

e. License bars under Iowa Code section 321.556.

615.22(2) *Submission of request.*

a. A person subject to a sanction listed in subrule 615.22(1) may contest the action by following the provisions of 761—Chapter 13 as supplemented by this rule.

b. A person may request an informal settlement, a contested case hearing, or an appeal of a presiding officer's decision by submitting a request in writing to the motor vehicle division at the address in rule 761—615.3(17A).

c. The request is to include the person's name, date of birth, driver's license or permit number, mailing address and telephone number and the name, address and telephone number of the person's attorney, if any.

d. A request for an informal settlement or a request for a contested case hearing will be deemed timely submitted if it is delivered to the motor vehicle division or postmarked within the time period specified in the department's notice of the sanction.

(1) Unless a longer time period is specified in the notice or another time period is specified by statute or rule, the time period will be 20 days after the notice is served.

(2) However, a request to appeal a sanction under rule 761—615.7(321) or a denial of a license may be submitted at any time.

615.22(3) *Informal settlement or hearing.*

a. The person may request an informal settlement. Following an unsuccessful informal settlement procedure, or instead of that procedure, the person may request a contested case hearing.

b. Notwithstanding paragraph 615.22(3)*"a,"* a request received from a person who has participated in a driver improvement interview on the same matter shall be deemed a request for a contested case hearing.

615.22(4) *Appeal.* A request to appeal a presiding officer's decision shall be submitted in accordance with 761—subrule 13.5(3).

615.22(5) *Stay of sanction.*

a. Upon receipt of a properly submitted, timely request under this rule, the department will review its records to determine whether the sanction may be stayed pending the outcome of the settlement, hearing or appeal unless prohibited by statute or rule or unless otherwise requested by the requester/appellant.

(1) If the stay is granted, the department will send a notice indicating the effective date of the stay. The notice allows the person to drive while the sanction is stayed if the license is valid and no other sanction is in effect.

(2) A person whose stay authorizes driving privileges shall carry the notice of stay at all times while driving.

b. Of the sanctions listed in subrule 615.22(1), the department shall not stay the following, and the person's driving privileges do not continue:

(1) A suspension for incapability.
(2) A denial.
(3) A disqualification from operating a commercial motor vehicle.
(4) A suspension under Iowa Code section 321.180B.
(5) A suspension or revocation under Iowa Code section 321.218 or 321J.21.

This rule is intended to implement Iowa Code chapter 17A and sections 321.177 through 321.215, 321.218, 321.556, 321A.4 through 321A.11 and 321J.21.

761—615.23(307,321,321A) Surrender of license. A person whose Iowa license has been sanctioned shall surrender the license to the designated representative of the department on or before the effective date of the sanction.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.201, 321.208, 321.210D, 321.212, 321.216, 321.556 and 321A.31.

761—615.24(321,321A,321J) License reinstatement or reissue. The department may reinstate the license when the sanction has ended if the person is otherwise eligible for issuance of the license and the person has:

615.24(1) Filed proof of financial responsibility under Iowa Code chapter 321A, when required, for all vehicles to be operated. Only the motor vehicles covered under the proof of financial responsibility filed by the applicant may be operated.

615.24(2) Paid the civil penalty when required by Iowa Code section 321J.17.

615.24(3) Complied with the specific instructions given in the department's notice terminating the sanction.

615.24(4) Successfully completed any required driver license examinations.

615.24(5) Paid the reinstatement fee under Iowa Code section 321.191 when required.

615.24(6) Paid the appropriate license fee or duplicate license fee under Iowa Code sections 321.191 and 321.195.

This rule is intended to implement Iowa Code sections 321.186, 321.191, 321.195, 321.208, 321.212, 321A.17 and 321J.17.

761—615.25(321) Investigation of convictions based on fraud. A person requesting investigation of fraudulent use of a person's name or other fraudulent identification that resulted in a record of conviction for a scheduled violation under Iowa Code chapter 321 and listed in Iowa Code section 805.8A may submit a written application to the department using Form 420049. The department will review the application and determine whether investigation is warranted under Iowa Code section 321.200A.

This rule is intended to implement Iowa Code section 321.200A.

761—615.26(321) Remedial driver improvement.

615.26(1) Pursuant to Iowa Code section 321.180B(3)*"a,"* remedial driver improvement action means any or all of the following as determined by the department: suspension, safety advisory letter, additional restriction(s), safety consultation, educational program, knowledge examination, or driving examination.

615.26(2) A suspension period under Iowa Code section 321.180B(3) shall be at least 30 days for the first violation, at least 60 days for the second violation, and at least 90 days for a third or subsequent violation. A person whose driving privilege has been suspended under this rule is not eligible for a temporary restricted license.

615.26(3) Any action under this rule terminates when a person attains the age of 18.

This rule is intended to implement Iowa Code section 321.180B.

761—615.27(307,321) Driver improvement program.

615.27(1) *When required.*

a. In lieu of suspension, the department may require the following persons to attend and successfully complete, at the person's own expense, a driver improvement program approved by the department:

(1) A habitual violator.

(2) A person who is convicted for speeding at least 25 but not more than 29 miles per hour over the legal limit.

(3) A person whose license is subject to suspension under Iowa Code section 321.210C.

(4) A person who is convicted of a first offense violation of Iowa Code section 321.372(3) or a similar ordinance of any political subdivision.

b. However, a person is not eligible to attend a driver improvement program in lieu of suspension more than once within a two-year period.

615.27(2) *Scheduling.* The department shall forward the person's contact information to the approved driver improvement program provider nearest the person's last known address. The provider will schedule the person's attendance at the provider's next available program opening.

a. One request for rescheduling may be granted by the provider if the program begins within 30 days of the originally scheduled date and if space is available.

b. A request to attend a program in another state may be granted if the curriculum is approved by the department.

615.27(3) *Probation.* When a person is required to attend and successfully complete a driver improvement program, the person must immediately thereafter complete a one-year probationary driving period. The department may suspend the person's license upon receipt of one conviction for a moving violation committed by the person during the probationary period. The suspension period will be for the length of the original underlying suspension.

615.27(4) *Failure to attend.* The department shall suspend the license of a person who is required to attend a driver improvement program and who does not attend, or does not successfully complete, the program. The suspension period will be for the length of the original underlying suspension.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.210, 321.210C and 321.372.

761—615.28(252J,307,321,321J) Temporary restricted license (work permit).

615.28(1) A person is not eligible for a temporary restricted license under Iowa Code section 321.215 if the person is subject to the following sanctions:

a. License denial or cancellation.

b. License suspension for incapability.

c. License suspension for noncompliance with the financial responsibility law.

d. Suspension or revocation of a special minor's restricted license or minor's restricted work license.

e. License revocation under Iowa Code section 321.209(1) through 321.209(4) or revocation for a second or subsequent conviction for drag racing.

f. License bar under Iowa Code section 321.560 unless the applicant is declared to be a habitual offender under Iowa Code section 321.555(1)*"c"* or 321.555(2).

g. License suspension under Iowa Code section 252J.8.

h. License suspension under Iowa Code section 321.180B(3).

615.28(2) Application for a temporary restricted license is to be made online at www.iowadot.gov/mvd/driverslicense/Suspensions-and-Revocations#TempRL or using Form 430100 and submitted to the motor vehicle division at the address in rule 761—615.3(17A).

615.28(3) The application is to be accompanied by supporting documentation signed by each entity able to attest to the applicant's eligibility for each requested purpose authorized under Iowa Code section 321.215(1)*"a"*(1) through 321.215(1)*"a"*(6). An applicant under Iowa Code section 321.215(1)*"a"*(5) must also submit a copy of the court order for community service. Acceptable

statements will explain the need for the license and list specific places and times for the activity that can be verified by the department.

615.28(4) A temporary restricted license issued for employment may include permission for the licensee to transport dependent children or adults between the licensee's residence and a child or dependent adult care location, provided the care is essential for continuation of the licensee's employment and the application includes a signed statement from the care provider.

615.28(5) An applicant for a temporary restricted license is also required to do all of the following:

a. File proof of financial responsibility under Iowa Code chapter 321A, if required, for all motor vehicles to be operated under the temporary restricted license.

b. Pay the civil penalty when required by Iowa Code section 321J.17.

c. Pass the appropriate examination for the type of vehicle to be operated under the temporary restricted license.

d. Pay any applicable reinstatement and license fees.

615.28(6) The department will determine the restrictions to be imposed by the temporary restricted license based on the documents submitted. The licensee may apply at any time to the department in writing with a justification for any requested change in license restrictions.

615.28(7) An applicant who has been denied a temporary restricted license or who contests the license restrictions imposed by the department may contest the decision in accordance with rule 761—615.22(321).

This rule is intended to implement Iowa Code chapter 321A and sections 252J.8; 307.12(1)*"j"*; 321.177; 321.178 as amended by 2024 Iowa Acts, Senate File 2109, section 3; 321.184; 321.185; 321.186; 321.189; 321.191; 321.193; 321.194 as amended by 2024 Iowa Acts, Senate File 2109, section 6; 321.195; 321.201; 321.205; 321.209; 321.210; 321.210A; 321.212; 321.213A; 321.213B; 321.215; 321.218; 321.513; 321.560; and 321J.17.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 620
"OWI and Implied Consent"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)"j," 321.193 and 321J.3

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 321J and sections 125.84, 125.86, 321.193, 321.201, 321.215, 321.376 and 707.6A

Public Hearing

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

October 10, 2024	Microsoft Teams link
3 to 3:30 p.m.	Or dial: 515.817.6093
	Conference ID: 527 660 638

Public Comment

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

Kasey Lee
6310 SE Convenience Boulevard
Ankeny, Iowa 50021
Email: kasey.lee@iowadot.us

Purpose and Summary

The purpose of the proposed chapter is to implement Iowa Code chapter 321J and outline the requirements for a person who has violated Iowa's operating while intoxicated (OWI) laws. The chapter also explains the issuance requirements for a temporary restricted license, the hearings and appeals procedures, and the reinstatement requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs or fees associated with this chapter; rather, it provides guidance and explanation for individuals following an OWI conviction. The chapter does not require any fees or costs beyond what is required by the underlying statute.

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

Persons who are seeking a temporary restricted license or to reinstate their driver's license following an OWI offense; persons who are seeking to appeal an OWI revocation; and persons who are substance use disorder providers, drinking driving class providers, and law enforcement officials who provide information to individuals following an OWI conviction 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 are no additional quantitative impacts that were not already anticipated as a result of the underlying statute.

- Qualitative description of impact:

The result of reorganizing, streamlining, and reducing redundancy in the proposed chapter will create a positive impact by producing a more user-friendly version of information the public relies on for understanding the requirements for a driver following an OWI conviction.

3. Costs to the State:

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

There are no additional implementation or enforcement costs in the proposed rules that were not already required as a result of the underlying statutes. The statute requires the Department to adopt rules for standards for requirements for a temporary restricted license and reinstatement following an OWI conviction.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond the underlying statute.

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

The benefit of the proposed chapter is consistency and transparency for standards for driver education courses provided in Iowa. The cost of the proposed rules is the same as the costs required by the underlying statute.

The cost of inaction is the inability for the public to quickly and efficiently understand the standards required for drivers following an OWI conviction. There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules, which is to quickly and efficiently provide information to the public regarding the required standards for drivers following an OWI offense in Iowa.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives to the proposed rules. Requirements for individuals following an OWI offense are set forth in the Iowa Code.

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

No alternatives to the proposed rules were considered.

Small Business Impact

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

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

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

There is no impact on small business since the rules apply to individuals, not businesses or entities. The proposed rules apply equally to all individuals following an OWI offense.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 620 and adopt the following **new** chapter in lieu thereof:

CHAPTER 620
OWI AND IMPLIED CONSENT

761—620.1(307,321J) Information and location. Information relating to this chapter is available by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.244.9124; by email at driver.services@iowadot.us; or by facsimile at 515.239.1837.

761—620.2(307,321,321J) Issuance of temporary restricted license.

620.2(1) *Application.*

a. An application for a temporary restricted license may be submitted, at any time before or during the revocation period, by completing Form 430400. The application form should be furnished by the arresting officer. It may also be obtained upon oral or written request to the motor vehicle division in person or by mail at the address in rule 761—620.1(307,321J) or online at www.iowadot.gov/mvd/driverslicense/suspensions-and-revocations.

620.2(2) *Additional requirements.* A person applying for a temporary restricted license will comply with all of the following requirements:

a. Submit proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles owned or operated under the temporary restricted license.

b. Provide certification of installation of an approved ignition interlock device on each vehicle required pursuant to Iowa Code section 321J.20(2).

c. Pay the $200 civil penalty.

d. Pay the applicable reinstatement and license fees.

e. Pass the appropriate examination for the type of vehicle to be operated under the temporary restricted license.

620.2(3) *Restrictions.* Upon receipt and approval of an application, the department will determine the restrictions to be imposed by the temporary restricted license. The licensee is to apply to the department in writing with a justification for any requested change in license restrictions.

620.2(4) *Denial.* A person who has been denied a temporary restricted license or who contests the restrictions imposed by the department may contest the decision at any time in accordance with rule 761—620.3(17A,307,321J).

761—620.3(17A,307,321J) Hearings and appeals.

620.3(1) *Contested case hearing.*

a. A person may request a contested case hearing by submitting Form 432034 to the department or by submitting a written request to the motor vehicle division. The request is to include the person's name, date of birth, driver's license number, complete address and telephone number.

b. A request for a hearing to contest a revocation is to be submitted within ten days following receipt of the revocation notice. The request will be deemed timely submitted if it is delivered to the motor vehicle division or properly addressed and postmarked within this time period.

c. Failure to timely request a hearing on a revocation is a waiver of the right to a hearing under Iowa Code chapter 321J, and the revocation shall become effective on the date specified in the revocation notice.

d. After a hearing, a written decision will be issued by the presiding officer.

620.3(2) *Appeal.* A decision by a presiding officer shall become the final decision of the department unless either party appeals the decision in accordance with this subrule.

a. An appeal is to be decided on the basis of the record made before the presiding officer in the contested case hearing, and no additional evidence shall be presented.

b. An appeal is to include a statement of the specific issues presented for review and the precise ruling or relief requested.

c. An appeal of the presiding officer's decision shall be submitted in writing to the motor vehicle division.

d. An appeal is deemed timely submitted if it is received by the motor vehicle division or properly addressed and postmarked within ten days after receipt of the presiding officer's decision.

e. The motor vehicle division will forward the appeal to the director of transportation or director's designee (director). The director may affirm, modify, or reverse the decision of the presiding officer or may remand the case to the presiding officer.

f. Failure to timely appeal a decision shall be considered a failure to exhaust administrative remedies.

620.3(3) *Final agency action.* The decision of the director is the final decision of the department and constitutes final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

620.3(4) *Default.*

a. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

c. A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within ten days after receipt of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with subrule 620.3(2). A motion to vacate is to state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate.

d. 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.

e. Timely filed motions to vacate are to be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties are to respond to a motion to vacate within ten days.

f. "Good cause" for the purpose of this rule means surprise, excusable neglect, or unavoidable casualty.

g. A decision denying a motion to vacate is subject to further appeal in accordance with subrule 620.3(2).

h. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 620.3(2).

i. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case is to proceed accordingly.

620.3(5) *Petition to reopen a hearing.*

a. A petition to reopen a hearing pursuant to Iowa Code section 17A.16 is to be submitted in writing to the motor vehicle division. If a petition is based on a court order, a copy of the court order shall be submitted with the petition. If a petition is based on new evidence, the petitioner shall submit a concise statement of the new evidence and the reason(s) for the unavailability of the evidence at the original hearing.

b. A petition to reopen a hearing may be submitted at any time even if a hearing to contest the revocation was not originally requested or held.

c. A person may appeal a denial of the petition to reopen. A timely appeal is delivered to the motor vehicle division or properly addressed and postmarked within 20 days after issuance of the decision denying the petition to reopen.

761—620.4(321J) Reinstatement. The department may reinstate the driver's license when the revocation has ended if the person has satisfied the requirements under paragraphs 620.2(2)*"a"* and *"c"* through *"e"* and Iowa Code section 321J.17.

761—620.5(307,321,321J) Issuance of temporary restricted license after revocation period has expired. The department may issue a temporary restricted license under Iowa Code section 321J.20(6) for six months from the end of the original revocation, unless a longer period of time is necessary to complete the requirements for driver's license reinstatement.

620.5(1) An applicant for a temporary restricted license under this rule must demonstrate to the satisfaction of the department one of the following:

a. That a course for drinking drivers was not readily available to the person during the revocation period and that the applicant has enrolled in a course for drinking drivers. The applicant must furnish the dates the class will begin and end.

b. That substance use disorder evaluation and treatment have not been completed because of an inability to schedule them or because they are ongoing.

c. That due to surprise, excusable neglect, or unavoidable casualty, the applicant has been unable to meet the requirements under rule 761—620.2(307,321,321J) and needs additional time for completion.

620.5(2) An applicant for a temporary restricted license under this rule must meet all other conditions for issuance of a temporary restricted license under rule 761—620.2(307,321,321J) and Iowa Code section 321J.20.

761—620.6(307,321J) Revocation for deferred judgment. The revocation period under Iowa Code section 321J.4(3) shall be 90 days.

761—620.7(125,321J) Substance use disorder evaluation and treatment. When the department revokes a person's driver's license under Iowa Code chapter 321J, the department shall also order the person to submit to substance use disorder evaluation and, if recommended, substance use disorder treatment. A provider of substance use disorder evaluation and treatment shall be licensed by the Iowa department of health and human services pursuant to Iowa Code chapter 125.

620.7(1) *Reporting.*

a. When a person has satisfactorily completed substance use disorder evaluation and treatment, the program provider shall electronically report completion to the department in a manner approved by the department.

b. Reporting to the department shall be in accordance with Iowa Code sections 125.84 and 125.86 and 42 CFR §2.13 effective February 16, 2024.

620.7(2) *Payment.* Payment of substance use disorder evaluation and treatment shall be in accordance with Iowa department of health and human services rules.

761—620.8(321J) Drinking drivers course. When a person who has been ordered to enroll, attend, and satisfactorily complete a course for drinking drivers under Iowa Code chapter 321J has successfully completed the course, the program provider under Iowa Code section 321J.22(2)*"a"* shall electronically report completion to the department in a manner approved by the department.

These rules are intended to implement Iowa Code chapters 17A and 321J and sections 125.84, 125.86, 307.12(1)*"j,"* 321.193, 321.201, 321.215, 321.376 and 707.6A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 635
"Motorcycle Rider Education (MRE)"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)"j" and 321.179

State or federal law(s) implemented by the rulemaking: Iowa Code sections 307.12(1)"j," 321.179 and 321.180B

Public Hearing

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

October 10, 2024 2 to 2:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 425 744 072

Public Comment

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

Sara Siedsma
6310 SE Convenience Boulevard
Ankeny, Iowa 50021
Email: sara.siedsma@iowadot.us

Purpose and Summary

The purpose of proposed Chapter 635 is to comply with Iowa Code sections 321.179 and 321.180B(5). The chapter outlines the application, renewal, and eligibility requirements for motorcycle rider education (MRE) courses, sponsors and instructors in the state. The Department is also required to establish the framework under which MRE sponsors may be reimbursed from the Motorcycle Rider Education Fund for the costs of providing MRE courses.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Private or commercial MRE sponsors who are required by the rules to pay a $25 application fee to the Department and all MRE sponsors and instructors who must be approved by the Department under Iowa Code section 321.180B(5) prior to licensure will bear the costs.

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

MRE sponsors and instructors will benefit from these rules by knowing the application and eligibility requirements to become a sponsor or instructor as well as the process for MRE sponsors to submit a request for reimbursement from the Motorcycle Rider Education Fund.

Individuals under 18 years old seeking a motorcycle license, who are required under Iowa Code section 321.180B(5) to complete an MRE course approved by the Department prior to licensure, will benefit from course availability.

All applicants for a motorcycle license will benefit from the availability of MRE courses, sponsors and instructors that meet eligibility criteria established by the Department.

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

- Quantitative description of impact:

In calendar year 2023, the Department issued or renewed 17 MRE sponsor licenses and 54 MRE instructor licenses. The Department also reimbursed eligible MRE sponsors a total of $562,454.07 in 2023 from the Motorcycle Rider Education Fund. A private or commercial MRE sponsor is required to pay a $25 application fee for an MRE sponsor license. Public MRE sponsors are not charged an application fee. The Department collected $125 in MRE sponsor application fees in 2023.

- Qualitative description of impact:

Reorganizing and streamlining the proposed chapter will create a positive impact by producing a more reader-friendly version of the information MRE sponsors and instructors use to determine the application and eligibility criteria for obtaining a sponsor or instructor license and when an MRE sponsor submits a request for reimbursement from the Motorcycle Rider Education Fund.

3. Costs to the State:

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

There are no additional implementation or enforcement costs in the proposed rules that were not already required as a result of the underlying statutes. Iowa Code section 321.180B(5) requires individuals under 18 years old seeking a motorcycle license to complete an MRE course approved by the Department prior to licensure. Iowa Code section 321.179 requires the Department to establish by rule the process for distributing funds from the Motorcycle Rider Education Fund to qualified MRE sponsors.

- Anticipated effect on state revenues:

In calendar year 2023, the Department collected $125 in MRE sponsor application fees. The Department also reimbursed eligible MRE sponsors a total of $562,454.07 from the Motorcycle Rider Education Fund established by Iowa Code section 321.179. The Motorcycle Rider Education Fund is comprised of a portion of the fees from each issuance of a motorcycle license and from motorcycle rider education license plates, as well as grant funding.

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

The benefit of the proposed chapter is consistency and transparency regarding the application and eligibility for an MRE sponsor or instructor license and the process for submitting a request for reimbursement from the Motorcycle Rider Education Fund. The cost of the proposed rules is the same as the cost required by the underlying statute.

The cost of inaction is the inability for MRE sponsors and instructors to be licensed to provide MRE courses in Iowa or to request reimbursement from the Motorcycle Rider Education Fund. There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules, which is to quickly and efficiently provide information to MRE sponsors and instructors seeking information regarding the application and eligibility requirements to become a sponsor or instructor as well as the process for MRE sponsors to submit a request for reimbursement from the Motorcycle Rider Education Fund.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives to the proposed rules. The Department is required by the Iowa Code to approve MRE courses and provide a process for MRE sponsors to request reimbursement from the Motorcycle Rider Education Fund.

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

No alternatives to the proposed rules were considered.

Small Business Impact

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

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

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

There is no substantial impact to small business because of the rules. All private and public MRE sponsors must meet the same eligibility criteria to provide MRE courses in the state. Private and commercial MRE sponsors are charged a nominal $25 application fee, which has not been determined to be a substantial barrier to licensure.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 635 and adopt the following **new** chapter in lieu thereof:

CHAPTER 635
MOTORCYCLE RIDER EDUCATION (MRE)

761—635.1(307,321) Information and location. Applications, forms and information regarding this chapter are available by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.244.8725; by facsimile at 515.239.1837; or by email at mre.dot@iowadot.us.

761—635.2(307,321) Definitions.

"Approved course" means the motorcycle rider education course approved by the department.

"Instructor" means a person licensed by the department to instruct an approved course.

"MRE" means motorcycle rider education.

"Sponsor" means an entity that provides the approved course.

761—635.3(307,321) Application, renewal and fees.

635.3(1) *Application and renewal.*

a. An applicant for a sponsor license must apply to the department in a manner determined by the department prior to the beginning of the first class offered in the approved course and annually thereafter.

b. An applicant for an instructor license must apply to the department in a manner determined by the department prior to the beginning of the first class of the approved course taught by the instructor and annually thereafter. However, an individual who meets the qualifications for a license except for paragraph 635.5(2)*"d"* or whose license is denied under subrule 635.6(2) may teach the approved course as provided in paragraph 635.6(2)*"b."*

c. A sponsor or instructor license is valid for a calendar year or remainder of a calendar year and expires on December 31 but remains valid for an additional 30 days after the expiration date.

d. Unless otherwise approved by the department, an application for license renewal is due to the department within 60 days of the expiration date.

635.3(2) *Fees.* The initial application and annual renewal fee are $25 for a private or a commercial sponsor. The fee is to be paid in a manner approved by the department.

761—635.4(307,321) Approved course in MRE.

635.4(1) *Course requirements.*

a. Only an MRE course approved by the department using nationally recognized, research-based curriculum is to be taught by any sponsor providing MRE.

b. On-cycle instruction of the approved course must meet the following requirements:

(1) The student is at least 14 years of age; possesses a valid driver's license as defined in Iowa Code section 321.1; is able to touch the ground with the balls of both feet while sitting astride the training motorcycle; wears a U.S. DOT-approved helmet, an eye-protective device, and protective clothing including gloves, a long-sleeved shirt or jacket, long pants, and shoes or boots that cover the feet and ankles; and completes the motorcycle safety course waiver form, including the signature of a parent or legal guardian if the student is under the age of 18.

(2) The scheduled time for classroom or on-cycle instruction, or a combination of both, does not exceed eight hours in any one calendar day.

(3) The student-instructor ratio for classroom instruction does not exceed 36 to 1. The student-instructor ratio for on-cycle instruction does not exceed 6 to 1; however, no more than 12 students may receive on-cycle instruction at one time on a single full-size range.

(4) The driving range used for on-cycle instruction is paved, free of hazards to motorcycle travel, and has an unobstructed, paved runoff of at least 20 feet in all directions.

(5) The sponsor provides for each student engaged in on-cycle instruction one fully operational motorcycle manufactured for highway use that has not been modified, does not contain aftermarket equipment, and meets at least two of the following criteria:

1. Has an engine displacement of 500 cubic centimeters or less, or an electric motor of 30 kW or less.
2. Has a curb (wet) weight of 440 pounds or less.
3. Has a seat height of 30 inches or less.

635.4(2) *Certificate of completion.* Only persons successfully completing all elements of the approved course will be issued an Iowa certificate of completion for MRE by the sponsor to be submitted to the department by the methods provided in 761—subrule 602.2(1). The driving test for a Class M driver's license or a motorcycle endorsement may be waived under 761—subrule 604.31(2) within two years of the issuance of a certificate of completion.

761—635.5(307,321) Instructor and sponsor qualifications.

635.5(1) *Instructor license.* To qualify for an instructor's license, an individual must:

a. Possess a valid Class M driver's license or a motorcycle endorsement or equivalent license or endorsement that is valid for a two-wheel motorcycle.

b. Successfully complete a nationally recognized, research-based instructor preparation course approved by the department.

c. Possess a current instructor certification from a nationally recognized motorcycle safety organization approved by the department.

d. Before a license is granted, teach one class of the approved course under the guidance of an experienced, licensed instructor approved by the department.

e. After the year in which a license is granted, teach at least one nationally recognized, research-based motorcycle rider preparation course approved by the department in Iowa or another state each calendar year.

f. After the year in which a license is granted, complete at least one state-sponsored or state-approved instructor update each calendar year. The update must be completed in Iowa every other year.

g. Have a clear driving record for the previous two years. A clear driving record means the individual has:

(1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).

(2) No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.

(3) Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.

(4) No record of a law enforcement investigative report indicating a contributive motor vehicle accident that caused the death or serious injury of another person.

(5) No record of two or more contributive motor vehicle accidents in a two-year period.

h. Comply with any department review and verification of the instructor's qualifications under this subrule.

635.5(2) *Sponsor license.* To qualify for a sponsor's license, an entity must:

a. Use only a course approved under rule 761—635.4(307,321).

b. Use only instructors licensed by the department to teach the approved course.

c. Maintain liability insurance in an amount of not less than $1 million, combined single limit, with an aggregate limit of not less than $2 million, and file a certificate of this insurance with the department verifying coverage for scheduled courses of instruction. The certificate shall name the department and its officers, agents, representatives and employees as additional insureds with respect to all work, deliveries or services performed for the department by the named insured, and specify that the department's motor vehicle division shall be given at least 30 days' prior notice of any material change in or cancellation of the insurance.

d. Provide written verification of self-insurance to the department if the sponsor is a state agency or public educational institution.

e. Maintain complete instructional accident report files and furnish this information to the department in a manner determined by the department.

f. Maintain a record of costs incurred in providing the approved course.

g. Allow the department or the department's designee to audit any class of the approved course, either announced or unannounced.

h. Involve a program administrator in an annual department-sponsored, in-service seminar.

i. Provide and maintain adequate instructional facilities and equipment to accommodate all components of the approved course, including but not limited to the lecture, audio-visual, and on-cycle components.

761—635.6(307,321) Cancellation or denial.

635.6(1) *Cancellation.* The department shall cancel the license if the sponsor or instructor fails to comply with the applicable provisions of this chapter or Iowa Code section 321.179 or 321.180B(5) or if the course or instructors are no longer approved.

635.6(2) *Denial.* The department shall deny an initial or renewal application if the applicant does not meet the criteria for issuance of a license under this chapter. A denial for an instructor's failure to comply with the provisions of paragraph 635.5(1)*"c," "e"* or *"f"* will remain in effect until the instructor completes the following requirements, as applicable:

a. Presents an unexpired instructor certification from a nationally recognized motorcycle safety organization approved by the department.

b. Teaches one class of the approved course under the guidance of an experienced, licensed instructor approved by the department.

c. Completes at least one state-sponsored or state-approved instructor update.

761—635.7(321) Use of MRE fund. The MRE fund may be used for the following purposes:

635.7(1) *Course development.* New or current sponsors may apply to the department for funds to establish delivery of the approved course at an unserved site. Current sponsors may apply for funds to expand delivery at an existing site.

a. Expenditures eligible for funding are limited to:

(1) Acquisition of necessary classroom furnishings and audio-visual systems if used exclusively to deliver the approved course.

(2) Required curriculum materials including necessary audio and visual components.

(3) Range development and maintenance excluding land acquisition, surfacing and resurfacing.

(4) Training motorcycles and motorcycle maintenance equipment if the equipment is to be used exclusively for the upkeep of the motorcycles.

(5) On-cycle safety equipment limited to helmets, eye-protective devices and gloves.

b. Application for funds shall be made in a manner determined by the department. Departmental approval will be based on the geographical area, the number of students to be served and the availability of moneys in the MRE fund. The number of students to be served is determined by range size, the number of courses to be offered, and the number of sponsors providing the course.

c. Payment to the sponsor for course development expenditures will be on a cost-reimbursement basis and made after claims under subrule 635.7(5) are paid.

635.7(2) *Instructor preparation.* The department will sponsor and accept applications for enrollment in initial instructor preparation courses.

a. An instructor preparation course is open to any individual who:

(1) Possesses a valid Class M driver's license or a motorcycle endorsement or equivalent license or endorsement that is valid for a two-wheel motorcycle.

(2) Submits verification from an approved sponsor of employment as an instructor of the approved course to be offered within the next 12 months.

b. Upon proof of successful completion of the instructor preparation course, an individual may be reimbursed for course tuition.

635.7(3) *Instructor updates.* The department will sponsor and fund instructor updates held in Iowa. Instructor updates are open to all state-licensed MRE instructors and instructor trainers.

635.7(4) *Instructor trainer preparation.*

a. An experienced, state-licensed MRE instructor may apply to the department for funding assistance on forms provided by the department if both the following occur:

(1) The instructor is accepted for enrollment in a nationally recognized instructor trainer preparation course approved by the department.

(2) The instructor agrees to be an instructor trainer in a department-sponsored instructor preparation course within 12 months following successful completion of the instructor trainer preparation course.

b. The department may approve the application if the department determines there is a need for additional instructor trainers.

c. If the department approves the application, then all the following apply:

(1) Funding assistance is limited to course tuition, travel, and subsistence (meals and lodging).

(2) Upon approval of the application, the department will pay for course tuition and travel to the training site.

(3) Upon receipt by the department of evidence of successful completion accompanied by documentation of subsistence expenses incurred, the department will reimburse the instructor for food and lodging based on the in-state reimbursement limits established for state employees by the department of administrative services.

(4) If the instructor fails to attend the training, the instructor must repay the department both the course tuition and the travel purchased.

(5) If the instructor fails to successfully complete the course, the instructor must repay the department one-half the course tuition and one-half the travel purchased. Meal and lodging expenses will not be reimbursed.

635.7(5) *Reimbursement of per pupil costs.* The department will reimburse a sponsor for each student who completes the approved course contingent upon the availability of moneys in the MRE fund.

a. Reimbursement will be paid twice each calendar year, once for training provided from January to June and once for training provided from July to December.

b. The reimbursement will be based on a per pupil rate determined semiannually by the department. The rate will be based on the amount of moneys available in the MRE fund, less the administrative and instructor training costs, and will be distributed to sponsors based on the total number of students who complete the approved course.

c. Claims for reimbursement shall be submitted in a manner determined by the department and include a summary of courses taught with site, date, and instructor information; a report for each class taught that provides the name, age, and driver's license number of each student; and any other information required by the department.

d. Failure to provide course, instructor and student information; failure to meet instructor certification and licensure requirements; failure to comply with applicable provisions of this chapter in providing the course; or failure to meet prescribed instructor-student ratios shall result in the forfeiture of reimbursement for those courses and students involved.

These rules are intended to implement Iowa Code sections 307.12(1)*"j,"* 321.179 and 321.180B(5).

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 24
"Claims and Benefits"

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:

October 8, 2024
11 a.m. to 12 noon

Microsoft Teams link
Meeting ID: 256 714 403 006
Passcode: d4U26J
Dial in by phone: +1 469.998.6043
Find a local number
Phone conference ID: 422 880 375#

Public Comment

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

Jeffrey Koncsol
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

Chapter 24 provides rules implementing Iowa Code chapter 96, regarding claims and benefits falling under unemployment insurance.

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:

Iowa Workforce Development expends considerable funds for unemployment support. However, there is no expected change in financial expenditures as a result of this updated chapter.

- Qualitative description of impact:

Not applicable.

3. Costs to the State:

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

Iowa Workforce Development expends considerable funds for unemployment support. However, there is no expected change in financial expenditures as a result of this updated chapter.

- Anticipated effect on state revenues:

No change in effect on state revenues is expected as a result of this rulemaking.

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

There is no cost to the proposed rulemaking. Instead, the general public can expect to see a benefit with clearer, up-to-date unemployment claims and benefits rules.

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:

This chapter implements Iowa Code chapter 96.

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?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 871—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
CLAIMS AND BENEFITS

871—24.1(96) Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms that are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(1) Reserved.

24.1(2) *Administrative office (state).* The state administrative office of the division of unemployment insurance services of the department of workforce development.

24.1(3) *Agent state.* The state in which a worker claims benefits against another (liable) state through the facilities of the state employment security agency.

24.1(4) *Applicant.* Any individual applying for work at a workforce development center.

24.1(5) *Average weekly wages.*

a. For an individual worker, the result obtained by dividing the individual's total wages in a specified period either by the total number of weeks in the period or by the number of weeks for which wages were payable to the individual during the period.

b. For a group of workers, the result obtained by dividing the total wages for one or more quarters by the number of weeks in the period, and then dividing by the average monthly employment during the period.

24.1(6) *Base period.* See Iowa Code section 96.1A(3).

24.1(7) *Base period employer and chargeable employer.* See Iowa Code section 96.3.

24.1(8) *Benefit eligibility conditions.* Statutory requirements that must be satisfied by an individual with respect to each week of unemployment before benefits can be received.

24.1(9) *Claim.* A request for benefit payment; also used to mean any notice filed by an individual to establish insured status or a notice filed by an individual to inform the administrative agency of the individual's unemployment.

a. A claim may be filed under any one or more of the following programs:

(1) The state program of unemployment insurance (UI),

(2) The federal program of unemployment compensation for federal employees (UCFE) established by Title V of the United States Code, and

(3) The federal program of unemployment compensation for ex-military personnel (UCX) established by Title V of the United States Code.

b. Unless otherwise specified, the term claim as used in the following definitions is applicable equally to each of the three programs.

(1) *Additional UI, UCFE, or UCX claim.* A notice filed at the beginning of a second or subsequent series of claims within a benefit year, when a break in job attachment has occurred since the last claim was filed, concerning which state procedures require that separation information be obtained.

(2) *Additional claim.* An application for determination of eligibility filed on an established claim that follows a period of employment.

(3) *Additional interstate claim.* A claim filed by an interstate claimant within the benefit year of a liable state in which insured status has already been established, after a break in the continuity of filing continued interstate claims, or to establish a new series of claims against that liable state from a new agent state.

(4) *Combined wage claim.* A claim filed according to an interstate agreement that allows workers who lack qualifying wages in any one state, or who qualify for less than maximum benefits in one or more states, to qualify or to increase benefits by combining wages from all states.

(5) *Compensable claim.* A request for benefit payment that certifies the completion of a week of total or partial unemployment to satisfy a claim benefit for a compensable week.

(6) *Contested claim.* A claim that has been protested by an employer, the department or an interested party regarding the claimant's right to benefits.

(7) *Continued claim.* A continued claim is a request for benefit payment. A continued claim is a compensable claim. It is an electronic, oral or written application that certifies to the completion of a week of total unemployment or partial employment to claim benefits for a compensable week.

(8) *Initial claim.* An application for a determination of eligibility for benefits which determination sets forth the weekly benefit amount and duration of benefits for a benefit year.

(9) *Initial interstate claim.* A new or an additional interstate claim.

(10) *Interstate claim.* A claim filed in one state (agent state) against another state (liable state).

(11) *Intrastate claim.* A claim filed in the state of residence against wages earned in that state or by an interstate commuter.

(12) *Mail claim.* Reserved.

(13) *New claim.* An application for the establishment of a benefit year.

(14) *New interstate claim.* The first interstate claim filed by a claimant against a liable state that serves as a request for determination of insured status.

(15) *New intrastate extended benefits claim.* The first intrastate claim filed for extended benefits in a new extended benefits period by a claimant in state having extended benefits provisions in its law. Each time such provisions become effective it is considered a new extended benefit period. Such first claims will include those that become effective, without any break in the benefit series, for the week following the week in which regular benefits are exhausted or are terminated by the end of the benefit year.

(16) *New UI, UCFE, or UCX claim.* A request for determination of insured status for purposes of establishing a new benefit year.

(17) *Reopened claim.* The first continued claim in a second or subsequent series of claims in a benefit year when no additional claim is reportable. An application for determination of eligibility for benefits and that certifies to the beginning date of a period of unemployment that falls within a benefit year previously established for which a continued claim or claims may be filed and which follows a break in a previously established claim, due to illness, disqualification, unavailability, or failure to report for any reason other than reemployment.

(18) *Second benefit year claim.* A new claim with an effective date for a second benefit year that is filed within 180 calendar days following the last week of the individual's previous benefit year. The individual is notified of the expiration of the previous benefit year.

(19) *Transitional claim.* Reserved.

(20) *Valid UI, UCFE or UCX claim.* A new claim on which a determination has been made that the individual has met the wage or employment requirements (and, under some laws, other eligibility conditions) to establish a benefit year.

24.1(10) *Claimant.*

a. An individual who has filed a request for determination of insured status or a new claim, or

b. An individual who has filed an initial claim unless the claim is found to be invalid or the benefit year has expired.

24.1(11) *Covered worker.* An individual who has earned wages in insured work.

24.1(12) *Department.* The department of workforce development, the chief executive officer of which is the director, who is appointed by the governor with the approval of two-thirds of the members of the senate. The director is responsible for administering Iowa Code chapter 96.

24.1(13) *Determination.*

a. Benefit determination. A decision with respect to a request for determination of insured status, a notice of unemployment, or a claim for benefits.

b. Initial determination. The first determination with respect to a claim or a request for determination of insured status.

c. Monetary determination. A determination as to whether an individual meets the employment requirements necessary for the receipt of benefits; and, if so, such individual's weekly benefit amount and maximum benefit amount.

d. Nonmonetary determination. A determination as to whether a claimant is barred from receiving benefits for reasons other than those affecting the claimant's insured status.

e. Redetermination. A determination made with respect to a claimant after reconsideration by the initial determining authority.

f. Status determination. A determination as to whether an employing unit is a subject employer and whether service performed for it constitutes employment as defined under a state employment security law.

24.1(14) *Disqualification provisions.* Those provisions of a state employment security law that set forth the conditions that bar an individual from receiving benefits for a specified period or cancel or reduce the individual's benefits or credits.

24.1(15) *Employment security law.* Iowa Code chapter 96.

24.1(16) *Fact-finding interview.* A discussion between interested parties and a department representative for the purpose of obtaining from the claimant a statement regarding a specific eligibility or disqualification issue.

24.1(17) *Insured unemployment.* Unemployment during a given week for which benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

24.1(18) *Insured work.* Employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act.

24.1(19) *Insured worker.* An individual who has had sufficient insured work in such individual's base period to meet the employment requirements for receipt of benefits under a state employment security law.

24.1(20) *Liable state.* Any state against which a worker claims benefits through the facilities of a workforce development center or the job service division of another (agent) state.

24.1(21) *Maximum benefit amount.* The maximum total amount of benefits an individual may receive during the individual's benefit year.

24.1(22) *Opening.* A single job for which a workforce development center has on file a request to select and refer an applicant or applicants.

24.1(23) *Partial benefits.* Benefits payable to an individual for a week of partial unemployment.

24.1(24) *Partial earnings allowance.* The amount of earnings that are disregarded in calculating a claimant's benefit for a week.

24.1(25) *Part-time worker.* See Iowa Code section 96.3.

24.1(26) *Placement.* An acceptance by an employer of a person for a job as a direct result of workforce development center activities, provided the employment office has completed all of the following four steps: receipt of an order, prior to referral; selection of the person to be referred without designation by the employer of any particular individual or group of individuals; referral; and verification from a reliable source, preferably the employer, that a person referred has been hired by the employer and has entered on the job.

24.1(27) *Referral.* The act of arranging to bring to the attention of an employer (or another workforce development center) the qualifications of an applicant who is available for a job opening on file for which the applicant has been selected by a workforce development center.

24.1(28) *Registration.* The process of applying for work through an office of the department of workforce development.

24.1(29) *Request for determination of insured status.* A request by an individual for a determination of insured status.

24.1(30) *Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoff. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quit. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separation. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

24.1(31) *Social security number.* The identification number assigned to an individual by the Social Security Administration under the Social Security Act.

24.1(32) *Total unemployment.* See week of unemployment.

24.1(33) *Verification.* The determination from a reliable source, preferably the employer, whether an applicant referred by a workforce development center has been hired by the employer and has entered on the job. In the case of applicants referred to seasonal agricultural openings, verification is considered complete when it is confirmed that a referred worker has been hired, even though confirmation of the worker's entry on the job may be lacking.

24.1(34) *Wage credits.* Wages earned in insured work.

24.1(35) *Qualifying wages.* The amount of wages a worker must have earned in insured work within a specified period in order to be an insured worker. See also benefit eligibility conditions.

24.1(36) *Taxable wages.* Wages subject to contribution under a state employment security law, or wages subject to tax under the federal Unemployment Tax Act.

24.1(37) *Compensable week.* A week for which benefits have been claimed.

24.1(38) *Week of unemployment.* A week during which an individual performs no work and earns no wages, except as indicated and has earnings that do not exceed the earnings limit.

This rule is intended to implement Iowa Code sections 96.3(5), 96.3(7), 96.4(3), 96.5(5)*"c,"*96.6, 96.7(2)*"a"*(2), 96.11, 96.1A and 96.23.

871—24.2(96) Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Filing a benefit claim.

a. In order to establish a benefit year during which an individual may receive unemployment benefits, the individual, once separated from employment, must file an initial claim, verify their identity, and register for work. The claim may be filed electronically or by other means prescribed by the department. A claim filed in accordance with this rule is considered filed as of Sunday of the week in which the claim is filed.

b. When filing an initial claim for benefits, an individual must provide the following information to the department:

(1) The name and complete mailing address of the individual's last employing unit or employer.

(2) Work history for all employers within the individual's base period.

(3) The location of the last job.

(4) The last day of work.

(5) The reason for separation from work.

(6) Certification that the individual is unemployed.

(7) Certification that the individual registers for work.

(8) The individual's last occupation.

(9) Number, full name, social security number, date of birth, and relationship of any dependents claimed.

"Spouse" means an individual who does not earn more than $120 in gross wages in one week. The reference week for this monetary determination is the gross wages earned by the spouse in the calendar week immediately preceding the claim's effective date.

"Dependent" means an individual who has been claimed for the preceding tax year on the claimant's income tax return. The same dependent may not be claimed on two separate monetarily eligible concurrent established benefit years. An individual may not claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

(10) The individual's social security number and alien registration number, if applicable.

(11) Such other information as requested by the department.

c. All claimants on an initial claim must state that they are registered for work and list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments are based on all facts obtained at the time of the claim filing. A group

code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

(1) Group "3" claimants are those "temporarily unemployed" as defined in Iowa Code section 96.1A(37)*"c."* After a period of temporary unemployment, claimants in this group are reviewed for placement in group "5" or "6."

(2) Group "4" claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job. Group "4" claimants have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group "4" code does not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(3) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained, and weekly contact to check for available work is required. Loss of membership will result in an assignment to group "6."

(4) Group "6" claimants are those individuals who do not otherwise meet the qualification group code "3," "4," or "5." This group must complete and document re-employment activities, as established by the department.

(5) Group "7" claimants are workers who are employed on a reduced workweek with an employer who is under a department-approved voluntary shared work contract. This group pertains to those individuals who worked full- or part-time and will again work full- or part-time if the individuals' employment, although temporarily suspended, has not been terminated. Once the contract expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(6) Group "8" claimants are workers who are part of a federally declared emergency. Once the emergency period expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

d. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual must report as directed by the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department or to an account specified by the claimant.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

e. After the initial claim has been filed, the claimant will receive a notice of monetarily eligibility. If the claimant is eligible for benefits, this notice will state the date on which the benefit year will begin, the amount per week, and the maximum amount for which the claimant is eligible.

f. No benefit payment is allowed until the individual claiming benefits has completed a continued claim online or as otherwise directed by the department.

(1) The claim must be submitted between 8 a.m. on the Sunday following the Saturday of the weekly reporting period and not later than close of business on the Friday following the weekly reporting period.

(2) An individual using the weekly continued claim system is to personally file the claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The claim must include the following:

1. That the individual continues the claim for benefits;

2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, and was able and available for work;

3. That the individual has performed a minimum of four work search activities and documented and reported each activity to the department.

- At least three of the four work search activities for the purpose of this paragraph shall consist of one of the following:
  - Applying for a potential job opening by submitting a resume or application through any of the following means:
    - Online.
    - In person.
    - Electronic mail.
    - Facsimile.
    - Mail.
  - Completing a civil service examination.
- Additional work search activities for the purpose of this paragraph consist of any of the following:
  - Registering with a placement facility of a school or college.
  - Interviewing for a job either virtually, in person, or at a job fair.
  - Attending an employment workshop organized or approved by the department, which may include completing an online or in-person job search workshop, job club, or job search networking meeting.
  - Attending a job fair sponsored or approved by the department.
  - Attending a scheduled career networking meeting with the department.
  - With the assistance and guidance of the department, completing a reemployment plan, which may include completing career direction research or work such as a job search plan or a targeted employer list.
  - Participating in job search counseling with a department career planner.
  - Attending an appointment with a core program partner authorized by the federal Workforce Innovation and Opportunity Act, Public Law 113-128.
  - Participating in online or in-person mock interviews organized or approved by the department.
  - Complete career-related assessment approved by the department and reviewed with a department career planner.

4. That the individual understands there are penalties for false statements in connection with the claim;

5. That the individual has reported any job offer received during the period covered by the claim;

6. That the individual understands the individual's responsibility to review the claim records to ensure there is no delay in filing the weekly claim to remain in continuous reporting status. Failure to file claims each week will require a claimant to submit a claim application to reactivate the claim;

7. Other information required by the department.

g. Reserved.

h. Effective starting date for the benefit year.

(1) Filing for benefits is effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may only be backdated prior to the first day of the calendar week in which the claimant does report and file a claim if the claimant filed an interstate claim against another state that has been determined as ineligible.

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating is not allowed at the change of a calendar quarter if

the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

i. An individual is entitled to partial benefits for partial unemployment as per Iowa code section 96.1A(37)*"b."* If the individual has been placed on reduced employment the individual may be entitled to partial benefits and should file a claim in accordance with the instructions pertaining to the partial claims procedure.

j. Any individual who is disqualified for benefits because of the individual's failure to report may appeal to the department for the right to establish good cause for failure to report because of extraordinary circumstances. A representative of the department may deny the request, and the decision may be appealed to an administrative law judge for a hearing and decision on the merits. If the petition is allowed the petitioner will be allowed to file a claim for and receive full benefits for each week for which such claim is filed, if otherwise eligible.

24.2(2) Filing a claim for unemployment insurance benefits (not applicable to interstate claims).

a. A notice of claim filing, which includes the name and social security number of the individual claiming benefits, will be sent to each base period employer on record and the last employer if different than the base period employer unless the separation issue has previously been adjudicated.

b. Even though the claims taker may believe that the claimant cannot meet the eligibility conditions established by statute, the claims taker will in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim will be accepted without hesitance. The claimant may be required to provide adequate proof of identification such as a driver's license, proof of citizenship, car registration, union membership card or supply personally identifying information.

c. If a claim filed in a previous quarter was ineligible because of no wage records or lack of qualifying earnings, a benefit year has not been established and a new claim will be taken. A new claim should not be taken if the claimant previously filed an ineligible claim in the same quarter unless the claimant insists on filing after being advised of ineligibility. The claims taker will notify the claimant that another claim filed in the same quarter would also be ineligible because additional wage credits (if any) would not be available until a subsequent quarter. The claimant should be advised to file a new claim during the first full week of the next calendar quarter.

d. If the check of the files does not disclose a previous claim and the claimant states that a claim has not been filed during the past year, a new claim will be taken.

e. Partially unemployed claims.

(1) A partially unemployed individual will:

1. File a claim for benefits in the same manner as an initial claim for unemployment insurance.
2. Report all wages that are earned for each week benefits are claimed.

(2) A claimant in a continuous reporting status, employed with the same employer, may exceed the claimant's weekly benefit amount plus $15 for four consecutive weeks before the individual is required to file an additional claim for benefits.

f. If the check of the files does not disclose a monetarily valid claim in another state, a new claim will be taken.

24.2(3) Filing a claim for unemployment insurance benefits (interstate only).

a. All interstate claimants must file an Iowa claim.

b. When the department is acting as an agent for another state unemployment insurance agency with respect to the filing of an initial claim for benefits, the interstate claimant must complete and file an Initial Interstate Claim unless otherwise directed by the interstate handbook for interstate claims-taking provided by the Employment and Training Administration of the United States Department of Labor.

24.2(4) Cancellation of unemployment insurance claim.

a. An individual may direct a request for cancellation of an unemployment insurance claim to the benefits bureau of the unemployment insurance services division. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made. A notice with the result of the request will be sent.

b. A cancellation request that is the result of employer coercion or intimidation will be denied and the employer may be subjected to serious misdemeanor charges.

c. If a cancellation request is received within the ten day protest period and before payment is made, the benefits bureau may upon review and cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

d. Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance that was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) If the Iowa wages are erroneous and deleted, and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

e. If a claim is canceled and becomes final with no appeal being filed, a valid claim with Iowa as the paying state may not be reestablished with the same effective date.

f. If it is determined a claim has been filed under an incorrect social security number, the claim will be voided rather than canceled.

g. All unemployment insurance claims canceled will be clearly identified as such and the administrative record of the individual's file shall be destroyed three years after final action.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(4), 96.4(1), 96.4(3), 96.5(1) *"h,"*96.5(3), 96.6(1), 96.6(2), 96.15, 96.16, 96.1A and 96.20.

871—24.3(96) Social security number needed for filing. A claim will not become valid until the identity of the claimant has been verified by the department.

24.3(1) If the agency is unable to verify the claimant's identity in the claim application, the department will notify the claimant who must provide approved documents, one of which must contain a social security number. The department will determine the approved documents required to verify identity. The list of approved documents can be found at the nearest local workforce center or online.

24.3(2) The claimant's identity will not be considered verified until approved documents have been provided. The claim will remain locked, and the claimant will remain ineligible for benefits, until the claimant provides approved documents.

24.3(3) Approved documents must be provided or postmarked by the due date provided on the notification. Once the approved documents are verified, the claim will be unlocked for all weeks following the most recent effective date of the claim application.

24.3(4) If a claimant provides approved documents after the due date, the claimant will be eligible, provided there are no other outstanding issues with the claim, as of the Sunday of the week the claimant's identity was verified.

This rule is intended to implement Iowa Code section 96.6.

871—24.4(96) Benefit rights information.

24.4(1) *Intrastate benefits.* Benefit rights information is available online to explain those provisions in the law and rules that govern the individual's monetary eligibility, rights and responsibilities under Iowa's unemployment insurance program.

24.4(2) *Interstate benefits.* Benefit rights information is not required for each individual who files an initial claim for interstate benefits. Claimants will be advised to contact the liable state that will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.

871—24.5(96) Mass separation—definition and procedure.

24.5(1) A mass separation is a layoff of all or a large number of workers, either permanently, indefinitely, or for a specific duration by one or more employers in the same area, at approximately the same time, and for the same common reason.

a. Special procedures for mass claim filing may be applied by the department, and the procedures may include taking claims at a designated site or utilizing an electronic mass claim entry form.

b. If outside facilities must be obtained for a mass layoff, the order of precedence for obtaining such facilities will be as follows:

(1) Interested employer involved.

(2) Bona fide union representing the workers.

(3) Public facility (e.g., courthouse, city hall).

24.5(2) To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. The workforce development center will coordinate between the affected parties. This information should include:

a. The number of workers to be separated.

b. The date of separation and, if staggered, the number on each date.

c. Reason for layoff.

d. Its probable duration.

e. If recall is anticipated, the date it will begin and, if staggered, the number to be recalled on each date.

f. If the layoff is for vacation or inventory purposes, the employer shall follow the vacation pay procedure in rule 871—24.12(96).

This rule is intended to implement Iowa Code section 96.6(1).

871—24.6(96) Reemployment services and eligibility assessment procedure.

24.6(1) The department will provide a program that consists of providing reemployment services.

24.6(2) Purpose. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

24.6(3) Reemployment services and eligibility assessment may include but are not limited to the following:

a. An assessment of the claimant's skillset, work history, and interest.

b. Employment counseling regarding reemployment approaches and plans.

c. Job search assistance and job placement services.

d. Labor market information.

e. Job search workshops or job clubs and referrals to employers.

f. Résumé preparation.

g. Other similar services.

24.6(4) As part of the initial intake procedure, each claimant is to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

24.6(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and class size limitations.

24.6(6) A claimant must participate in reemployment services when referred by the department unless the claimant has previously completed such training or services or demonstrates to the department of other good cause prior to the appointment or service. Failure to participate without good cause will disqualify the claimant from receiving benefits until the claimant participates in the reemployment services or eligibility assessment.

a. Good cause for failure to participate is an important and significant reason that a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.

b. Reserved.

24.6(7) Eligibility assessment procedure.

a. Before an individual has claimed five weeks of intrastate benefits, the workforce development center will receive a computer-selected list of individuals claiming benefits within the target population for review.

b. No eligibility assessment will be performed on an individual unless monetary eligibility and nonmonetary eligibility are established.

c. Once selected for an initial or subsequent eligibility assessment, claimants are required to participate.

d. A Notice to Report will be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual does not respond, the department will issue an appropriate failure to report decision and lock the claim to prevent payment.

e. Selected claimants must participate in staff-assisted services for the initial assessment.

24.6(8) Conducting the first eligibility assessment interview.

a. All available evidence will be examined to detect potentially disqualifying issues.

b. The individual's need for advice, assistance or instructions will be determined and conveyed to the individual.

c. The interview will convey to the individual the requirements that must be satisfied to maintain eligibility.

d. This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment that otherwise would result in referral for adjudication.

e. The individual will be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.

f. The final objective of the interview is to determine whether a subsequent interview is needed. This determination is based on expected return to work date, job openings in the area, local labor market conditions, and other relevant factors.

This rule is intended to implement Iowa Code section 96.4(7).

871—24.7(96) Workers' compensation or indemnity insurance exclusion and substitution.

24.7(1) An individual who has received workers' compensation under Iowa Code chapter 85 during a healing period or temporary total disability benefits or indemnity insurance benefits for an extended period of time and who has insufficient wage credits in the base period may qualify for unemployment insurance benefits as explained in Iowa Code section 96.23.

24.7(2) An individual may receive workers' compensation during a healing period or temporary total disability benefits or indemnity insurance benefits until the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

24.7(3) The department shall make an initial determination of eligibility for unemployment insurance benefits as explained in Iowa Code section 96.23 using the following criteria for allowances and disqualifications.

a. Allowances. When the allowance criteria are met, the department will always exclude and substitute at least three quarters of the base period if the individual received workers' compensation or indemnity insurance benefits in:

(1) Four base period quarters with no earnings in at least two of the quarters and the individual lacks qualifying earnings; the department will exclude and substitute all four quarters of the base period.

(2) Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.

b. Disqualifications. The request for retroactive substitution of base period quarters will be denied if the individual received workers' compensation or indemnity insurance benefits in:

(1) At least three base period quarters but the individual is currently monetarily eligible with an established weekly and maximum benefit amount.

(2) At least three base period quarters and the individual has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.

(3) Less than three base period quarters.

24.7(4) The individual will be asked to complete the Affidavit and Questionnaire, which requests the following information:

a. Individual's name and social security number.

b. Name of employer responsible for the workers' compensation benefits or the indemnity insurance benefits.

c. Names of employers and periods worked for the period preceding the workers' compensation or the indemnity insurance pay period.

d. Name of the workers' compensation or indemnity insurance carrier or, if self-insured, the name of the employer.

e. Specify whether the wages determined to be in the individual's base period were or were not received for working in insured work during the base period.

24.7(5) The department will provide the individual with the monetary redetermination. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the indemnity insurance benefits will be notified and will be responsible for the charges on the redetermined claim that are solely due to wage credits considered to be in the individual's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or indemnity insurance benefits maintains the right to protest as provided in rule 871—17.8(96).

871—24.8(96) Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(1) Issuing a notice of the filing of an initial claim or a request for wage and separation information to employing units.

a. Notice of Claim and Request for Wage and Separation Information, shall be:

(1) Addressed to the address or addresses as requested by the employing unit and agreed to by the department, to the business office of the employing unit where the records of the individual's employment are maintained, or to the employing unit's place of business where the individual claiming benefits was most recently employed; and

(2) Sent electronically via the United States Department of Labor State Information Data Exchange System (SIDES).

b. A notice of the filing of an initial claim or a request for wage and separation information will be sent to an owner, a partner, an executive officer, a departmental manager or other responsible employee of the employing unit or to an agent designated to represent the employing unit in unemployment insurance matters.

(1) An agent who has been authorized to represent an employing unit in unemployment insurance matters may be furnished information from the files of the department to the extent designated in the authorization and in the same manner and to the same extent that the information would be furnished to the employing unit.

(2) The appointment of an agent to act for the employing unit and to receive documents and reports in no way abrogates the right of department representatives to deal directly with the employing unit when it appears that this will best serve the interest of the parties.

24.8(2) Employing units' response to a notice of the filing of an initial claim or a request for wage and separation information and protesting benefit payment.

a. The employing unit that receives a Notice of Claim or Request for Wage and Separation Information must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts disclosing that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. If the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the department's next working day. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report will be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit will be deemed to have not been properly notified and the employing unit will again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions that, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation must be postmarked or received before or within ten days of the date that the Notice of Claim was mailed to the employer. If the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

(2) On the Notice of Separation, the employer must indicate the dates of the last day worked, the separation date and the reason the worker was separated.

24.8(3) Completing and signing of forms by an employing unit that may affect the benefit rights of an individual.

a. A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, is accomplished by properly completing the form or computerized format provided by the department.

b. The form must be signed by, or the computerized form completed by, an authorized agent, individual proprietor, partner, executive officer, department manager or other responsible employee

who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment.

c. Failure to timely submit any notice or response requested by the department will result in the department basing its determination of the individual's rights to benefits based on the information available.

24.8(4) Issuing determinations, redeterminations and decisions to employing units.

a. An employing unit that has filed a timely response or protest to the notice of the filing of an initial claim will be notified in writing of the determination as to the individual's rights to benefits. If an individual's employing unit has submitted timely information affecting the individual's rights to benefits, including facts disclosing that the individual voluntarily quit without good cause attributable to the employing unit or was discharged for misconduct in connection with employment, the employing unit will be notified in writing of the department's decision as to the cause of termination of the individual's employment.

b. Any notice of determination or decision must contain a statement establishing the employing unit's right of appeal.

c. Determinations regarding an individual's right to benefits, the cause of termination of the individual's employment, an employing unit's experience record and correspondence related thereto will be sent to:

(1) The address of the employing unit to which the notice of the filing of an initial claim was sent; or

(2) If the employing unit in its response or protest to the notice of the filing of an initial claim furnishes the address of an agent for the employing unit and requests that further documents and correspondence be sent to the agent, the department representative will comply, and the department has approved authorization (power of attorney) designating the agent to represent the employing unit.

871—24.9(96) Determination of benefit rights.

24.9(1) *Monetary determinations.* When an initial claim for benefits is filed, the department will send to the individual claiming benefits a notification consisting of a statement of the individual's weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual's benefit rights.

24.9(2) *Fact-finding.* Each interested party will be afforded the opportunity to provide information to the department regarding pending eligibility matters. A telephone fact-finding interview may be scheduled upon request of either interested party. Interested parties may request an in-person fact-finding interview as a reasonable accommodation under the federal Americans with Disabilities Act of 1990, as amended, or the Iowa Civil Rights Act of 1965, as amended. The department reserves the right to call any interested party in for an in-person fact-finding interview.

24.9(3) *Notice of benefit determination.*

a. This notice of benefit determination will be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potentially disqualifying issues relevant to the determination. If a claimant is ineligible, this notice will advise of the reason.

b. The department will promptly notify the claimant or any other party filing the request of its decision via a notice of benefit determination that specifies the claimant's appeal rights. Unless the claimant or any such other party entitled to notice, within ten days after such notification was sent to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final, and benefits will be paid or denied in accordance therewith.

24.9(4) *Reconsideration of determination.*

a. The department, upon receiving a timely written request for reconsideration or, on its own initiative and based on newly discovered facts it may have in its possession or may acquire, and that may affect the validity of the original determination, may affirm, modify, or reverse the prior decision,

or refer the claim to an administrative law judge. In such case, an unemployment insurance representative will examine the facts or request and promptly issue a redetermination. The redetermination of the monetary record will constitute a final decision unless the individual files a written appeal to an administrative law judge within ten days of the date on the redetermination specifying the grounds of objection.

b. For the purposes of this subrule, the appeal period is extended to the next working day of the department if the tenth day falls on a Saturday, Sunday, or holiday.

24.9(5) *Nonmonetary determinations.*

a. When a protest of an initial claim for benefits is filed, the department will mail to the individual claiming benefits, and the most recent or any other base period employing unit, an Unemployment Insurance Decision, which affects the individual's right to benefits.

b. When an issue could result in a decision detrimental to an interested party, the interested party will be afforded the opportunity to present facts and evidence that may include an informational fact-finding interview scheduled by the department. An interested party, at the party's expense and with the party's equipment, may record (video or audio) the proceedings. All participants will be informed of the recording of the interview, which must not be disruptive or distracting.

c. Interested parties are afforded review, reconsideration, and appeal rights in the same manner as those provided for monetary determinations as established in subrule 24.9(4).

871—24.10(96) Employer and employer representative participation in fact-finding interviews.

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6(2), means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.24(7). Written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

24.10(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6(2), as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator will notify the employer's representative in writing after each such appeal.

24.10(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6(2) has engaged in a continuous pattern of nonparticipation, the division administrator will suspend the representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on any subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

24.10(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6(2), means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)*"b."*

871—24.11(96) Deductible and nondeductible payments.

24.11(1) *Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits will be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay that is deductible in the manner prescribed in rule 871—24.12(96) will be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer. The individual claiming benefits is required to designate the last day paid that may indicate payments made under this rule. The employer is required to designate on the Notice of Claim response, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, the unemployment insurance representative will determine the days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) will be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.14(96). If the claimant received vacation pay under rule 871—24.12(96), the procedure established in Iowa Code section 96.5(7)*"c"* will govern. The maximum number of days the vacation pay will be applied is five workdays following the separation date. The first day the vacation pay can be applied is the first workday after the separation. The amount of any payment under subrule 24.13(3) will be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

24.11(2) *Deductible payments from benefits.* The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment provided in rule 871—24.14(96):

a. Holiday pay. However, if the employer does not pay holiday pay, the individual may request an underpayment adjustment from the department.

b. Commissions. The commission payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

c. Incentive pay. Incentive pay is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

d. Strike pay. Strike pay is only deductible when it is a payment received for services rendered and the individual is otherwise eligible for benefits.

e. Remuneration other than cash. The cash value of all remuneration payable in any medium other than cash, e.g. board, rent, housing, lodging, meals, or similar advantage, is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

f. Stand-by pay. When an individual is paid to hold oneself in readiness for a call to specific work for an employer but is not called, since the work is given to another, the payment is stand-by pay that is deductible from benefits when earned by the individual during the period in which the individual is claiming benefits.

g. Tips or gratuity. Tips or gratuity are only deductible when based on service performed by the individual during the period in which the individual is claiming benefits.

24.11(3) *Fully deductible payments from benefits.* The following payments are considered as wages, but are fully deductible from benefits on a dollar-for-dollar basis:

a. Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.

b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It is treated as vacation and be fully deductible in the manner prescribed in rule 871—24.12(96).

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

d. Workers' compensation, temporary disability only. The payment is fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.

e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced if the base period employer has made 100 percent of the contributions to the plan that is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

24.11(4) *Nondeductible payments from benefits.* The following payments are not considered as wages and are not deductible from benefits:

a. Self-employment income. However, the individual must meet the benefit eligibility requirements of Iowa Code section 96.4(3).

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

c. Remuneration for work performed by the individual claiming benefits in exchange for county relief in the form of groceries, rent, etc.

d. Payment for unused sick leave.

e. National guard duty pay. This includes reserve unit drill pay for any branch of the armed service.

f. Supplemental unemployment benefit plans approved by the department. 871—paragraph 16.3(1)*"e"* contains more information for criteria and employer procedure for obtaining department approval.

g. Pension to the blind.

h. Payment for terminal leave. Any payment received by military personnel for unused leave upon discharge.

i. Compensation for military service-connected disability from the department of veterans affairs.

j. Payments to the surviving spouse of a regular or disability pension based on the work of the deceased spouse.

k. Deferred wage compensation. Remuneration received by the individual for wages earned in a period prior to the individual's claim for benefits will not be deductible during the period in which the individual is claiming benefits.

l. Witness and jury fees. These fees are reimbursement for expenses and are not considered as wages.

m. Supplemental security income. This payment is nondeductible because it is financed by income taxes and not social security taxes and is based on need factors such as age, mental or physical disability, and personal income, and not on previous employment.

n. Federal social security benefit and social security disability payments.

o. Payments conditional upon the release of any rights.

p. Payments requiring the individual to work through a specific day to be eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.5, 96.5(5), 96.11(1), and 96.1A.

871—24.12(96) Vacation pay.

24.12(1) If the employer properly notifies the department that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted, not to exceed five workdays. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.12(96), the term "vacation pay" includes paid time off and annual leave payments.

24.12(2) If the employer fails to properly notify the department regarding the application of vacation pay to a specific vacation period, the vacation pay will be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff during the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

24.12(3) Unless otherwise specified by the employer, the amount of the vacation pay will be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

This rule is intended to implement Iowa Code section 96.5(7).

871—24.13(96) Vacation pay procedure.

24.13(1) The Notice of Claim, Request for Federal Wage and Separation Information, and Request for Wage and Separation Information on Federal Employment Additional Claim, which are returned by the employer for the purpose of notification of vacation pay, will be used as notification to the department that vacation pay is applicable. Upon receipt of these forms, the department will:

a. Compare the amount of vacation reported by the employer with the computer record. If there are any discrepancies that would affect the claimant's eligibility for unemployment insurance benefits for any week claimed, the claimant will be afforded the opportunity to present facts and evidence. The department may then allow the employer to present additional facts and evidence. If the employer is afforded an opportunity to provide additional facts and evidence, the unemployment insurance representative will likewise afford the claimant the opportunity to present additional facts and evidence.

b. Consider all information submitted by the interested parties and issue to the employer and claimant the appropriate decision concerning the vacation pay. The department will then check the current status of the claim to ascertain if any weeks have been reported.

c. If the record shows that the claimant has not reported or claimed for some or all of the weeks indicated for the vacation period, take no further action on the weeks not claimed.

24.13(2) The claimant is instructed to only report vacation pay applicable to the five workdays following the last date worked and that vacation pay designated by the employer in excess of the vacation pay the claimant reported may result in an overpayment of benefits.

This rule is intended to implement Iowa Code section 96.5(7).

871—24.14(96) Wage-earnings limitation. Partial unemployment is defined in Iowa Code section 96.1A(37)*"b."* If an individual is partially unemployed, the formula for wage deduction is a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.1A.

871—24.15(96) Benefit eligibility conditions. To be eligible to receive benefits, the individual bears the burden of establishing, and the department must find, that the individual is able to work, available for work, and earnestly and actively seeking work.

24.15(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

24.15(2) *Available for work.* The availability requirement is satisfied when an individual is genuinely attached to the labor market (e.g. the individual is willing, able, and ready to accept suitable work that the individual does not have good cause to refuse). Under unemployment insurance laws, it is the availability of an individual that is tested, and the labor market is therefore described in terms of the individual. A labor market for an individual means a market for the type of service the individual offers in the geographical area in which the individual offers the service. It does not mean that job vacancies must exist. It means only that the type of services that an individual is offering is generally performed in the geographical area in which the individual is offering the services.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

b. Intermittent employment. An individual cannot limit employability to only temporary or intermittent work until recalled by a regular employer.

c. Jury duty. The individual is considered available for work while serving on jury duty because time spent in jury service is not a personal service performed under a contract of hire in an employment situation but rather a public duty required by law. Jury duty does not render the individual as employed and ineligible for benefits even though it may involve the individual full-time.

d. Work release program while incarcerated. For those individuals incarcerated in jail, the work release program usually does not meet the availability requirements of Iowa Code section 96.4(3), but the department will review any situation concerning an incarcerated individual who can meet the requirements of Iowa Code section 96.4(3).

e. Available for part of week. Each case is decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

f. On-call workers.

(1) Substitute workers (e.g., post office clerks, railroad extra board workers) who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and is determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. A substitute teacher is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits from on-call work, such as a banquet worker, railway worker, or substitute school teacher, is not considered an unemployed individual within the meaning of Iowa Code section 96.1A(37)*"a"* and *"b."* An individual who is willing to accept only on-call work is not considered to be available for work.

g. Leave of absence. A leave of absence negotiated with the consent of both employer and employee is deemed a period of voluntary unemployment for the employee who is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee, the individual is considered laid off and eligible for benefits.

(2) If the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

h. Effect of religious convictions on Sabbath day work. An individual is considered as available for work if the precepts of the individual's religion prohibit work on the Sabbath. An individual who refuses to work on the Sabbath designated by the individual's religion because of conscientious observance of the Sabbath as a matter of religious conviction is also deemed to have good cause for refusing the work.

i. Available for work. To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed. As an individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to seek work in some other occupation in which job openings exist. If that does not seem likely to result in employment, the individual may be required to accept counseling for possible retraining or a change in occupation.

j. Reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed limitations that leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

k. Corporate officers. To be considered available, the corporate officer must meet the same tests of availability as are met by other individuals.

l. Lawfully authorized work. An individual who is not lawfully authorized to work within the United States is considered unavailable for work.

24.15(3) *Earnestly and actively seeking work.* Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts that might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual will be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The department makes determinations on a case-by-case basis. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if the department finds each constitutes a reasonable means of securing work by the individual:

(1) Applying with employers reasonably expected to have suitable openings.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Applying or testing for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work that appear suitable to the individual if the response is made in writing, in person, or electronically.

(5) Any other action that the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility that charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

b. Number of employer contacts. "Earnestly and actively" may be interpreted in different manners, depending on the estimate of employment opportunities in an area. The number of employer contacts appropriate in an area of limited opportunities might be totally unacceptable in another area. The number of required contacts is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary. Reemployment activities must be recorded as directed by the department.

c. Exceptions.

(1) Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession, or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession, or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient, except when all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program. Mere registration at a union or reporting to a union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and individuals complete reemployment activities.

(2) The requirement for seeking work is waived if all of the following conditions apply:

1. The individual is attached to a regular job or industry.

2. The individual is a high-skilled worker. For purposes of this numbered paragraph, "high-skilled worker" means a worker whose job or position requires licensing, credentials, or specialized training.

3. The individual is on a short-term temporary layoff. For purposes of this numbered paragraph, "short-term temporary layoff" means a layoff period of 16 weeks or less due to seasonal weather conditions that impacts the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

4. The individual otherwise qualifies for unemployment insurance benefits.

d. Week-to-week disqualification. Disqualification due to failure to conduct reemployment activities is made on a week-to-week basis and is not permanent.

e. Seniority rights. An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to individuals receiving extended benefits or similar federal program benefits.

f. Search for work.

(1) The group code is used to determine which individuals are required to make personal applications for work. Other factors, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(2) Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors that may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

g. Job search assistance. Attendance at job search assistance classes, including reemployment services, that are sponsored by the department may be counted as one of the individual's reemployment activities for that week.

This rule is intended to implement Iowa Code section 96.4(3).

871—24.16(96) Availability disqualifications. The following are reasons for disqualifying a claimant for being unavailable for work:

24.16(1) An individual who is ill and presently not able to work due to illness.

24.16(2) An individual presently in the hospital. If there is a change in status, the individual is to renew the claim at once if unemployed.

24.16(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work.

24.16(4) If the individual loses the means of transportation from the residence to the area of usual employment. However, an individual will not be disqualified for restricting employability to the geographic area of usual employment. More information is contained in subrule 24.20(7).

24.16(5) Full-time students devoting the major portion of their time and efforts to their studies except for students available to the same degree and to the same extent as when they accrued wage credits.

24.16(6) If an individual has a medical report on file submitted by a physician or a physician assistant, stating the individual is not presently able to work.

24.16(7) Where an individual devotes time and effort to becoming self-employed.

24.16(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

24.16(9) The claimant requested and was granted a leave of absence.

24.16(10) Failure to report as directed to the department in response to a notice sent to the claimant.

24.16(11) If a claimant is in jail or prison.

24.16(12) If an individual cannot be contacted by the department for referral to possible employment.

24.16(13) Where a claimant has demanded a wage in excess of the wages most commonly paid for suitable work the individual is seeking in the locality.

24.16(14) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

24.16(15) Where work is unduly limited because the claimant is not willing to work the number of hours necessary in the claimant's occupation.

24.16(16) Where availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

24.16(17) Where availability for work is unduly limited because the claimant is not willing to accept work in the claimant's usual occupation and has failed to establish what other types of work that can and will be performed at the wages most commonly paid in the claimant's locality.

24.16(18) Where availability for work is unduly limited because the claimant is waiting to be recalled by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

24.16(19) Where a claimant does not want to earn wages that may adversely affect receipt of social security.

24.16(20) Where availability is unduly limited because claimant is working to such a degree that removes the claimant from the labor market.

24.16(21) Reserved.

24.16(22) If the claimant is out of town for personal reasons for the major portion of the workweek and is not fulfilling reemployment requirements.

24.16(23) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

24.16(24) Failure to report any effort to find employment.

24.16(25) Failure to make an adequate work search after having been previously warned and instructed to expand the work search.

24.16(26) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.16(27) Failure to attend the major portion of the scheduled workweek for department-approved training.

24.16(28) Where the claimant spent the major portion of the period traveling while relocating.

24.16(29) The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.1A(37)*"c"* are met.

24.16(30) Where the claimant left employment prior to a scheduled layoff when claimant could have remained in employment. No disqualification may be imposed in accordance with Iowa Code section 96.5(1)*"g"* for the period subsequent to the date of the scheduled layoff if such claimant is otherwise eligible. The claimant will be disqualified for the period between the last day worked and the date of the scheduled layoff because of voluntary unemployment.

24.16(31) Where the claimant is not able to work due to personal injury.

24.16(32) Where the claimant is not able to work, is under the care of a medical practitioner, and has not been released as being able to work.

24.16(33) An individual that follows a course of action designed to discourage prospective employers from hiring the individual will be deemed to have failed to make an effort to secure work.

24.16(34) Where the work search has been deliberately falsified for the purpose of obtaining benefits, the recommended penalty is:

a. First offense—denial of benefits for six weeks.

b. Second offense—denial of benefits for nine weeks.

c. Third offense—total disqualification for the remainder of the benefit year and the department may consider filing fraud charges.

The penalties are a mere guide and not a substitute for the subjective judgment of the department.

24.16(35) Where claimant became temporarily unemployed but was unavailable for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499 and Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.1A and 96.29.

871—24.17(96) Failure to accept work and failure to apply for suitable work. A claimant's failure to accept work and failure to apply for suitable work will be removed when the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.17(1) *Bona fide offer of work.*

a. In deciding whether or not a claimant failed to accept or apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter is deemed to be sufficient as a personal contact.

b. Upon notification of a job opening for a claimant, a representative of the department will notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant will be disqualified until such time as the claimant contacts the department.

24.17(2) *Job within claimant's capabilities.*

a. To be suitable, the job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training the claimant does not already possess. As the period of unemployment lengthens, work that might originally have been unsuitable may become suitable.

b. A refusal of suitable work occurs when a claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department. The claimant will be disqualified for failure to apply for or accept an offer to work until such time as the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.17(3) *Each case decided on its own merits.* The department will investigate and determine whether the work was suitable and whether the claimant had good cause for refusal. Each case will be determined on its own merits as established by the facts. Good cause for refusing suitable work may nevertheless disqualify a claimant as being unavailable for work.

24.17(4) *Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3).* Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant will not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

24.17(5) *Bumping rights to a job.* A claimant who fails to exercise seniority rights to bump a less senior employee is eligible for benefits and the provision pertaining to the search for work is waived during a period of regular unemployment insurance benefits. This waiver of the search for work does not apply to a claimant who is receiving extended benefits.

24.17(6) *Claimant physically unable to perform job.* A medical practitioner must submit certification to support the claimant's statement that work offered is unsuitable because of the claimant's physical condition.

24.17(7) *Gainfully employed outside of area where job is offered.* Two reasons that generally constitute good cause for not accepting an offer of work are if the claimant is gainfully employed elsewhere or the claimant does not reside in the area where the job is offered.

24.17(8) *Refusal disqualification jurisdiction.* Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa Code section 96.5(3) disqualification can be imposed. It

is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

24.17(9) *Distance to new job.* Without a prior specific agreement between the employer and employee, the employee's refusal to follow the employer to a distant new job site may not be reason for a refusal disqualification.

24.17(10) *Bulletin board notice of work.* A bulletin board notice for employees to work during a plant shutdown does not constitute an offer of work by the company.

24.17(11) *Claimant discourages prospective employers.* When a claimant willfully follows a course of action designed to discourage a prospective employer from hiring such claimant, the claimant will be deemed to have refused suitable work.

24.17(12) *Claimant moved to another state.* A claimant who moves to another state will not be subject to disqualification for refusal to return to a previously held job.

24.17(13) *Employment offer from former employer.*

a. A claimant will be disqualified for refusing work with a former employer if the work offered is reasonably suitable, comparable, and within the purview of the claimant's usual occupation. The provisions of Iowa Code section 96.5(3)*"b"* control the determination of suitability of work.

b. An employment offer will not be considered suitable if the claimant had previously quit the former employer and the conditions that caused the claimant to quit are still in existence.

24.17(14) *Suitable work.* In determining what constitutes suitable work, the department will consider, among other relevant factors, the following:

a. Any risk to the health, safety and morals of the individual.

b. The individual's physical fitness.

c. Prior training.

d. Length of unemployment.

e. Prospects for securing local work by the individual.

f. The individual's customary occupation.

g. Distance from the available work.

h. Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.

i. Whether the work offered meets the percentage criteria established for suitable work that is determined by the number of weeks that have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

j. Whether the position offered is due directly to a strike, lockout, or other labor dispute.

k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.

l. Whether employment is contingent on joining or resigning from a labor organization.

24.17(15) *Disabled accessibility to job.* A job offer is not suitable if a disabled individual has no access to a building or its facilities.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(2), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.11(1), 96.16, 96.1A, and 96.29.

871—24.18(96) Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits, but the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code sections 96.5(1)*"a"* through *"i"* and 96.5(10). The following reasons for a voluntary quit are be presumed to be without good cause attributable to the employer:

24.18(1) Claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

24.18(2) Claimant moved to a different locality.

24.18(3) Claimant left to seek other employment but did not secure employment.

24.18(4) Claimant was absent for three days without giving notice to employer in violation of company rule.

24.18(5) Claimant left due to an inability to work with other employees.

24.18(6) Claimant failed to return to work upon the termination of a labor dispute.

24.18(7) Claimant left to enter military service, either voluntarily or by conscription. While in military service such claimant is considered to be on leave from employment. Voluntary quit in this context will occur when upon release from military service the claimant does not return to the claimant's employer to apply for employment within 90 days, provided the claimant provides evidence to the employer of satisfactory completion of the military service and further provided that the claimant is still qualified to perform the duties of the position.

24.18(8) Claimant left employment to accompany a spouse to a new locality. No disqualification will be imposed when Iowa Code section 96.5(1)*"b"* is applicable.

24.18(9) Claimant left to get married.

24.18(10) Claimant left without notice during a mutually agreed upon trial period of employment.

24.18(11) Claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

24.18(12) Claimant becomes incarcerated.

24.18(13) Claimant left because of lack of child care.

24.18(14) Claimant left because of a dislike of the shift worked.

24.18(15) Claimant left to enter self-employment.

24.18(16) Claimant left for compelling personal reasons and the period of absence exceeded ten working days.

24.18(17) Claimant left because of dissatisfaction with the work environment.

24.18(18) Claimant left because of a personality conflict with the supervisor.

24.18(19) Claimant left voluntarily due to family responsibilities or serious family needs.

24.18(20) Claimant left employment to accept retirement when such claimant could have continued working.

24.18(21) Claimant left to take a vacation.

24.18(22) Claimant left to go to school.

24.18(23) Claimant left rather than perform the assigned work as instructed.

24.18(24) Claimant left after being reprimanded.

24.18(25) Claimant left in anticipation of a layoff in the near future, but work was still available at the time claimant left.

24.18(26) Claimant left due to the commuting distance to the job and was aware of the distance when hired.

24.18(27) Claimant left work to keep from earning enough wages during the year to adversely affect receipt of social security.

24.18(28) Claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required.

24.18(29) Claimant left because claimant felt that the job performance was not to the satisfaction of the employer provided the employer had not requested claimant leave and continued work was available.

24.18(30) Claimant left because work was irregular due to weather conditions that were not unusual in claimant's type of employment.

24.18(31) Claimant left because of illness or injury that was not caused or aggravated by the employment or pregnancy and failed to:

a. Obtain the advice of a licensed and practicing physician or physician assistant;

b. Obtain certification of release for work from a licensed and practicing physician or physician assistant;

c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician or physician assistant; or

d. Fully recover so that the claimant could perform all of the duties of the job.

24.18(32) Where claimant maintained that the claimant left due to an illness or injury that was caused or aggravated by the employment but the employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

24.18(33) Where claimant gives the employer notice of an intention to resign and the employer accepted such resignation. This rule also applies to a claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

24.18(34) Where claimant gave the employer an advance notice of resignation, causing the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation. Benefits will be denied effective the proposed date of resignation.

24.18(35) Where claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.6(2), 96.16, and 96.1A.

871—24.19(96) Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. In addition to the reasons established in Iowa Code section 96.5(1), the following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.19(1) An employer's willful breach of contract of hire is not a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and may involve changes in working hours, shifts, remuneration, location of employment, or drastic modification in type of work. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

24.19(2) Claimant left due to unsafe working conditions.

24.19(3) Claimant left due to unlawful working conditions.

24.19(4) Claimant left due to intolerable or detrimental working conditions.

24.19(5) Claimant was laid off by the employer for being pregnant; however, availability must still be determined.

24.19(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. For purposes of Iowa Code section 96.5(1)*"d,"* recovery is defined as the ability of the claimant to perform all the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment that caused or aggravated the illness, injury, allergy, or disease to the employee that made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph, an individual must present competent evidence showing adequate health reasons to justify termination, before quitting have informed the employer of the work-related health problem and informed the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work that is not injurious to the claimant's health and for which the claimant must remain available.

24.19(7) For purposes of Iowa Code section 96.5(1)*"c,"* immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family are related by blood or by marriage.

24.19(8) For purposes of Iowa Code section 96.5(1)*"e,"* family is defined as wife, husband, children, parents, grandparents, grandchildren, foster children, brothers, brothers-in-law, sisters, sisters-in-law, aunts, uncles or corresponding relatives of the classified employee's spouse or other relatives of the classified employee or spouse residing in the classified employee's immediate household.

24.19(9) A claimant who underwent a mandatory retirement as of a certain age because of company policy or in accordance with an agreement between the employer and union.

24.19(10) The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

24.19(11) When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee is eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

24.19(12) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date is deemed to be unavailable for work until the future separation date designated by the employer. After the employer-designated date, the separation will be considered a layoff.

24.19(13) For purposes of Iowa Code section 96.5(1)*"g,"* good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business, blinding snowstorm, telephone lines down, employer closed for vacation, hospitalization of the claimant, and other substantial reasons.

Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications.

24.19(14) For purposes of Iowa Code section 96.5(1)*"f,"* working days means the normal days in which the employer is open for business.

24.19(15) Separation due to incarceration.

a. The claimant is eligible for benefits if the department finds that all of the following conditions have been met:

(1) The employer was notified by the claimant prior to the absence;

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the claimant was found not guilty of all criminal charges relating to the incarceration;

(3) The claimant reported back to the employer within two working days of the release from incarceration and offered services to the employer; and

(4) The employer rejected the offer of services.

b. If the claimant fails to satisfy the requirements of subparagraph 24.19(17)*"a"*(1), the claimant is considered to have voluntarily quit the employment if the claimant was absent for three working days or more under subrule 24.18(4). If the absence was two days or less, the separation is considered a discharge under rule 871—24.24(96). If all of the conditions of subparagraphs 24.19(17)*"a"*(2), 24.19(17)*"a"*(3) and 24.19(17)*"a"*(4) are not satisfied, the separation is considered a discharge under rule 871—24.24(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Irving v. Employment Appeal Board*, 883 N.W.2d 179.

24.19(16) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work is not construed as a voluntary leaving of employment. The issue

of a refusal of an offer of suitable will shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 871—24.17(96) are controlling in the determination of suitability of work. However, this subrule does not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) that denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee is considered to have voluntarily quit employment.

24.19(17) The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

24.19(18) When a claimant was compelled to resign when given the choice of resigning or being discharged, it is not considered a voluntary leaving.

24.19(19) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. This subrule does not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) that denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees are considered to have voluntarily quit employment.

24.19(20) The claimant left work because the type of work was misrepresented at the time of acceptance of the work assignment.

24.19(21) A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service is entitled to a leave of absence during the period of such duty. The employer will restore the person to the position held prior to such leave of absence, or employ the person in a similar position provided that the person provides evidence to the employer of satisfactory completion of the training or duty and further provided that the person remains qualified to perform the duties of the position.

24.19(22) The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account will immediately become chargeable for the benefits paid that are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification will be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.1A.

871—24.20(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and who has not requalified for benefits following the voluntary quit of part-time employment, but is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, will not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer that was voluntarily quit will be notified that benefit payments will not be made that are based on the wages paid by the part-time employer and benefit charges will not be assessed against the part-time employer's account. However, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment will be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer will be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)*"g."*

871—24.21(96) Voluntary quit requalifications and previously adjudicated voluntary quit issues.

24.21(1) A claimant is eligible for benefits even though having voluntarily left employment, if after leaving the employment, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.21(2) The claimant is eligible for benefits even though having been previously disqualified from benefits due to voluntary quit, if, after the disqualification, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.21(3) The claimant will be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be insured work and does not include self-employment.

24.21(4) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

24.21(5) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the administrative law judge and such decision has become final.

24.21(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the employment appeal board and such decision has become final.

This rule is intended to implement Iowa Code section 96.5(1)*"a."*

871—24.22(96) Business closing.

24.22(1) Whenever an employer at which the individual was last employed and is laid off goes out of business, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period, which may increase the maximum benefit amount up to 26 times the weekly benefit amount or one-half of the total base period wages, whichever is less. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because the employer goes out of business within the same benefit year. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the claim for benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

24.22(2) Going out of business is when an employer closes its door and ceases to function as a business. An employer is not considered to have gone out of business if it sells or otherwise transfers the business to another employer that continues to operate the business.

24.22(3) When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business, the representative completes a verification of business closing form and refers it to the field audit section for verification. Upon return of the form from the field audit section, a representative will issue the appropriate decisions to all claimants who requested that their unemployment insurance claim be redetermined as a business closing.

871—24.23(96) Subsequent benefit year condition.

24.23(1) The claimant must have been paid benefits on a previous claim.

24.23(2) Qualifications for a second benefit year are established in Iowa Code section 96.4(4) *"c."* Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes.

24.23(3) Employment for a railroad under the Railroad Unemployment Insurance Act is insured work.

24.23(4) Disqualification for lack of eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work will be removed upon verification that the claimant worked in and received wages for insured work totaling eight times the claimant's weekly benefit amount from the previous benefit year during or after the previous benefit year.

This rule is intended to implement Iowa Code section 96.4(4).

871—24.24(96) Discharge for misconduct.

24.24(1) *Definition.*

a. "Misconduct" is defined in Iowa Code section 96.5(2)*"d."*

b. Back pay awards are not considered when calculating wages for qualification under Iowa Code section 96.5(2)*"a."*

24.24(2) *Gross misconduct.*

a. "Gross misconduct" is defined in Iowa Code section 96.5(2)*"c."*

b. An indictable offense means a common law or statutory offense presented on indictment or on county attorney's information, and includes all felonies and all indictable misdemeanors punishable by a fine of more than $500 or by imprisonment in the county jail for more than 30 days.

c. If gross misconduct is established, the department will cancel the individual's wage credits earned, prior to the date of discharge, from all employers regardless of when the act occurred during the benefit year.

24.24(3) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence is not sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct is resolved.

24.24(4) *Trial period.* A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work are not issues of misconduct.

24.24(5) *False work application.* It is an act of misconduct when a willfully and deliberately false statement, made on a work application, may or does result in endangering the health, safety or morals of the applicant or others, result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy.

24.24(6) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the claimant's duty to the employer and is considered misconduct except for illness or other reasonable grounds so long as properly reported to the employer.

24.24(7) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

24.24(8) *Suspension or disciplinary layoff.* Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cosper vs. Iowa Department of Job Service and Blue Cross of Iowa*.

871—24.25(96) Labor disputes.

24.25(1) *Definition.* As used in sections 96.5(3)*"b"*(1) and 96.5(4), the term "labor dispute" shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to

arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual is disqualified for benefits if unemployment is due to a labor dispute.

24.25(2) *Initial requirements—workforce development center.*

a. As soon as a workforce development center has knowledge of a labor dispute or work stoppage in its administrative area, a report the Labor Dispute Report will be sent to the administrative office of the department advising of the labor dispute or work stoppage.

b. If the labor dispute or work stoppage is terminated before the report is transmitted, the information concerning the termination of the dispute and the date of the worker's return to work must also be entered on the Labor Dispute Report.

c. When the labor dispute or work stoppage is terminated after the filing of the initial Form 68-0535, the department must be notified of the termination and return to work dates.

d. In those instances where an association represents a group of employers, the report will contain the names and addresses of the employers who are involved in the labor dispute, as well as the name and address of the association and the name of the association official who can furnish information about the work stoppage.

e. In taking initial claims in which there is a labor dispute, the workforce development center will process an initial application for unemployment, Application for Job Placement Assistance and/or Job Insurance, in the normal manner, which will include the union name and local union number.

f. If there is a work stoppage at the premises of an employer and it is a known fact that there has not been a union and that at present there is no union representation nor any attempt by a union to organize the workers of the plant, a statement will be taken from each individual claiming benefits. Each individual's statement would become a part of the evidence submitted to the administrative office of the department of workforce development.

g. Statements from each individual claiming benefits are not required on the labor dispute issue whenever there is union representation even though some of the individuals may not be union members.

h. When there is a termination of the work stoppage, or if the issues have not been resolved and all workers returned to work, a report must be made to the legal counsel, unemployment insurance services division. The report will include the:

(1) Date on which an agreement was reached on the issues that caused the work stoppage.

(2) Date on which the workers returned to work, or a schedule as to how the workers will return to work.

i. The requirements in subrules 24.25(1) and 24.25(2) will cover the establishment and termination reports of the work stoppage and give the information necessary for the benefits bureau to investigate the work stoppage when claims are filed on which a protest is made that the claimant is involved in a work stoppage.

j. During the period of a labor dispute, the claims involved in the labor dispute are processed as though no separation from the employer had occurred. Therefore, if an individual is still unemployed after the termination of the labor dispute, such individual has either been laid off, voluntarily left, or has been discharged from employment, and an additional claim will be taken if the individual continues in claim status.

k. When the employer or the union requests advice and information pertaining to what action should be taken in regard to the labor dispute, the workforce development center, at that time, should obtain all the information possible from the requester for inclusion in the labor dispute report to the unemployment insurance services division.

l. The employer will receive separate notices of claim filing for each claimant and shall make any protest in the appropriate section on the Notice of Claim. The employer will receive a copy of the decision that may be appealed.

m. The employer will use the Notice of Separation or Refusal of Work to report separations from work by employees for reasons of voluntary leaving, misconduct and job refusal, but not labor disputes.

24.25(3) *Initial determination.* In any case in which the payment or denial of benefits will be determined by the provisions of Iowa Code section 96.5(4), the representative of the unemployment insurance services division will promptly review the evidence submitted and issue a decision to interested parties, who have ten days from the date of mailing the decision to the last known address of record to appeal the decision.

871—24.26(96) Labor dispute—policy.

24.26(1) Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

24.26(2) The relationship between employer and employee continues during the period of the labor dispute unless severed by the employer or employee.

a. If the relationship is severed by the employer, Iowa Code section 96.5(2) governs.

b. If the relationship is severed by the employee, Iowa Code section 96.5(1) governs.

24.26(3) An individual who is unemployed because of a labor dispute and accepts employment elsewhere during the period of the labor dispute must return to the previous employer when said labor dispute is settled or be subject to a determination on the issue of voluntary leaving.

24.26(4) Any individual unemployed because of failure or refusal to cross a picket line during a labor dispute is considered as involved in such labor dispute.

24.26(5) Appeals of the department's initial determination of a labor dispute issue are heard by an administrative law judge, whose decision may be appealed to the employment appeal board.

24.26(6) An individual not involved in or participating in a labor dispute who failed to report to work because of a picket line shall be deemed to have voluntarily left employment. However, if the individual was subjected to hostility or violence in an attempt to cross a picket line, then the individual will be held to have involuntarily left employment.

a. The division presumes that any strike or lockout is being conducted in a lawful manner unless there is evidence to the contrary. The division presumes that any picketing is being conducted in a peaceful manner and that ingress or egress to the employer's facility is not being unlawfully impeded.

b. If an injunction request for actual or threatened violence, unlawful impedance of ingress or egress, or other unlawful conduct is denied due to such conduct not being established, the division presumes that the picket line is peaceful absent evidence to the contrary.

c. If an injunction is obtained, the division presumes the picket line is peaceful as of the date the injunction is issued unless evidence is introduced that proves the contrary proposition.

24.26(7) A lockout is not a labor dispute if the claimant is willing to continue working under the preexisting terms and conditions of the expired collective bargaining agreement for a reasonable period of time while a new collective bargaining agreement is negotiated. A lockout is a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get more desirable terms for the employer.

a. The test for determining whether a stoppage of work is a lockout or labor dispute is to determine the final cause and the party ultimately responsible for the work stoppage. If the employees have offered to continue working for a reasonable period of time under the preexisting terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations and the employer refuses to maintain the status quo by extending the expired contract, the resulting work stoppage constitutes a lockout, and the claimants are not disqualified because of a labor dispute.

b. A cessation of employment by the employer is not a lockout if:

(1) The stoppage of work is in the same facility or another facility of the employer and the claimant is directly involved in the labor dispute and the collective bargaining negotiations will directly affect the claimant's condition of employment, or

(2) The claimant or the recognized collective bargaining agent declines an offer from the employer to extend the expired collective bargaining agreement while negotiations continue for a reasonable period of time taking into consideration the nature of the employer's business, or

(3) The employer can demonstrate that its refusal to allow employees to continue working under the terms and conditions of the expired collective bargaining agreement is due to a compelling reason of such degree that the extension of the contract would be unreasonable under the circumstances.

24.26(8) A labor dispute involves a stoppage of work at the plant or establishment. If there is no stoppage of work, the individual who leaves employment is deemed to have voluntarily quit.

24.26(9) When individuals, not as a group, union, or under union direction or suggestion but individually, left their work voluntarily in protest against the discharge of a fellow employee by their employer, in an unauthorized strike, it is held to be a voluntary quit.

24.26(10) Employment offered by an employer involved in a labor dispute or an employer who becomes involved in a labor dispute prior to acceptance by the claimant is considered:

a. Not suitable if the offer is made to a person who would be a new employee or a former employee who was laid off before the labor dispute and the vacancy was created by the strike, lockout, or other labor dispute.

b. Suitable if the offer was made to a former employee who was previously laid off, provided the position offered is not vacant because of the strike, lockout, or other labor dispute and the provisions of section 96.5(4) will apply.

c. Suitable if the offer is made to a new employee who was not previously laid off by the same employer, and the vacancy was not created by a labor dispute.

24.26(11) Other employment accepted during periods of labor disputes does not free the claimant from the labor dispute section of the Iowa employment security law unless the claimant severs the relationship with the employer and obtains bona fide employment elsewhere.

This rule is intended to implement Iowa Code sections 96.5(3) and 96.5(4).

871—24.27(96) Date of submission and extension of time for payments and notices.

24.27(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division will be considered received by and filed with the division:

a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.27(1)*"a"* and *"b,"* on the date it is received by the division.

24.27(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period will be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division will designate personnel who are to decide whether an extension of time will be granted.

c. No submission will be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division will issue an appealable decision to the interested party.

24.27(3) Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division will be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last-known address. The date mailed is presumed to be the date of the document, unless otherwise indicated by the facts.

24.27(4) Electronic delivery. Any notice, report form, determination, decision, or other document sent by the division via the U.S. Department of Labor state information data exchange system is considered as having been given to the party to whom it is directed on the date it is submitted on the system. The date submitted is presumed to be the date of the document, unless otherwise indicated by the facts.

871—24.28(96) Interstate benefits.

24.28(1) An interstate claimant is an individual who claims benefits under the unemployment insurance law of one or more liable states. Interstate benefits are payable under the plan approved by the national association of state workforce agencies to unemployed individuals who do not reside in the state(s) in which wage credits were earned.

24.28(2) The division shall determine unemployment benefit claims for interstate claimants in accordance with applicable state and federal law.

871—24.29(96) Payment of benefits to interstate claimants.

24.29(1) Section 96.20 of the employment security law of Iowa authorizes the department to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both. In conformity with this section, the department of workforce development prescribes:

a. Applicability. This regulation shall govern the department in its administrative cooperation with other states.

b. Definitions. In addition to terms defined in 17.1, the following definitions apply to this rule unless the context clearly requires otherwise:

(1) "Interstate benefit payment plan." The plan approved by the national association of state workforce agencies under which benefits shall be payable to unemployed individuals who do not reside in the state (or states) in which benefit credits have been accumulated.

(2) "Interstate claimant." This is an individual who claims benefits under the unemployment insurance law of one or more liable states. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such a claimant in a specified area.

(3) "State." This includes the District of Columbia, Puerto Rico, the Virgin Islands and Canada.

c. Registration for work.

(1) Each interstate claimant will be registered for work as legally required by the agent state. This registration will be deemed to meet the registration requirements of the liable state.

(2) Each agent state will report to the respective liable state whether each interstate claimant meets the registration requirements of the agent state.

d. Benefit rights of interstate claimants.

(1) If a claimant files a claim against any state, and it is determined that the claimant has available benefit credits in that state, then claims will be filed only against that state as long as benefit credits are available there. Thereafter, the claimant may file claims against any other state having available benefit credits.

(2) For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction. The department will respect the prior adjudication of a liable state

if the department is made aware of the decision and will apply the Iowa requalification criteria, unless the claimant has requalified pursuant to the liable state's requalification criteria.

(3) The effective date of an interstate claim is the Sunday of the week the claim was filed, unless proof is obtained from another state that the claimant should have filed in Iowa.

e. Claim for benefits. Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms or by using the procedures provided by the liable state and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

f. Determination of claims.

(1) In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim unless the liable state has a procedure for taking out-of-state claims.

g. Appellate procedure.

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified representative of the agent state.

24.29(2) Extended benefits interstate claims. When extended benefits are in effect and a claimant is filing for extended benefits, an eligible individual shall be limited to a maximum of two weeks of the extended benefit entitlement if the individual moves from this state, before or during an extended benefit period triggered by this state's "on" indicator, to another state in which an extended benefit period is not in effect.

This rule is intended to implement Iowa Code sections 96.6(1) and 96.29(3).

871—24.30(96) Combined wage claim.

24.30(1) Purpose of plan. The combined wage program enables an unemployed worker with covered employment or wages in more than one state to combine all employment and wages in one state to qualify for benefits or to receive increased benefits.

a. Each state will cooperate with every other state by implementing these uniform combined wage procedures, rules and regulations.

b. The benefit year, base period, qualifying wages, benefit rate, and duration of benefits under the unemployment compensation law of the agent state is applicable to a combined wage claimant.

c. The rights of the individual under the combined wage claim plan are determined by the paying state after the combining of all wages available from the liable states; however, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. The department will respect the prior adjudication of the transferring state if the department is aware of the decision and will apply the Iowa requalification criteria, unless the individual has requalified pursuant to the liable state's requalification criteria.

d. All other provisions of the unemployment compensation laws and rules of the state agency of the paying state will be applied to the combined wage claim.

e. The paying state is the state in which the claim is filed unless the individual does not qualify after the transfer has been completed or the claimant is a commuter, meaning that the person travels on a daily or regular basis from the state of residence to a separate state where the person works.

24.30(2) Exception to combining wage credits. Wages and employment are not transferable to the paying state if:

a. Any employment and wages have been transferred to any other paying state and not returned unused,

b. Wages have been used by the transferring state as the basis of a monetary determination that established a benefit year, and

c. Any employment and wages have been canceled or are unavailable due to a transferring state determination made prior to the request for transfer.

24.30(3) The claimant will be told that if there was a previous election to file a combined wage claim, the claimant may withdraw the combined wage claim any time, up to the date the paying state's monetary determination becomes final. However, if the claimant withdraws a combined wage claim and benefits have been paid, the claimant will be required to repay any such benefits. This repayment may be done electronically, by cash, by check, by money order, or by an authorization to the state(s) from which such claimant next claims benefits to reimburse the combined wage paying state for any benefits that said claimant will be paid.

871—24.31(96) Department-approved training. Department-approved training allows claimants to return to the labor market after attending vocational training while being paid unemployment insurance benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. It includes technical, skill-based, or job readiness training intended for pursuing a career. Upon departmental approval, the claimant is exempt from the work search requirement for continued benefit eligibility benefits. To be eligible for department-approved training programs and to maintain continuing participation therein, the individual must meet the following requirements:

24.31(1) The claimant applies to the department demonstrating:

a. The educational establishment at which the claimant would receive training;

b. The estimated time required for such training;

c. The date the training will be complete or the degree obtained;

d. The occupation the training is allowing the claimant to maintain or pursue; and

e. The training plan, indicating the requirements needed to complete the certification or degree.

24.31(2) A claimant may receive unemployment insurance while attending a training course approved by the department if:

a. The educational establishment is a college, university or technical training institution;

b. The training is completed 104 weeks or less from the start date; and

c. The individual is enrolled and attending as a full-time student, as defined by the institution.

While attending the approved training course, the claimant need not be available for work or actively seeking work, except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training, to continue eligibility for unemployment insurance, the claimant may place no restriction on employability. The claimant must be able to work, available for work, and actively searching for work. The claimant may be subject to disqualification for any refusal of work without good cause after completing training.

24.31(3) The claimant must show satisfactory attendance and progress in the training course to be considered for a subsequent approval.

871—24.32(96) Training extension benefits.

24.32(1) Training extension benefits provide continued benefit eligibility, allowing an individual to pursue a training program for entry into a high-demand or high-technology occupation. Training extension benefits are available to an individual who voluntarily quit with good cause attributable to the employer or who was laid off or from full-time employment in a declining occupation or who was involuntarily separated from full-time employment due to a permanent reduction of operations.

24.32(2) The weekly benefit amount is pursuant to the same terms and conditions as regular unemployment benefits and the benefits are for a maximum of 26 times the weekly benefit amount of the claim that resulted in eligibility. Contributory and reimbursable employers will be relieved of charges for training extension benefits.

24.32(3) Enrollment must be full-time, as defined by the training institution, and courses must be designed to prepare the individual for a high-demand or high-technology occupation. The department will make available on its website and at workforce centers a list of high-demand, high-technology, and declining occupations.

a. High-technology occupations include life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, environmental technology, and technologically advanced green jobs. A high-technology occupation is one that requires a high degree of training in the sciences, engineering, or other advanced learning area and that has work opportunities available in the labor market area or the state of Iowa.

b. A high-demand occupation means an occupation in a labor market area or the state of Iowa as a whole in which the department determines that work opportunities are available.

c. A declining occupation has a lack of sufficient current demand in the individual's labor market area or the state of Iowa for the occupational skills possessed by the individual, and the lack of employment opportunities is expected to continue for an extended period of time.

d. A declining occupation includes an occupation for which there is a seasonal variation in demand in the labor market or the state of Iowa, and the individual has no other skill for which there is a current demand.

e. A declining or high-demand occupation will be determined by using Iowa labor market information for each region in the state.

24.32(4) The application for training benefits must be received within 30 days after state or federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program for training extension benefit eligibility to continue.

24.32(5) Training benefits will cease to be available if the training is completed, the individual quits the training course, the individual exhausts the training extension maximum benefit amount, or the individual fails to make satisfactory progress. Benefits will cease no later than the end of the benefit year in which the individual became eligible for the benefits. Individuals must file and receive benefits under any federal or state unemployment insurance benefit program until the benefits have been exhausted in order to maintain eligibility for training extension benefits.

This rule is intended to implement Iowa Code section 96.3(5).

871—24.33(96) Retention of DHS referral form.

871—24.34(96) Trade Act of 1974. Unemployment benefits payable to claimants under the Trade Act of 1974 (P.L. 93-618) are determined in accordance with the rules of the United States department of labor as published in the Code of Federal Regulations, Chapter 29, Parts 70 and 91. The Trade Act of 1974 is designed to pay unemployment benefits to workers who become unemployed due to foreign production of goods replacing domestic production.

871—24.35(96) Extended benefits.

24.35(1) *Purpose.* Extended benefits are defined by Iowa Code section 96.1A(20).

24.35(2) *Determination of when extended benefits are paid.*

a. When paid. The state "on" indicator, as defined by Iowa Code section 96.1A(29), determines when extended benefits are paid in this state.

b. When not paid. The state "off" indicator, as defined by Iowa Code section 96.1A(28), determines when extended benefits are not paid in this state.

c. Period of payment. The extended benefit period is defined in Iowa Code section 96.1A(19).

d. Rate of insured unemployment. More information can be found in Iowa Code section 96.1A(31).

24.35(3) *Notice of the beginning and ending of an extended benefit period.*

a. Notice to individuals. The department will notify individuals of:

(1) The beginning of an extended benefit period. The notice of potential entitlement to extended benefits is sent to each individual who has exhausted all rights to regular benefits either prior to the beginning of, or during, the extended benefit period and who has a benefit year that will not end prior to the beginning of the extended benefit.

(2) The ending of an extended benefit period. The notice of termination of entitlement to extended benefits is sent to each individual who is currently filing a claim for extended benefits.

b. Reserved.

24.35(4) *Amount and duration of extended benefits.*

a. Eligibility period. The eligibility period is defined in Iowa Code section 96.29(6).

b. Applicable benefit year. The applicable benefit year includes the period of one year from the date that an individual files a valid claim for benefits and any weeks following this one-year period in which the individual's eligibility period for extended benefits has not expired and the individual is not able to establish a second benefit year for regular benefits.

24.35(5) *Eligibility requirements for extended benefits.* The individual is required to actively seek, apply for or accept suitable work as per the current extended benefits proclamation.

24.35(6) Overpayment of extended benefits.

871—24.36(96) Disaster benefits. Unemployment benefits payable under the Disaster Relief Act of 1974, will be determined in accordance with the rules of the United States Department of Labor and published in the Code of Federal Regulations, Title 20, Chapter V, Parts 625 and 650.

871—24.37(96) UCFE claims. Benefits under the Federal Employer's Compensation Act. Unemployment benefits for civilian federal employees are determined in accordance with the applicable state law and rules as well as the rules of the United States Department of Labor published in the Code of Federal Regulations, Title 20, Chapter V, Parts 609, 615, 616, and 650. These benefits are payable under the Federal Employees Compensation Account, 5 U.S.C. 8509, and are based on wages earned by civilians in covered federal employment.

871—24.38(96) UCX claims.

24.38(1) Unemployment benefits for ex-military personnel, in addition to being determined in accordance with applicable Iowa law and rules, will be determined in substantial compliance with the rules and guidelines of the United States Department of Labor published in the Code of Federal Regulations, Title 20, Chapter V, Parts 614 and 650.

24.38(2) These benefits are payable under the Ex-service Member's Unemployment Compensation Act of 1958, 5 U.S.C. 8521-8525.

871—24.39(96) Temporary extended unemployment compensation.

24.39(1) Overpayments will be offset up to and including 100 percent of the federal extended unemployment compensation benefit payment.

24.39(2) Waiver of overpayments.

a. Individuals who have received amounts of extended unemployment compensation to which they were not entitled are required to repay the amounts of such extended unemployment compensation except that the state repayment may be waived if the department determines that:

(1) The payment of such extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors are considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and that was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors are considered:

(1) Whether the overpayment was the result of a decision on appeal;

(2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and

(3) Whether recovery of the overpayment will cause financial hardship to the individual.

This rule is intended to implement Iowa Code sections 96.11 and 96.29.

871—24.40(96) School definitions.

24.40(1) Educational institution is defined in Iowa Code section 96.1A(12).

24.40(2) Educational service is defined in Iowa Code section 96.4(5)*"d."*

24.40(3) Employment definitions.

a. Professional employees including educational service agency employees means persons who are employed in an instructional, research or principal administrative capacity as explained below:

(1) Instructional: Services performed for an educational institution that consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services that consist of directing or supervising the instructional activities of others; or services that consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(2) Research: Services performed for an educational institution that consist of careful and systematic study and investigation in a field of science and knowledge, undertaken to establish facts or principles. The work performed is in a predominantly intellectual field or artistic endeavor that is varied in character and requiring the constant exercise of discretion and judgment in performance. The work further requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

(3) Principal administrative: Services performed for an educational institution that consist of managing the educational institution or one of its major divisions or departments. Such services include the responsibility for establishing and administering policies, rules, and regulations that have major impact on the overall operations and functions of the educational institutions or one of its major divisions or departments. Work and activities are performed under general direction and broad objectives and missions, with the authority to determine goals and the techniques and methods of operations of the educational institution or one of its major divisions or departments. The duties performed by the individual rather than the title held should determine whether the prohibition applies.

b. Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in an instructional, research, or principal administrative capacity.

24.40(4) Institution of higher education is defined in Iowa Code section 96.1A(25).

24.40(5) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

24.40(6) School duration period.

a. "Academic year" is defined as that period of time that school personnel are obligated by contract to render services to the educational institution during the school year.

b. "Term" is defined as either of the two periods into which the yearly period of instruction is normally divided, commonly referred to as a semester. If the educational institution operates on a quarterly basis, then term means the same as a quarter period. If the educational institution operates on a trimester basis, then term means the same as a trimester period or any other division in a school year during which instruction is regularly given to students.

c. Twelve-month employment. School employees that perform services for educational institutions 12 months of a calendar year or years.

24.40(7) The term "established and customary" vacation period or holiday recess involved in this provision includes those scheduled at Christmas and in the spring, when those vacation periods or recesses occur within a term.

24.40(8) Between terms or academic years denial means any week of unemployment that begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such terms or academic years.

871—24.41(96) Determining eligibility of school claims after employer protest.

24.41(1) Claim filed. When a claim has been filed by an employee of an educational institution, the department sends a Notice of Claim to the educational institution. To protest the claim, the educational institution returns the notice to the department, including a statement as to whether or not the individual who filed a claim had been given reasonable assurance for the ensuing academic year or term. The statement should include the date and method of such notification. A copy of the notification may be attached to the Notice of Claim.

24.41(2) If the statement from the school indicates that there is no reasonable assurance of the employee returning to work for the ensuing academic year or term, the claim will be allowed, subject to meeting all other eligibility requirements. However, if an educational institution submits a statement or the claimant furnishes information concerning a reasonable assurance of school employment, the employee is subject to a denial of benefits. If the fact-finding results in a disqualification, the effective starting date of the disqualification is determined as follows:

a. No earlier than the effective starting date of the claim. If the job offer was prior to the beginning date of the claim and the claimant refuses the offer, the issue is adjudicated as a voluntary quit.

b. The Sunday of the week in which the job was offered under any of the following conditions:

(1) The employer protest was made within ten-day protest period.

(2) The department was notified within ten days of the date of the offer.

(3) The claimant was in a reporting status on a claim for unemployment insurance at the time the offer was made and the claimant failed to notify the department of the offer.

c. The Sunday of the week in which the claimant or employer notified this department of the offer unless the offer was prior to the week that the department was notified of the offer and the claimant was in reporting status on a claim for unemployment insurance at that time. In this situation,

the effective starting date of disqualification will be the Sunday of the week in which the job offer was made.

d. The Sunday of the week in which the employer notified the department of the offer to the claimant. A refusal to accept the offer of employment is adjudicated as a voluntary quit section.

24.41(3) Professional employee. Unemployment insurance payments that are based on school employment shall not be paid to a professional employee for any week of unemployment that begins between two successive academic years, between regular terms, or during a period of paid sabbatical leave if the individual has a contract or reasonable assurance to perform services in any such capacity for any educational institution for both such academic years or terms. However, unemployment insurance payments may be made that are based on non-school-related wage credits pursuant to subrule 24.41(6).

24.41(4) Nonprofessional employee.

a. Unemployment insurance payments that are based on school employment may not be paid to a nonprofessional employee for any week of unemployment that begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.41(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to paragraph 24.2(1)*"e."*

24.41(5) An educational institution employee who performs services on a 12-month, year-round basis whose employment is terminated through layoff or reduction in force prior to the completion of the 12-month period, is eligible for benefits and may not be disqualified under the provisions of Iowa Code section 96.4(5). An offer of reemployment to the 12-month, year-round employee for the succeeding academic year or term will be adjudicated under Iowa Code section 96.5(3) regarding offers of suitable work and no disqualification may be imposed prior to the week in which the employment is scheduled to commence.

24.41(6) Benefits based on services performed in an educational institution for periods between academic years or terms that are denied to an individual will result in the denial of the use of such wage credits. However, if sufficient non-school wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

24.41(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes, then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

a. A nonprofit organization that has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs that have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

b. A head start program that is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

24.41(8) Wages earned and payment deferred. Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a "when earned" basis rather than on a "when paid" basis. Deferred wages currently paid that are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9)*"b"* and paragraph 24.13(2)*"o."*

24.41(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments may not be paid to any individual for any week that commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. The provision of subrule 24.52(6) could also apply in this situation.

24.41(10) Substitute teachers.

a. Substitute teachers are professional employees and subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subparagraph 24.15(2)*"i"*(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not deemed unemployed persons pursuant to subparagraph 24.15(2) *"i"*(3).

d. Substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subparagraph 24.15(2)*"i"*(3) if they are:

(1) Able and available for work,

(2) Making an earnest and active search for work each week,

(3) Placing no restrictions on their employability, and

(4) Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.19(19).

24.41(11) Declination of new contract or reasonable assurance.

a. The school employee who is not employed on a 12-month, year-round basis and who fails or refuses to accept a contract or reasonable assurance of employment in the succeeding academic term or year will have the separation adjudicated as a voluntary quit.

b. This subrule also applies to substitute teachers who fail or refuse to accept a contract or reasonable assurance of employment in the succeeding academic term or year pursuant to subrules 24.19(19) and 24.19(22).

24.41(12) School employees who are not offered a contract or reasonable assurance of employment in the succeeding academic term or year are eligible for benefits if all other eligibility conditions are met. However, school employees who subsequently receive a contract or reasonable assurance of employment for the following term or year will be disqualified under the "between terms denial" provision.

24.41(13) Continuing supplemental (part-time) school employment after loss of non-school employment. All employers, including employers of part-time workers are notified of the filing of a claim. The school employer who continues to furnish part-time employment to the claimant may make a protest on the basis that the individual is still employed at the part-time employment and request removal of any charges to the part-time employer account pursuant to Iowa Code section 96.7(3) *"a"*(2).

871—24.42(96) Noncovered school-related employment.

24.42(1) More information can be found in rule 871—23.20(96). However, wages earned by an individual who is a full-time employee for a school whose academic pursuit is incidental to the full-time employment may be used for claim and benefit purposes.

24.42(2) More information can be found in rule 871—23.21(96).

871—24.43(96) Church school coverage. Schools affiliated with a church, as per 871—subrule 16.27(7), are exempt from coverage but may volunteer coverage by request to the department. Schools not affiliated with a church are covered employers with insured work.

871—24.44(96) Athletes—disqualifications. "Athletes," as used in Iowa Code section 96.5(9), applies to professional athletes. A professional athlete is an individual whose occupation is participating in athletic or sporting events for wages. A semiprofessional athlete is within the scope of Iowa Code section 96.5(9), if such sports services are performed for compensation in covered wages. Auxiliary personnel, such as coaches, trainers, etc., are not considered professional athletes.

24.44(1) As used in Iowa Code section 96.5(9), "services performed by an individual, substantially all of which consist of participating in sports or athletic events" means all services performed by an individual in any subject employment during the individual's base year if such individual was engaged in remunerative sports or athletic events for 90 percent or more of the total time spent in subject employment during such base year.

24.44(2) As used in Iowa Code section 96.5(9), "participating in sports or athletic events" means any services performed in an athletic activity by an individual as:

a. A regular player or team member.

b. An alternate player or team member.

c. An individual in training to become a regular player or team member.

d. An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

24.44(3) The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons are determined by the department after considering custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

24.44(4) For the purposes of Iowa Code section 96.5(9), a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

a. The individual has an express or implied multiyear contract that extends into the subsequent sport season, or,

b. The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and

c. There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season, and

d. The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

24.44(5) Benefits that will be paid with respect to weeks of unemployment during a sports season shall be based on all wage credits of the individual. Wage credits would include those earned in sports as well as in other employment covered by an employment security law. With respect to weeks of unemployment that begin during a period between sports seasons (or similar periods) no benefits are payable on the basis of any athletic or nonathletic wages if substantially all (more information can be found in subrule 24.57(1)) of the services performed by the individual during the base period were in sports or athletic events.

24.44(6) When a professional athlete is denied benefits because there is a reasonable assurance that the individual will again perform services as a professional athlete in the next ensuing season but the assurance fails to materialize, the denial of benefits is effective until the date established that the assurance is ineffective. Following the ineffective date, benefits can be paid if the individual is otherwise eligible. If an assurance given to an individual is found to be not a bona fide assurance, benefits are payable if the individual is otherwise eligible.

24.44(7) Benefits will be paid with respect to weeks of unemployment between sports seasons (or similar periods) based on wage credits of the individual, paid in other employment covered by employment security law except those in sports or athletic events or training, or preparing to so participate.

24.44(8) Athletes—denial of benefits. An individual (athlete) will be denied benefits between seasons based on services performed by such individual (athlete).

This rule is intended to implement Iowa Code section 96.5(9).

871—24.45(96) Voluntary shared work. The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of all employees in an affected unit and those employees will receive a portion of their regular unemployment insurance benefits. The program is designed to reduce unemployment and stabilize the workforce. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer will administer the program in cooperation with the department. Participating employees will complete the employee information form and claim for benefits and return it to the employer, who will submit it to the department. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and unemployment insurance overpayments will be offset as they are for regular unemployment insurance benefits.

24.45(1) The duration of a shared work plan is between 4 and 52 weeks. Any requests for subsequent plans will be reviewed by the department.

24.45(2) Employment is considered seasonal if the production or service provided by the employment is curtailed by at least 45 percent or ceases for a four-month or longer period on an annual basis due to climatic conditions.

24.45(3) A plan that has been approved may be modified at the discretion of the department. An employer seeking modification of an approved plan must demonstrate good cause as to why the modification is necessary and that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

24.45(4) The department retains discretion to approve, deny, or revoke an approved plan.

24.45(5) Employer requirements.

a. For each week that a voluntary shared work employer has an active plan, the employer will submit a certification of hours worked by each employee covered under the plan in the form or manner directed by the department. This includes a part-time employee provided that the employee meets all other requirements.

b. The first employer weekly certification is due no later than the Monday following the effective date of the employer's approved work share plan. All subsequent weekly employer certifications are due no later than Monday (close of business) immediately following the benefit week. If the employer fails to submit the weekly certification by Monday immediately following the benefit week, the department will have good cause to terminate the employer's work share plan.

This rule is intended to implement Iowa Code section 96.40.

871—24.46(96) Child support intercept. The term "benefits" for child support intercept purposes means any compensation payable under Iowa Code chapter 96, including any amounts payable pursuant to any workforce development agreement under any federal law administered by the department.

24.46(1) *Information furnished to child support recovery unit.* The department will furnish information to the child support recovery unit concerning all new claims filed that are monetarily eligible for benefits under any state or federal program administered by the department.

24.46(2) *Action taken by child support recovery unit.* The child support recovery unit will contact the claimant to afford claimant opportunity to enter into an agreement regarding amounts to be deducted and withheld.

24.46(3) *Processing of payments.* The child support recovery unit will furnish to the department the name and address of the designated public official to whom the amount deducted will be remitted. After the deduction, the remaining balance is credited to the claimant.

24.46(4) *Notice to claimant.* The department will send a notice to the claimant explaining the beginning date and the amount of the weekly benefit deduction that satisfies the individual's child support obligation to the child support recovery unit. This notice, which explains the authority for the deduction and the claimant's right of appeal, will be issued when the first deduction is made from the benefit payment.

24.46(5) *Appeal rights on the child support deduction.*

a. Any appeal on a child support deduction is limited to either the validity of the development's authority to make the deduction or the accuracy of the amount deducted.

b. The claimant will be advised to seek remedy either through the child support recovery unit or through the court system whenever the question of reasonableness or fairness of the deducted amount is raised in terms of ability to pay.

c. The department does not have the authority to change the amount of the deduction as specified by garnishment or voluntary agreement or to adjudicate any appeal from garnishment or voluntary agreement.

This rule is intended to implement Iowa Code sections 96.3 and 96.20.

871—24.47(96) Alien. An alien is defined as a person who is not a citizen or a national of the United States. An alien is a person owing allegiance to another country or government. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States.

24.47(1) To identify illegal nonresident aliens, each claimant, at the establishment of a benefit year will be asked whether or not the individual is a citizen.

a. If the response is "yes," no further proof is necessary, and the claimant's records are marked accordingly.

b. If the answer is "no," the claimant will be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is provided to the department. The principal documents showing legal entry for permanent residency are the Form I-94, Arrival and Departure Record, and the Forms I-151 and I-551, Alien Registration Receipt Card. These forms are issued by the U.S. Citizenship and Immigration Services and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the U.S. Citizenship and Immigration Services. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 871—18.10(96), prosecution on overpayments.

24.47(2) Disqualification of aliens.

a. Color of law permanent residence is defined as:

(1) An alien admitted as a refugee under Section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157, in effect after March 31, 1980;

(2) An alien granted asylum by the attorney general of the United States under Section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158;

(3) An alien granted a parole into the United States for an indefinite period under Section 212(d)(5)(B) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(B);

(4) An alien who entered the United States prior to June 30, 1948, and who is eligible for lawful permanent residence pursuant to Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259; or

(5) An alien who has been formally granted deferred action or nonpriority status by the U.S. Citizenship and Immigration Services.

b. Reserved.

24.47(3) Certain nonimmigrants may perform service in this country. All nonimmigrant aliens 18 years and older are required by law to carry alien registration card Form I-94. The immigration and naturalization service places a symbol on the Form I-94 that indicates eligibility to perform service in this country.

a. Nonimmigrant aliens who are allowed to perform certain types of service are:

Class of worker		Symbol on I-94	Employment Permitted
(1)	Ambassador, Consular officers and their immediate families	A-1	May accept employment with permission from the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(2)	Other foreign government officials and their immediate families.	A-2	Same as for A-1.
(3)	Treaty trader, spouse and children Treaty investor, spouse and children	E-1 E-2	Admitted to work for a specific employer or as a sole proprietorship or partnership.
(4)	Student	F-1 M-1	May accept employment of up to 20 hours per week with permission from the Immigration Service. I-94 will be stamped: "Employment Authorized." Employment should not displace a USC or permanent resident alien.
(5)	Representatives of foreign governments to international organization such as the U.N.	G-1 G-2 G-3 G-4 G-5	May accept employment if approved by the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(6)	Temporary worker of distinguished merit and ability	H-1	Are admitted to work on a petition of an employer. Can only work for that employer unless permission is granted by the Immigration Service to change employers.
(7)	Temporary workers performing services unavailable in the U.S.	H-2	Same as for H-1.
(8)	Trainee	H-3	Same as for H-1.
(9)	Exchange visitor Spouse and children	J-1 J-2	May be admitted to work in a specific program or may be granted permission to work after entry. I-94 will be stamped: "Employment Authorized."
(10)	Fiancé or fiancee of USC entering solely to conclude valid marriage Child of a K-1	K-1 K-2	May accept employment upon approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."
(11)	Intra company transferee entering to continue employment with same employer. Dependents.	L-1 L-2	Admitted upon petition by an employer. May only work for that employer. May accept employment if approved by

Class of worker	Symbol on I-94	Employment Permitted
		the Immigration Service. I-94 will be stamped: "Employment Authorized."
(12) NATO representatives	NATO-1 NATO-2 NATO-3 NATO-4 NATO-5 NATO-6 NATO-7	Dependents may accept employment with approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."

b. Immigrant aliens who are not allowed to perform services are:

Class of worker	Symbol on I-94	Employment Status
(1) Attendant, servant or personal employee of an A-1 or A-2	A-3	May not accept employment.
(2) Temporary visitor for business	B-1	May not accept employment.
(3) Temporary visitor for pleasure	B-2	May not accept employment.
(4) Alien in transit	C-1 C-2 C-3	May not accept employment.
(5) Transit without a visa	TRWOV	May not accept employment.
(6) Seaman	D-1 D-2	May not accept employment.
(7) Dependent of student	F-2 M-2	May not accept employment.
(8) Spouse or child of an H-1, H-2 or H-3	H-4	May not accept employment.
(9) Representative of foreign information media including spouse and children	I	May not accept employment.

This rule is intended to implement Iowa Code section 96.5(10).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 801—Chapters 1 and 7
"County Commissions of Veterans Fund and Training Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 35A.5(6), 35A.5(9), 35A.13(5), 35A.16(3)"a," 35A.16(4), and 35B.6(1)"c"

State or federal law(s) implemented by the rulemaking: 2024 Iowa Acts, House Files 259 and 2663

Public Hearing

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

October 8, 2024 10:30 a.m.	Video call link: meet.google.com/dcn-jwdo-zkq Or dial: 402.282.0092 Conference ID: 733 538 987#

Public Comment

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

Mike Olson
1301 Summit Street
Marshalltown, Iowa 50158
Email: michael.olson@ivh.state.ia.us

Purpose and Summary

This proposed rulemaking is intended to update definitions and administrative rules concerning training and requirements for county veteran service officers, implement legislative changes to the County Commission of Veteran Affairs Fund and training program, and update reporting requirements from the counties to the IDVA for information that the IDVA reports to the Governor and General Assembly.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

This rulemaking, which implements 2024 Iowa Acts, House File 259, requires county veteran service officers (VSOs) to obtain and maintain a Personal Identification Verification (PIV) card from the United States Veterans Administration (VA) as a condition of their employment by their respective county. This card allows electronic access to the VA system that contains claim records and medical information necessary to effectively assist veterans. Currently, over 90 Iowa counties already have a VSO that possesses a PIV card, and the cost to the counties for training to obtain one is negligible. Additionally, IDVA provides $10,000 annually to each county to assist in complying with requirements in the Iowa Code.

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

House File 259 requires a VA PIV card and also through implementation of 2024 Iowa Acts, House File 2663, provides for $300,000 in additional funding for national training for all VSOs, which benefits each county and county commission of veterans affairs, VSOs, and local veterans, who will as a result receive service from more highly qualified and trained personnel. An expected result of expanded training and standards for VSOs is an increase in federal veteran benefit awards, which will bolster local economies. In addition, requiring all VSOs to possess the same access to records via a PIV card will likely reduce the current practice of veterans going out of county for a level of service that is not currently available in their own.

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:

Better trained VSOs with access to records essential to fully develop a veteran's VA claim will have greater success on the initial claim filing as well as potential claim appeals, resulting in more VA claims being granted and for higher dollar amounts.

- Qualitative description of impact:

Veterans deserve access to every benefit that they have earned. Fully trained and equipped VSOs will be able to more effectively connect veterans with these benefits.

3. Costs to the State:

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

There are no anticipated implementation or enforcement costs.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

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

The benefit of the proposed rules will accrue to Iowa veterans. The cost of inaction would be to deny some of these veterans access to uniformly well-trained and credentialed VSOs.

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

There are no less costly or intrusive methods to achieve the proposed rulemaking. The rules have been drafted in the most efficient manner possible to achieve the intent of the legislation.

6. Alternative methods considered by the agency:

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

The IDVA did not consider alternatives for the proposed rules.

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

No alternatives were considered for the proposed rules.

Small Business Impact

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

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule **801—1.1(35,35A,35D)**, definitions of "Annual school of instruction" and "Commandant," as follows:

"Annual school of instruction" means annual classroom certification and recertification training sponsored by the department for county veteran service officers to meet accreditation requirements of the National Association of County Veteran Service Officers (NACVSO), in addition to any other training prescribed by the commandant.

"Commandant" means the ~~commandant~~ director of the Iowa ~~Veterans Home~~ department of veterans affairs.

ITEM 2. Rescind subrule 1.3(4) and adopt the following **new** subrule in lieu thereof:

1.3(4) *Duties.* The duties of the department are as follows:

a. Maintain and disseminate information to veterans and the public regarding facilities, benefits, and services available to veterans and their families and assist veterans and their families in obtaining such benefits and services.

b. Maintain information and data concerning the military service of Iowa veterans.

c. Assist county veteran affairs commissions established pursuant to Iowa Code chapter 35B. The department shall provide to county commissions suggested uniform benefits and administrative procedures for carrying out the functions and duties of the county commissions. The department shall also ensure compliance of county commissions with required office hours.

d. Permanently maintain the records including certified records of bonus applications for awards paid from the war orphans educational fund under Iowa Code chapter 35.

e. Collect and maintain information concerning veterans affairs.

f. Assist the United States Department of Veterans Affairs, the Iowa Veterans Home, funeral directors, and federally chartered veterans service organizations in providing information concerning veterans' service records and veterans affairs data.

g. Maintain alphabetically a permanent registry of the graves of all persons who served in the military, naval, or merchant marine forces of the United States in time of war and whose mortal remains rest in Iowa.

h. Administer or conduct one school for training of county veteran service officers and another for county commissioners of veterans affairs pursuant to Iowa Code section 35A.5(6). At the discretion of the commandant, training for newly appointed county veteran services officers may also be conducted. Training provided for veteran service officers will include courses accredited through the National Association of County Veteran Service Officers as well as other subjects at the discretion of the commandant, who will certify satisfactory completion. The training shall ensure that each county veteran service officer is proficient in the use of electronic mail, general computer use, and use of the Internet to access information regarding facilities, benefits, and services available to veterans and their families.

i. Establish and operate a state veterans cemetery pursuant to Iowa Code section 35A.5(10).

j. Authorize the sale, trade, or transfer of veterans commemorative property pursuant to Iowa Code chapter 37A and 801—Chapter 15.

k. Adopt rules pursuant to Iowa Code chapter 17A and establish policy for the management and operation of the department. Prior to adopting rules, the department shall submit proposed rules to the commission for review pursuant to the requirements of Iowa Code section 35A.3.

l. Provide information requested by the commission concerning the management and operation of the department and the programs administered by the department.

m. Carry out the policies of the department.

ITEM 3. Rescind 801—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
COUNTY COMMISSIONS OF VETERAN AFFAIRS FUND AND TRAINING PROGRAM

801—7.1(35A,35B) County commissions of veteran affairs fund.

7.1(1) *Purpose.* Annual funding is dependent on an appropriation from the general assembly to the department of veterans affairs. The purpose and legislative intent of the county commissions of veterans affairs fund is to assist county commissions of veteran affairs in complying with legislative requirements for employing a county veteran service officer who: maintains national accreditation through the National Association of County Veterans Service Officers (NACVSO), maintains an active Personal Identification Verification (PIV) card necessary to access the Veterans Administration's Veterans Benefit Management System, is occupied in veterans affairs service pursuant to Iowa Code section 35B.6 for a minimum number of hours, and maintains an office in a location owned or leased by the county. Beginning July 1, 2024, an additional $300,000 is transferred annually from the moneys received for the Iowa Veterans Trust Fund from the Iowa Lottery pursuant to Iowa Code sections 35A.16(4) and 99G.39. The additional $300,000 is allocated to the county commission of veteran affairs training program account within the county commissions of veteran affairs fund for the specific purpose of funding national training and related expenses for county veteran service officers and appropriate staff. Moneys remaining in the county commissions of veteran affairs fund after the allocations have been distributed to the counties shall be used by the department to provide for a county commission of veteran affairs training program as outlined in rule 801—7.2(35A,35B).

7.1(2) *Allocation amounts.*

a. If sufficient moneys are available, the department shall annually allocate $10,000 to each county commission of veteran affairs, or to each county sharing the services of a county veteran service officer pursuant to Iowa Code chapter 28E, to be used to maintain veteran service officer qualifications and certifications, access to United States Department of Veteran Affairs systems, and to provide services to veterans pursuant to Iowa Code section 35B.6. In order to qualify for the allocation, a county must expend the allocation pursuant to and be in compliance with Iowa Code section 35B.6 and must also maintain its current level of spending from the previous fiscal year.

b. In accordance with Iowa Code section 35A.16(4), for the fiscal year beginning July 1, 2024, and for each subsequent fiscal year, the department shall annually allocate $3,000 from the county commission of veteran affairs training program account within the county commissions of veteran affairs fund to each county commission of veteran affairs, or to each county sharing the services of a county veteran service officer pursuant to Iowa Code chapter 28E, to be used for national training and related expenses of county veteran service officers and appropriate staff. Counties shall request reimbursement from the department with required supporting documentation for eligible expenses during the fiscal year up to the $3,000 annual allocation within 30 days of training completion, but no later than June 30 of each fiscal year.

7.1(3) *Allocation report.* Counties shall submit a written report to the department 30 days following the end of the fiscal year in which the allocation was received. The report shall include:

a. An assessment of county veteran affairs services, including county population, verification of an office, hours of employment, and number of hours of veterans' services provided by the county veteran service officer.

b. Documentation that the county veteran service officer is performing required duties and maintaining qualifications and credentials pursuant to Iowa Code section 35B.6.

c. A final report on county veteran affairs expenditures for the fiscal year in which the allocation was received and the expenditure report from the previous fiscal year. Information provided in this report shall be used by the department to comply with rule 801—7.3(35A,35B).

7.1(4) *Recovery of funds.* The department shall be the entity charged with the recovery of county commissions of veteran affairs fund allocations from counties under the following circumstances:

a. Unauthorized use. Counties expending a portion of the allocation on items that do not provide services to veterans pursuant to Iowa Code section 35B.6 will be required to return the unauthorized funds to the state of Iowa.

b. Maintenance of effort. Counties not maintaining their previous fiscal year's spending levels will be considered to have supplanted county funding with state allocation funds. Counties not complying with their maintenance of effort will be required to return the supplanted portion to the state of Iowa pursuant to Iowa Code section 35A.16(3).

c. Noncompliance. Counties that are not in compliance with the requirements of Iowa Code section 35B.6 on June 30 of each fiscal year will be required to return all moneys received during that fiscal year to the county commissions of veteran affairs fund pursuant to Iowa Code section 35A.16(3). Counties that are deemed noncompliant due to the termination or resignation of an employee shall not be required to return the state allocation if an employee is hired within two months of the previous employee's separation.

7.1(5) *Appeals.* Applicants that are dissatisfied with a decision may file an appeal with the commandant. The written appeal must be received within 15 working days of the date of the notice of decision and must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy or rules; or involved conflicts of interest by staff. The commandant shall review the appeal and issue a final decision.

801—7.2(35A,35B) County commission of veteran affairs training program. The department shall provide training for county veteran service officers in accordance with Iowa Code section 35A.5(6).

7.2(1) Training provided by the department may meet the continuing education requirements as established by NACVSO and shall ensure that each veteran service officer and support staff are proficient in the use of electronic mail, general computer use, and the Internet in order to access information regarding facilities, benefits, and services available to veterans and their families.

7.2(2) County veteran service officers shall do the following within one year of appointment or will be subject to removal from office as provided for in Iowa Code section 35B.6(1)*"c"*:

a. Obtain and maintain all certifications that are federally required and provide documentation to the department.

b. Obtain and maintain national accreditation through instruction provided by the department or a national school of accreditation provided or recognized by NACVSO and any other training required by the commandant. Upon completion, a certificate of satisfactory completion shall be provided to the department for certification and issuance of an Iowa certificate of training.

c. Obtain and maintain a PIV card from the United States Department of Veteran Affairs as well as access to the Veterans Benefits Management System and provide the department with documentation. Upon request from a county commission of veterans affairs and based on extenuating circumstances, the commandant may extend the time frame for a veteran service officer to obtain a PIV card prior to being subject to removal from office. The decision of the commandant is final.

d. Counties shall submit to the department annually by July 30 all documentation required by this rule.

7.2(3) County veteran service officers shall maintain the following on an annual basis or will be subject to removal from office as provided for in Iowa Code section 35B.6(1)*"c"*:

a. Maintain all certifications that are federally required and annually provide documentation to the department.

b. Maintain national accreditation through continuing education instruction provided by the department or a national school of accreditation provided or recognized by NACVSO and any other training required by the commandant. Attendance at training courses conducted by veterans organizations other than the department or NACVSO may be substituted for the annual school of instruction if the training meets NACVSO accreditation continuing education requirements. Upon

completion, a certificate of satisfactory completion shall be provided to the department for certification and issuance of an Iowa certificate of training.

c. Maintain a PIV card from the United States Department of Veteran Affairs as well as access to the Veterans Benefits Management System and provide the department with documentation.

d. Counties shall submit to the department annually by July 30 all documentation required by this section.

7.2(4) County veteran service officers who fail to comply with subrules 7.2(2) and 7.2(3) shall be removed from their position. Knowing violation of this provision constitutes noncompliance as provided in paragraph 7.1(4)*"c,"* and individuals who knowingly fail to comply may be charged with a serious misdemeanor for nonfelonious misconduct in office as provided by Iowa Code section 721.2(6).

7.2(5) The annual school of instruction and all associated training materials will be provided at the expense of the department and attendees will not be charged for participation in the training.

7.2(6) Travel, meals, lodging, and miscellaneous expenses incurred while attending the annual school of instruction required by subrules 7.2(2) and 7.2(3) shall be the responsibility of the respective county.

7.2(7) Any cost of initial training, accreditation, and continuing training that uses state funds shall follow the department's travel policy. The department's travel policy overrides county-specific travel policies.

7.2(8) The department shall maintain documentation regarding any school of instruction required by subrules 7.2(2) and 7.2(3) including but not limited to agendas, presentation dates, attendees, certificate of satisfactory completion of accreditation or continuing education training, and the issuance of certificates of training.

7.2(9) Inquiries regarding an annual school of instruction shall be directed to the commandant or designee.

7.2(10) Disputes regarding the annual school of instruction, certificates of training, and related matters shall be reviewed by the commandant, who will render a decision within ten days of receipt of all relevant facts and supporting materials. The decision of the commandant shall be final.

801—7.3(35A,35B) Report to the general assembly.

7.3(1) *Report.* Annually by August 31, under the provisions of Iowa Code section 35A.5(14), the department shall prepare and submit a report to the governor and general assembly relating to county commissions of veteran affairs. Copies of the report shall also be provided to each county board of supervisors and to each county commission of veteran affairs by electronic means. Pursuant to Iowa Code section 35B.11, the department may request any information necessary to prepare the report from each county commission of veteran affairs. The report shall include all of the following:

a. Information related to compliance with the training requirements under Iowa Code section 35B.6 during the previous fiscal year.

b. The weekly operating schedule of each county commission of veteran affairs office maintained under Iowa Code section 35B.6.

c. The number of hours of veterans' services provided by county commission of veteran affairs executive director or administrator during the previous fiscal year.

d. Population of each county, including the number of veterans residing in each county.

e. The total amount of compensation, disability benefits, or pensions received by the residents of each county under laws administered by the United States Department of Veterans Affairs.

f. An analysis of the information contained in paragraphs 7.3(1)*"a"* through *"e,"* including an analysis of such information for previous years.

7.3(2) *County veteran affairs office assistance.* Each county commission of veteran affairs shall provide information required in paragraphs 7.3(1)*"a"* through *"c"* to enable the department to complete the report. The county executive director or administrator will be provided with a form to return to the department by July 30 of each year.

These rules are intended to implement Iowa Code chapters 35A and 35B.

ARC 8215C

PUBLIC HEALTH DEPARTMENT[641]

Amended Notice of Intended Action

Proposing rulemaking related to smokefree air and providing an opportunity for public comment

The Department of Health and Human Services hereby proposes to rescind Chapter 153, "Smokefree Air," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 142D.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 142D.

Purpose and Summary

Proposed Chapter 153 defines the procedure for implementing Iowa's Smokefree Air Act. This includes the duty of employers, owners, or other persons having control of an area where smoking is prohibited to inform employees and persons accessing the site of that prohibition through proper signage. The rules also describe the procedure for receiving complaints and implementing enforcement actions against persons who fail to comply with provisions of the Act. Enforcement action may be taken against a person who smokes in an area where smoking is prohibited or a person who owns, operates, manages or otherwise has custody or control of a place where smoking is prohibited and fails to properly prohibit smoking.

This chapter describes the procedure to support the requirements for signage, complaints, and enforcement detailed in the Iowa Code. This chapter does not create additional, substantive requirements.

Reason for Amendment of Notice of Intended Action

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7366C**. Since then, additional changes to the rules were made to provide further clarification on what constitutes a solid wall.

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 comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on October 9, 2024. Comments should be directed to:

Joe Campos
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@idph.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 12 noon to 12:30 p.m.	Microsoft Teams Meeting ID: 224 642 900 746 Passcode: AXsYRM
October 9, 2024 2 to 2:30 p.m.	Microsoft Teams Meeting ID: 228 740 757 44 Passcode: pKepAb

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. Rescind 641—Chapter 153 and adopt the following **new** chapter in lieu thereof:

CHAPTER 153
SMOKEFREE AIR

641—153.1(142D) Definitions. For the purposes of this chapter, definitions found in Iowa Code section 142D.2 and the following definitions apply:

"Ashtray" means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs. However, "ashtray" shall not include any receptacle located outdoors and on the perimeter of any public place, the perimeter of the grounds of any public building, the perimeter of school grounds, or the perimeter of any other outdoor space subject to the prohibition in Iowa Code chapter 142D.

"Entrance" means any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. "Entrance" also includes the commonly understood points of entry to an outdoor area, subject to the prohibitions of this chapter, such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way.

"Grounds of any public building" means an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading

pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water. Nothing in this definition prohibits any owner, operator, manager, or other person having custody or control of an area that is exempt from the prohibitions of Iowa Code chapter 142D from declaring the entire area or property a nonsmoking place.

"Public building" means an enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.

"Solid wall" means any physical barrier, whether temporary or permanent, covering more than 75 percent of the combined surface area of the vertical planes constituting the perimeter of the area. Solid walls also include the floor and ceiling of the enclosed area.

641—153.2(142D) Duties of employers, owners, operators, managers, and persons having custody or control of a public place, place of employment, area declared nonsmoking pursuant to Iowa Code chapter 142D or outdoor areas where smoking is prohibited.

153.2(1) The employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under Iowa Code chapter 142D shall:

a. Not permit smoking in a public place, place of employment, outdoor area where smoking is prohibited, or area declared nonsmoking pursuant to Iowa Code chapter 142D.

b. Inform all current employees and all prospective employees upon application for employment of the prohibitions of Iowa Code chapter 142D.

c. Not retaliate against any employee, applicant for employment, or customer who exercises any rights, registers a complaint, or attempts to prosecute a violation pursuant to Iowa Code chapter 142D.

d. Post signs in and at every entrance to the public place, place of employment, area declared nonsmoking, and outdoor area where smoking is prohibited that inform persons that they are entering a "no smoking" facility or area.

(1) The signs shall be clear and conspicuous in or at the entrance where posted.

(2) The signs shall be at least 24 square inches in size (for example, 4 inches by 6 inches) and shall be in legible font type.

(3) The signs shall contain the words "No Smoking" or the international "no smoking" symbol; the telephone number for reporting complaints, 1.888.944.2247; and the department website, hhs.iowa.gov/smokefreeair.

e. Place "no smoking" signs in every vehicle that constitutes a public place, place of employment, or area declared nonsmoking pursuant to Iowa Code section 142D.5.

(1) Such signs shall be clear and conspicuous from the exterior of the vehicle.

(2) The signs shall be at least 9 square inches (for example, 3 inches by 3 inches) and shall be in legible font type.

(3) The signs shall contain the words "No Smoking" or the international "no smoking" symbol; the telephone number for reporting complaints, 1.888.944.2247; and the department's website, hhs.iowa.gov/smokefreeair.

(4) Nothing in this rule requires the placement of a sign in any vehicle that the director of the department of administrative services or the director of transportation orders to receive a regular registration plate pursuant to Iowa Code section 321.19.

f. Remove all ashtrays from areas where smoking is prohibited.

153.2(2) The owner or operator of a building or facility that contains more than one public place, place of employment, or area declared nonsmoking pursuant to Iowa Code chapter 142D that is controlled by other employers, owners, or operators shall comply with the provisions of these rules for the area of the building or facility under the owner's or operator's control.

153.2(3) An employer, owner, or operator of a public place, place of employment or area declared nonsmoking pursuant to Iowa Code chapter 142D that is within a public place that is owned or operated

by another person shall comply with the provisions of these rules for the area under the control of the employer, owner, or operator within that public place.

153.2(4) An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under Iowa Code chapter 142D shall inform any individual smoking in a place where smoking is prohibited that the individual is violating the smokefree air Act and shall request that the individual stop smoking immediately.

a. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may discontinue service to that individual.

b. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may request that the individual leave the area where smoking is prohibited.

c. If the individual refuses to leave the area where smoking is prohibited, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

641—153.3(142D) Leases. Any lease entered into by the state or its political subdivisions shall require that all areas where smoking is prohibited pursuant to Iowa Code chapter 142D comply with the provisions of these rules and Iowa Code chapter 142D.

641—153.4(142D) Complaints and enforcement.

153.4(1) *Duties of department.* The department will maintain a system for receiving and investigating complaints against persons who own, operate, manage, or otherwise have custody or control of a place where smoking is prohibited and who fail to comply with the provisions of Iowa Code chapter 142D.

a. The department may designate one or more public agencies through a 28E agreement or other written contract to assist with enforcement.

b. The department may refer complaints regarding a violation to the law enforcement authorities of the state or of the political subdivision of the state in which the alleged violation occurred.

153.4(2) *Enforcement against a person who smokes in an area where smoking is prohibited.* Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. A peace officer may issue a citation in lieu of arrest pursuant to Iowa Code chapter 805 against a person who smokes in an area where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay a civil penalty pursuant to Iowa Code section 805.8C(3) for each violation.

153.4(3) *Enforcement against a person who owns, operates, manages, or otherwise has control of a place where smoking is prohibited.* Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. The department or its designee may initiate a civil action against an owner, operator, manager, or person who otherwise has custody or control of a place where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay the applicable civil penalty pursuant to Iowa Code chapter 142D.

153.4(4) *Manner of filing a complaint.* Any person may register a complaint with the department by calling the toll-free number, 1.888.944.2247, or registering a complaint on the department's website, hhs.iowa.gov/smokefreeair.

153.4(5) *Contents of the complaint.* A complaint filed with the department shall include:

a. The name or location of the public place, place of employment, area declared a nonsmoking place pursuant to Iowa Code chapter 142D, or outdoor area where smoking is prohibited that is the subject of the complaint;

b. A description of the occurrence that prompted the complaint; and

c. Any other information relevant to the occurrence.

153.4(6) *Review of complaint by department.* Upon receipt of a complaint, the department or its designee may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.

153.4(7) *Information from inspections.* Information received by the department of one or more violations of Iowa Code chapter 142D as a result of an inspection of a public place by the state or political subdivision of the state shall be considered a credible complaint under this rule.

153.4(8) *Notice of potential violation.* If the department determines that a complaint against a public place, place of employment, area declared nonsmoking pursuant to Iowa Code chapter 142D, or outdoor areas where smoking is prohibited is credible:

a. For the first complaint, the department shall:

(1) Issue a written notice of potential violation to the owner, operator or person having custody or control including the details of the complaint.

(2) Include in the notice educational materials about how to comply with Iowa Code chapter 142D, and information on whom to contact for further information and assistance for compliance.

b. For the second and subsequent complaints within one year, the department:

(1) Shall issue a subsequent notice of potential violation to the owner, operator, or person having custody or control.

(2) May authorize one or more public agencies to conduct a compliance check of the location.

(3) May pursue any remedy authorized by Iowa Code chapter 142D, including the enforcement of civil penalties.

641—153.5(142D) Limitation of rules. Nothing in these rules is intended to limit any other state administrative rule or federal regulation that prohibits smoking.

These rules are intended to implement Iowa Code chapter 142D.

ARC 8222C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rulemaking related to strategic infrastructure program and providing an opportunity for public comment

The Economic Development Authority (IEDA) hereby proposes to rescind Chapter 118, "Strategic Infrastructure Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 15.106A and 15.313.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 15.313.

Purpose and Summary

The Strategic Infrastructure Program (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.

Pursuant to Executive Order 10 dated January 10, 2023, IEDA proposes to rescind Chapter 118 relating to the program and adopt a new chapter 118 in lieu thereof. Language that duplicates statutory language or that is otherwise unnecessary will be eliminated throughout the chapter.

Additionally, the definition of "council" in rule 261—118.3(15) is proposed to be updated to include a committee appointed pursuant to Iowa Code section 15.117A(7) as enacted by 2024 Iowa Acts, Senate

File 2385. Review of program applications by the Iowa Innovation Council is no longer required. In lieu of review by the Council, the Director of IEDA and chairperson of the council will appoint a review committee of members with relevant expertise. Committee members need not be members of the council.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on June 26, 2024. A public hearing was held on the following date(s):

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by IEDA no later than 4:30 p.m. on October 10, 2024. Comments should be directed to:

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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 9:30 to 9:45 a.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review
October 10, 2024 2:30 to 2:45 p.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review

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 IEDA 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. 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 financing structure for the proposed infrastructure project, 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.

ARC 8221C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rulemaking related to innovative and other business development and providing an opportunity for public comment

The Economic Development Authority (IEDA) hereby proposes to rescind Chapter 105, "Demonstration Fund," and to adopt a new Chapter 105, "Innovative and Other Business Development —Demonstration Fund and Proof of Commercial Relevance"; and to rescind Chapter 108, "Acceleration

and Development of Innovative Ideas and Businesses," and to adopt a new Chapter 108, "Innovative and Other Business Development—Applied Research and Manufacturing Extension Partnership," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 15.106A and 15.411.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 15.411.

Purpose and Summary

Pursuant to Executive Order 10 issued January 10, 2023, IEDA proposes to rescind Chapters 105 and 108 relating to the innovation program components 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 new 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.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on June 26, 2024. A public hearing was held on the following date(s):

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by IEDA no later than 4:30 p.m. on October 10, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315

Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 9:15 to 9:30 a.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review
October 10, 2024 2:15 to 2:30 p.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review

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 IEDA 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. 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 committee and board may establish maximum award amounts for each program component.

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 conform to a timeline.

105.8(4) *Market.* The business's competitors, market for the business's product in Iowa and outside of Iowa, plausibility 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. 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). Authority staff will review applications to confirm program eligibility before sending them 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. No funds will be disbursed to the applicant until the applicant has entered into a contract with the authority. 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.

ARC 8223C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rulemaking related to manufacturing 4.0 technology investment program and providing an opportunity for public comment

The Economic Development Authority (IEDA) hereby proposes to rescind Chapter 119, "Manufacturing 4.0 Technology Investment Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 15.106A and 15.371.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 15.371.

Purpose and Summary

The Manufacturing 4.0 Technology Investment Program (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.

Pursuant to Executive Order 10 dated January 10, 2023, IEDA proposes to rescind Chapter 119 relating to the program and adopt a new chapter in lieu thereof. Language that duplicates statutory language or that is otherwise unnecessary will be eliminated throughout the chapter. Scoring criteria will be updated to more closely align to the intent of the program. An existing policy that excludes labor performed by a recipient's employees from reimbursement through the program will be added to the chapter.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on June 26, 2024. A public hearing was held on the following date(s):

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by IEDA no later than 4:30 p.m. on October 10, 2024. Comments should be directed to:

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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 9:45 to 10 a.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review
October 10, 2024 2:45 to 3 p.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review

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 IEDA 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. 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" 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 for the duration of the program. However, the maximum amount of financial assistance awarded to any eligible business for all its applications under the program 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.

ARC 8224C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rulemaking related to entrepreneur investment awards program and providing an opportunity for public comment

The Economic Development Authority (IEDA) hereby proposes to rescind Chapter 102, "Entrepreneur Investment Awards Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 15E.362 and 15E.363.

Purpose and Summary

Pursuant to Executive Order 10 issued January 10, 2023, IEDA proposes to rescind Chapter 102 relating to the Entrepreneur Investment Awards Program and adopt a new chapter in lieu thereof. 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. Language that duplicates statutory language or that is otherwise unnecessary will be eliminated throughout the chapter.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on June 26, 2024. A public hearing was held on the following date(s):

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by IEDA no later than 4:30 p.m. on October 10, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315

Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 9 to 9:15 a.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review
October 10, 2024 2 to 2:15 p.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review

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 IEDA 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. 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.

ARC 8214C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Amended Notice of Intended Action

Proposing rulemaking related to health care employment agencies and health care technology platforms and providing an opportunity for public comment

The Department of Inspections, Appeals, and Licensing hereby proposes to amend Chapter 55, "Health Care Employment Agencies," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 10A.104.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 135Q as amended by 2023 Iowa Acts, chapter 131 (House File 357), and 2024 Iowa Acts, chapter 1157 (House File 2698), sections 63 through 67; 2023 Iowa Acts, chapter 16 (Senate File 75); and Executive Order 10 (January 10, 2023).

Purpose and Summary

This proposed rulemaking amends Chapter 55 and implements Iowa Code chapter 135Q as amended by 2023 Iowa Acts, chapter 131 (House File 357), and 2024 Iowa Acts, chapter 1157 (House File 2698), sections 63 through 67, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). This rulemaking removes the definition of "direct services" and amends the definition of "health care employment agency" in accordance with 2023 Iowa Acts, chapter 131 (House File 357). Additionally, the rulemaking adds provisions regarding health care technology platforms to Chapter 55 in accordance with 2024 Iowa Acts, chapter 1157 (House File 2698), sections 63 through 67. The rulemaking also revises references to ambulatory surgical centers in the definition of "health care entity" to account for new state licensing standards established by 2023 Iowa Acts, chapter 16 (Senate File 75). Finally, this rulemaking updates the Department's contact information and references now-codified legislation.

Reason for Amendment of Notice of Intended Action

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on April 17, 2024, as **ARC 7784C**.

The Notice of Intended Action is being amended to also add provisions regarding health care technology platforms to Chapter 55 in accordance with 2024 Iowa Acts, chapter 1157 (House File 2698), sections 63 through 67.

Fiscal Impact

In accordance with Iowa Code section 17A.4(4) and after analysis and review of this rulemaking, the Department does not anticipate expenditures requiring a fiscal impact statement. Expenditures by affected persons associated with registration requirements, including additional costs to the Department to implement this rulemaking, are not anticipated to exceed the amounts set forth in Iowa Code section 17A.4(4).

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on October 8, 2024. Comments should be directed to:

Jeremiah Junker
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Email: jeremiah.junker@dia.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 **481—Chapter 55**, title, as follows:

HEALTH CARE EMPLOYMENT AGENCIES
AND HEALTH CARE TECHNOLOGY PLATFORMS

ITEM 2. Amend rule 481—55.1(89GA,HF2521) as follows:

481—55.1(~~89GA,HF2521~~ 135Q) Definitions. The definitions set forth in Iowa Code section 135Q.1 ~~as enacted by 2022 Iowa Acts, House File 2521,~~ are incorporated herein by reference. As used in this chapter, unless the context otherwise requires, the following ~~terms~~ also apply:

~~*"Direct services"* includes services performed by registered nurses, licensed practical nurses, certified nurse aides, certified medication aides, and medication managers. "Direct services" does not include the practice of medicine and surgery or osteopathic medicine and surgery by an individual licensed under Iowa Code chapter 148 or 148C or the practice of nursing by an advanced registered nurse practitioner or an advanced practice registered nurse licensed under Iowa Code chapter 152 or 152E. For purposes of this chapter, janitorial, housekeeping, laundry, and meal preparation services are not considered direct services.~~

"Health care employment agency" does not include a recruitment firm that contracts with a health care entity to identify and screen potential candidates for hire and does not provide agency workers for temporary~~,~~ or temporary-to-hire~~, direct hire, or other contract or~~ employee placements in this state. ~~"Health care employment agency" does not include a group of physical therapists licensed under Iowa Code chapter 148A, occupational therapists licensed under Iowa Code chapter 148B, or speech pathologists or audiologists licensed under Iowa Code chapter 154F providing services to a health care entity.~~

"Health care entity" includes, but is not limited to, any entities licensed or certified pursuant to Iowa Code ~~chapters~~ chapter 135B (hospitals), 135C (health care facilities), 135G (subacute mental health care facilities), 135H (psychiatric medical institutions for children), 135J (licensed hospice programs), 231C (assisted living programs), ~~and~~ 231D (adult day services), or ~~any ambulatory surgical center~~ 135R (ambulatory surgical centers), or any home health agency, hospice, end-stage renal disease center, rural health clinic, or federally qualified health care center certified by the Centers for Medicare and Medicaid Services.

ITEM 3. Amend rule 481—55.2(89GA,HF2521) as follows:

481—55.2(~~89GA,HF2521~~ 135Q) ~~Health care employment agency registration~~ Registration.

55.2(1) A health care employment agency or health care technology platform operating in the state shall ~~file a statement of registration and pay a registration fee in accordance with Iowa Code section 135Q.2(1) as enacted by 2022 Iowa Acts, House File 2521~~ register annually with the department and pay an annual registration fee of $500. A health care employment agency with multiple locations may complete one registration ~~containing the information required in subrule 55.2(3)~~ for ~~each location~~ all locations and may remit one payment for the total registration fee required. A health care employment agency or health care technology platform shall register with the department 30 days prior to operation. A health care technology platform in operation prior to the effective date of these rules shall register with the department within 30 days of the effective date of these rules.

~~*a.* A health care employment agency in operation prior to July 1, 2022, shall register with the department no later than January 4, 2023.~~

~~*b.* A health care employment agency in operation on or after July 1, 2022, shall register with the department 30 days prior to operation.~~

55.2(2) The statement of registration may be submitted electronically via an Internet-based system provided by the department for such purpose; by mail to the Department of Inspections, ~~and~~ Appeals, and Licensing, Health ~~Facilities~~ and Safety Division, ~~Lucas State Office Building, Third Floor, 321 E. 12th Street~~ 6200 Park Avenue, Suite 100, Des Moines, Iowa ~~50319-0083~~ 50321; or by fax to ~~(515)242-5022~~ 515.242.5022.

55.2(3) No change.

55.2(4) The health care employment agency or health care technology platform shall notify the department of any changes to the information on the annual statement of registration within 30 days of the date the change occurs, including cessation of operation. ~~Changes shall be submitted in the manner described in subrule 55.2(2).~~

~~**55.2(5)** The department shall issue each location a separate certification of registration upon approval of registration and payment of the fee.~~

ITEM 4. Amend rule 481—55.3(89GA,HF2521) as follows:

481—55.3(~~89GA,HF2521~~ 135Q) General requirements. A health care employment agency or health care technology platform shall adhere to all requirements under Iowa Code section 135Q.2(2) ~~as enacted by 2022 Iowa Acts, House File 2521,~~ or 135Q.3(2), as applicable, and do all of the following:

55.3(1) *Verification of employment standards.* A health care employment agency shall ensure that its agency workers comply with all applicable state and federal requirements ~~under~~ and qualifications for personnel in health care entity settings pursuant to Iowa Code sections 135Q.2(2)*"a"* through ~~*"e"* as enacted by 2022 Iowa Acts, House File 2521, including but not limited to the following:~~ *"c."* A health care technology platform shall verify that independent nursing services professionals supply documentation demonstrating compliance with all applicable state and federal requirements and qualifications for personnel in health care entity settings pursuant to Iowa Code sections 135Q.3(2)*"a"* through *"c."* These include but are not limited to the following:

a. ~~The health care employment agency shall ensure~~ Ensuring completion of all requirements regarding criminal, dependent adult abuse, and child abuse record checks that would otherwise be the responsibility of the health care entity if the health care entity employed the agency worker or independent nursing services professional directly;

b. ~~The health care employment agency shall ensure~~ Ensuring completion of the physical examination and screening and testing for tuberculosis procedures that would otherwise be the responsibility of the health care entity if the health care entity employed the agency worker or independent nursing services professional directly; and

c. ~~The health care employment agency shall ensure~~ Ensuring that an agency worker or independent nursing services professional has completed all education, training, and continuing education requirements for the agency worker's or independent nursing services professional's occupation and that the agency worker or independent nursing services professional is in good standing

with any minimum licensing or certification standards to appropriately engage in the ~~workers'~~ worker's or professional's profession.

55.3(2) *Allegations of dependent adult abuse.*

a. If ~~a health care employment agency receives~~ an allegation of dependent adult abuse is received by a health care employment agency against an agency worker or is received by a health care technology platform against an independent nursing services professional, the health care employment agency or health care technology platform shall immediately notify the facility in which the alleged abuse occurred so that the facility may immediately separate the victim and alleged dependent adult abuser. The health care employment agency or health care technology platform shall also notify the department within 24 hours or the next business day. If the health care employment agency or health care technology platform has reason to believe that immediate protection for the dependent adult is advisable, ~~the health care employment agency~~ it should also make an oral report to an appropriate law enforcement agency. After receiving notice of an allegation of dependent adult abuse against an agency worker or independent nursing services professional and before the department's dependent adult abuse investigation is completed and the abuse determination is made, the health care employment agency or health care technology platform shall disclose such investigation to any prospective health care entity with which the agency worker or independent nursing services professional will be placed.

b. In addition to any other requirement under state or federal law with respect to the receipt of an allegation of dependent adult abuse, if a health care entity receives an allegation of dependent adult abuse against an agency worker or independent nursing services professional, the health care ~~employment agency~~ entity shall immediately notify the health care employment agency or health care technology platform of the allegation. This does not ~~except~~ exempt the health care entity from any of its duties with respect to alleged dependent adult abuse under state or federal law.

c. If the health care employment agency or health care technology platform terminates the alleged dependent adult abuser as a result of the investigation or the alleged dependent adult abuser resigns, the alleged dependent adult abuser shall disclose such termination or investigation to any prospective facility or program employer.

ITEM 5. Amend rule 481—55.4(89GA,HF2521) as follows:

481—55.4(~~89GA,HF2521~~ 135Q) Prohibitions.

55.4(1) A health care employment agency or health care technology platform shall not restrict the employment opportunities of an agency worker or independent nursing services professional in accordance with Iowa Code section 135Q.2(3) ~~as enacted by 2022 Iowa Acts, House File 2521~~ or 135Q.3(3), as applicable.

55.4(2) Subrule 55.4(1) ~~shall~~ does not apply to a contract ~~between a health care employment agency and a health care entity or a health care employment agency worker~~ that meets all of the ~~following~~ criteria~~:~~ set forth in Iowa Code section 135Q.2(3)*"b."*

~~*a.* The contract is for the purpose of placing an agency worker the health care employment agency assisted in obtaining authorization to work in the United States;~~

~~*b.* The contract contains an initial contract term of no less than 24 months and has a total duration, including any renewals or extensions, of no longer than 36 months; and~~

~~*c.* The contract requires the agency worker to work at a single health care entity for the duration of the contract.~~

ITEM 6. Amend rule 481—55.5(89GA,HF2521) as follows:

481—55.5(~~89GA,HF2521~~ 135Q) Record retention and reporting.

55.5(1) *Document retention.* A health care employment agency or health care technology platform shall maintain documentation in its files regarding each agency worker's or independent nursing services professional's compliance, as applicable, with ~~the~~ minimum licensing, certification, training, health requirements, and continuing education standards as described in subrule 55.3(1). A health care employment agency or health care technology platform shall provide copies of this documentation to the

department or a health care entity for a contracted agency worker or independent nursing services professional upon request.

55.5(2) *External reporting.* A health care employment agency shall report, file, or otherwise provide any required documentation pursuant to Iowa Code section 135Q.2(2)*"c,"* ~~as enacted by 2022 Iowa Acts, House File 2521,~~ including~~,~~ but not limited to:

a. No change.

b. The health care employment agency shall report allegations of dependent adult abuse as set forth in subrule ~~55.3(3)~~ 55.3(2).

55.5(3) *Quarterly reporting to the department.*

a. The quarterly report required ~~by~~ to be submitted by a health care employment agency pursuant to Iowa Code section 135Q.2(4) ~~as enacted by 2022 Iowa Acts, House File 2521,~~ shall provide the following:

(1) to (3) No change.

b. The report data and submission dates shall be as follows:

(1) The quarterly report containing data from January 1 through March 31 ~~shall be submitted~~ is due no later than April 15;

(2) The quarterly report containing data from April 1 through June 30 ~~shall be submitted~~ is due no later than July 15;

(3) The quarterly report containing data from July 1 through September 30 ~~shall be submitted~~ is due no later than October 15; and

(4) The quarterly report containing data from October 1 through December 31 ~~shall be submitted~~ is due no later than January 15.

ITEM 7. Amend rule 481—55.6(89GA,HF2521) as follows:

481—55.6(~~89GA,HF2521~~ 135Q) Complaints.

55.6(1) *Complaints.*

a. The process for filing a complaint is as follows:

(1) Any person with a concern regarding the operation of a health care employment agency may file a complaint at the department's physical location, complaint hotline, or website, as follows:

Physical address:	Department of Inspections~~, and~~ Appeals, and Licensing Health and Safety Division, Complaint/Incident Unit ~~Lucas State Office Building, Third Floor~~ 6200 Park Avenue, Suite 100 ~~321 E. 12th Street~~ Des Moines, Iowa ~~50319-0083~~ 50321
Complaint hotline:	~~1-877-686-0027~~ 1.877.686.0027
Website address:	~~dia.iowa.gov~~ dial.iowa.gov

(2) When the nature of the complaint is outside the department's authority, the department ~~shall~~ will forward the complaint to the appropriate investigatory entity.

~~(3) If other state agencies receive a complaint that relates to a health care employment agency, the agencies shall forward the complaint to the department.~~

b. The department ~~shall~~ will act on anonymous complaints unless the department determines that the complaint is intended to harass the health care employment agency or health care technology platform or is without a reasonable basis. If the department, upon preliminary investigation, determines that the complaint is intended to harass or is without a reasonable basis, the department may dismiss the complaint.

55.6(2) *Content of complaint reports.* The complaint ~~shall~~ should include as much of the following information as possible: the complainant's name, address, and telephone number; the complainant's relationship to the health care employment agency or health care technology platform; and the reason for the complaint. ~~The complainant's name shall be confidential information and shall not be released by the department.~~

55.6(3) *Time frames for investigation of complaints.* Upon receipt of a complaint made in accordance with this rule, the department ~~shall~~ will make a preliminary investigation of the complaint to determine if probable cause exists to further investigate the complaint. If probable cause exists, an investigation of the health care employment agency ~~shall~~ or health care technology platform will be initiated within 45 working days.

55.6(4) *Standard for determining whether a complaint is substantiated.* The department ~~shall~~ will apply a preponderance of the evidence standard in determining whether a complaint is substantiated.

55.6(5) *Notification of the health care employment agency or ~~alleged health care employment agency~~ health care technology platform of results of investigation.* The department ~~shall~~ will notify the subject health care employment agency or ~~alleged health care employment agency~~ health care technology platform, in writing, of the final report of the complaint investigation.

55.6(6) *Notification of the complainant of results of investigation.* The complainant, if known, ~~shall~~ will be notified of the final findings of a complaint investigation~~. The complainant, if known, shall also be notified~~ as well as if the department determines not to further investigate after the preliminary investigation ~~and shall receive~~, including an explanation of the department's decision.

ITEM 8. Amend rule 481—55.7(89GA,HF2521) as follows:

481—55.7(~~89GA,HF2521~~ 135Q) Investigations.

55.7(1) *Initiation of investigations.* Investigations may be initiated because of a complaint or other information received by the department or upon referral from other agencies. If the department determines there is probable cause to believe that a health care employment agency or health care technology platform is ~~an~~ unregistered ~~health care employment agency~~ or that a registered health care employment agency or health care technology platform is not in compliance with state, federal, or local statutes or rules, an investigation ~~shall~~ may be initiated.

55.7(2) *Evaluation of allegations and referral to other agencies.* If an investigation is initiated, the department ~~shall~~ will evaluate the allegations to determine whether the allegations should also be referred to other local, state, or federal agencies. If the department believes a criminal violation has occurred or is occurring, it ~~shall~~ will notify the appropriate law enforcement entities.

55.7(3) *Access to records.* An inspector of the department may enter a health care employment agency or health care technology platform without a warrant and may examine and copy all records and items pertaining to the investigation, or may require the health care employment agency or health care technology platform to provide copies of all records and items pertaining to the investigation, unless the record or item is protected by some other legal privilege.

ITEM 9. Amend rule 481—55.8(89GA,HF2521) as follows:

481—55.8(~~89GA,HF2521~~ 135Q) Penalties. ~~A health care employment agency that violates Iowa Code sections 135Q.2(1) through 135Q.2(3) as enacted by 2022 Iowa Acts, House File 2521, or rule 481—55.3(89GA,HF2521) shall be subject to the associated penalties under Iowa Code section 135Q.2(5) as enacted by 2022 Iowa Acts, House File 2521.~~ A health care employment agency or health care technology platform that violates Iowa Code chapter 135Q will be subject to monetary penalties, denial or revocation of registration, and other penalties as described in Iowa Code section 135Q.4.

ITEM 10. Amend rule 481—55.9(89GA,HF2521) as follows:

481—55.9(~~89GA,HF2521~~ 135Q) Public and confidential information.

55.9(1) *Public disclosure.* The following records are open and available for inspection:

a. Registration forms and accompanying materials;

b. Final findings of the department's investigations;

c. Official notices of penalties; and

d. Any records required to be submitted to the department by the health care employment agency pursuant to Iowa Code section 135Q.2(4) ~~as enacted by 2022 Iowa Acts, House File 2521,~~ and subrule 55.5(3) (quarterly reporting to the department).

55.9(2) No change.

~~**55.9(3)** *Redaction of confidential information.* If a record normally open for inspection contains confidential information, the confidential information shall be redacted prior to an agency's providing the record for inspection.~~

ITEM 11. Amend **481—Chapter 55**, implementation sentence, as follows:

These rules are intended to implement ~~2022 Iowa Acts, House File 2521~~ Iowa Code chapter 135Q.

ARC 8220C

ATTORNEY GENERAL[61]

Notice of Intended Action

Proposing rulemaking related to victim assistance program and providing an opportunity for public comment

The Attorney General hereby proposes to rescind Chapter 9, "Victim Assistance Program," and to adopt a new Chapter 9, "Crime Victim Assistance Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 915.

State or Federal Law Implemented

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

Purpose and Summary

Attorney General Brenna Bird took office in January 2023 and quickly discovered that a complete audit of the Crime Victim Assistance Program was obligatory to address any gaps and update practices to allow Attorney General Bird's staff to continue to provide victims the highest level of service and have a victim-centered approach to all issues. Several areas were identified during the audit as needing improvement and will be addressed with the proposed updates to Chapter 9. The updates will help ensure that the rights guaranteed to victims under Iowa Code chapter 915 are upheld. Due to Chapter 13 not being updated in a regular and timely manner by the previous administration, it is necessary to rescind the entire chapter and readopt it with the changes to continue to improve overall services for victims and those who serve victims. Multiple factors, some independent, will be addressed in this rulemaking to provide a complete picture of the need and urgency for the update.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on August 7, 2024. A public hearing was held on the following date(s):

- August 27, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa. The current funding is sufficient to support the increase in pay to qualified providers.

Jobs Impact

After analysis and review of this rulemaking, the Iowa Attorney General's Office believes that providing qualified providers with an increase in payment for performing sexual assault forensic exams will increase the number of medical professionals who will want to become qualified providers and serve victims.

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 Attorney General for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Attorney General's Office no later than 4:30 p.m. on October 8, 2024. Comments should be directed to:

Tracey L. Bearden
Iowa Attorney General's Office, Victim Assistance Section
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: tracey.bearden@ag.iowa.gov with subject line "Notice of Intended Action Public Comment"

Public Hearing

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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:

Text of Proposed Rulemaking

ITEM 1. Rescind 61—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
CRIME VICTIM ASSISTANCE PROGRAM

61—9.1(915) Definitions. These definitions apply to the entire chapter.

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

"Chief" means the section chief of the victim assistance section established in the Iowa department of justice or a designee of the chief.

"Department" means the Iowa department of justice.

"Section" means the victim assistance section of the Iowa department of justice.

61—9.2(915) Board.

9.2(1) A crime victim assistance board is established pursuant to Iowa Code section 915.82.

9.2(2) Members of the board shall serve terms for three years and are eligible for reappointment to the board by the attorney general.

9.2(3) The initial term of the board members shall commence on July 1 of the state fiscal year.

61—9.3(915) Expenses.

9.3(1) Board members shall be reimbursed from the victim compensation fund for expenses actually and necessarily incurred in the discharge of their duties including attendance at board meetings, board committee meetings, and other activities on behalf of the board as designated by the board chair and approved by the department. Reimbursement for expenses shall conform with guidelines established by the department of revenue.

9.3(2) A member of the board may receive, in addition to actual expense reimbursement, a per diem that conforms with guidelines established by the department of revenue.

9.3(3) Expenses of the board and individual members shall be submitted to the chief.

61—9.4(915) Chair of the board.

9.4(1) The attorney general shall select one of the members of the board to serve as chair of the board. The chair shall serve at the pleasure of the attorney general.

9.4(2) A member who is chair of the board and relinquishes the position or is removed as the chair may maintain board membership for the remainder of the term for which the member was originally appointed.

61—9.5(915) Resignations.

9.5(1) Resignations from the board shall be made to the attorney general.

9.5(2) Whenever a member of the board ceases to have the statutory qualifications for appointment to the board, that member shall be considered to have resigned and a vacancy shall occur on the board.

9.5(3) A board member shall be deemed to have submitted a resignation from the board if any of the following events occur:

a. The member does not attend three or more consecutive regular meetings of the board. This paragraph does not apply unless the first and last of the consecutive meetings counted for this purpose are at least 30 days apart. The chair of the board shall contact the board member if two consecutive meetings are missed.

b. The person attends less than one-half of the regular meetings of the board within any period of 12 calendar months beginning July 1. This paragraph applies only to such a period beginning on or after the date when the person is appointed to the board.

9.5(4) If the member receives no notice and had no knowledge of a regular meeting and gives the attorney general a sworn statement to that effect within ten days after the person learns of the meeting, such meeting shall not be counted for the purposes of this rule.

9.5(5) If the events described in paragraphs 9.5(3)*"a"* and *"b"* occur, then the chair of the board will provide the attorney general notice of resignation.

9.5(6) The attorney general may accept or reject such resignation. If the attorney general accepts it, the attorney general shall notify the member, in writing, that the resignation is accepted pursuant to this rule. The attorney general shall then make another appointment to fill the vacancy.

61—9.6(915) Vacancies. Barring unusual circumstances, vacancies on the board shall be filled within 45 days after the attorney general is advised of the vacancy. Vacancies shall be filled for the remainder of the vacant term.

61—9.7(915) Meetings.

9.7(1) The board shall meet a minimum of once per quarter. The board may also meet at the call of the chair or upon the written request to the chair of at least five members of the board.

9.7(2) No fewer than two-thirds of board members shall be present to vote and transact board business in accordance with the Iowa administrative procedure Act.

61—9.8(915) Duties of board. The board shall adopt rules pursuant to Iowa Code chapter 17A relating to the administration of the section, including the adoption of administrative rules relating to the following:

9.8(1) Administration of state and federal grants received for victim services and training and outreach.

9.8(2) Administration of the crime victim compensation program provided in Iowa Code chapter 915.

9.8(3) Administration of sexual abuse examination payments as provided in Iowa Code section 709.10.

9.8(4) Appeal procedures for victim compensation claims denied by the program.

9.8(5) Appeal procedures for grants administered by the program and denied by the board.

61—9.9(915) Chief and staff. The attorney general shall employ a chief and staff for the section, and they shall be employees of the department.

61—9.10(915) Duties of section. In addition to the duties contained in Iowa Code section 13.13, the section shall:

9.10(1) Administer other funds, grants, or programs for victim assistance created by public law or the department.

9.10(2) Provide administrative support to the board.

9.10(3) Enter into agreements under Iowa Code chapter 28E or other law including agreements with other state agencies and political subdivisions for the transfer to the department of funds authorized by law for victim service programs.

9.10(4) Accept, use, and dispose of contributions of money, services, and property that are made available by an agency or department of the state or any of its political subdivisions, the federal government, a private agency, or an individual and that are specifically designated for crime victim assistance programs.

61—9.11 to **9.24** Reserved.

61—9.25(915) Administration of the crime victim compensation program. The section shall administer the crime victim compensation program as provided in Iowa Code chapter 915. All questions, comments, requests for information, or applications for compensation shall be directed to the section by calling 515.281.5044 or 1.800.373.5044.

61—9.26(915) Definitions. For rules related to the crime victim compensation program of the section, the following definitions apply:

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

"Applicant" includes the following individuals who file an application with the crime victim compensation program:

1. A victim of a crime, as defined in Iowa Code section 915.80(9).
2. A person responsible for the care and maintenance of a victim.
3. A resident of Iowa who is the victim of an act that would be compensable had it occurred within the state of Iowa and that occurred in a state or foreign country that does not have a victim compensation program as defined in the federal law.
4. In the event of a victim's death, a spouse, fiancé or fiancée, child, parent, sibling, or person cohabiting with or related by blood or affinity to the victim. An estate is not an eligible applicant for crime victim compensation. An estate shall, however, be reimbursed for funeral and burial expenses if the estate paid the costs on behalf of an eligible applicant who shall benefit from the proceeds of the estate.
5. A legal representative authorized to act on behalf of any of the persons listed above.

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

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

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

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

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

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

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

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

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

"Dependent" means a person who is unable to care for the person's self due to injury, disability, or minor age status.

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

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

"Medical care" means services provided by or provided under the supervision of a person licensed under Iowa law as a medical physician or surgeon, physician assistant, osteopathic physician or surgeon, chiropractor, podiatrist, physical therapist, acupuncturist, or dentist. Medical care also includes services rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

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

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

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

"Program" means the crime victim compensation program of the department of justice.

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

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

"Reasonable charges" means those ordinarily charged by the provider of the service to the general public for services of a similar nature.

61—9.27(915) Duties of the section. The duties of the section shall include but not be limited to the duties provided for in Iowa Code sections 13.31 and 915.83, as well as:

9.27(1) To prepare appropriate forms for the filing and processing of compensation applications.

9.27(2) To conduct an administrative review of claims when a request for reconsideration is filed by an applicant with the chief.

9.27(3) To receive moneys bequeathed, awarded, or donated to the section by a public or private organization or individual.

61—9.28(915) Application for compensation. An applicant may file an application for compensation by telephone or in writing within two years of the occurrence or discovery of a crime pursuant to Iowa Code section 915.84(1). For a victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, the date of the discovery of the crime shall be considered to be the date when the referral was made. The program may waive the requirements of Iowa Code section 915.84(1) if good cause is shown.

9.28(1) *Application postmarked.* An application postmarked within the prescribed time period shall be considered timely filed.

9.28(2) *Good cause.* In determining whether there is good cause for waiver of the two-year application filing requirement, the victim's age, physical condition, psychological state, and cultural or linguistic barriers and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.28(3) *Multiple erroneous claims.* When two or more applications are filed by or on behalf of an individual applicant during a calendar month and the applications appear on initial review to be erroneous claims based on innocent misrepresentation or circumstances of a similar nature, the claims shall be treated as a single application. Verification shall be investigated for each crime recorded in a file with multiple erroneous applications. If any of the crimes recorded in a combined application are verified as compensable crimes, the applications for compensation for those crimes shall be separated from the combined file and assigned distinct application numbers. The program will notify the applicant whenever two or more applications have been combined as one application.

9.28(4) *Program effective date.* The effective date of the crime victim compensation program is January 1, 1983. Victims and survivors of crimes that were committed prior to the effective date may be eligible for compensation if the program can obtain sufficient documentation to verify eligibility.

9.28(5) *Concurrent primary and secondary applications.* A victim may be both a primary victim and a secondary victim in the same crime. The secondary victim application shall not be opened until a benefit has been exhausted for the primary application and there is documentation of need for further benefits in that category. The secondary victim application shall be considered timely filed if the primary victim application was timely filed.

9.28(6) *Concurrent secondary victim applications.* A victim may be a secondary victim to multiple primary victims in a crime. A subsequent secondary victim application shall not be opened until a benefit has been exhausted in the first secondary victim application and there is documentation of need for further benefits in that category. Subsequent secondary victim applications shall be considered timely filed if the primary victim application was timely filed.

61—9.29(915) Report to law enforcement. A person is not eligible for compensation unless the crime is reported to law enforcement pursuant to Iowa Code section 915.84(2). The program may waive the requirements of Iowa Code section 915.84(2) if good cause is shown.

9.29(1) *Law enforcement report sources.* The program finds there is good cause to accept that the report of a crime to any of the following is a report to law enforcement pursuant to Iowa Code section 915.84(2):

a. Sheriffs and their regular deputies.

b. Marshals and police officers of cities.

c. Peace officers of the department of public safety.

d. Special security officers employed by a board of regents institution as identified in Iowa Code section 262.13.

e. Peace officers as authorized by Iowa Code section 350.5 or 456A.13.

f. Employees of the department of transportation who are designated "peace officers" by resolution of the department under Iowa Code section 321.477.

g. Correctional officers, including parole and probation officers.

h. County and state prosecutors.

i. An employee of the department of health and human services having jurisdiction to investigate the incident.

j. A magistrate or judge of the Iowa court system.

9.29(2) *Elements of a report.* A victim is considered to have made a report to law enforcement when the victim has provided a true and accurate report of the incident, which shall include to the best of the victim's knowledge:

a. The nature of the crime,

b. The location of the crime,

c. The name, whereabouts and description of the suspect, if known, and

d. The names of witnesses, if known.

9.29(3) *Law enforcement record.* A law enforcement trip record may satisfy the requirement that the crime be reported to law enforcement.

9.29(4) *Good cause.* In determining whether there is good cause for waiving the requirement to report a crime to law enforcement within 72 hours of the occurrence of the crime, the victim's age, physical condition, psychological state, and cultural or linguistic barriers and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

a. Child victim. If the victim is a child as defined in Iowa Code section 232.2 and is reported to be a victim of child abuse, the section finds there is good cause to waive the 72-hour reporting requirement.

b. Dependent adult victim. If the victim is a dependent adult as defined in Iowa Code section 235B.2(4) and is reported to be a victim of dependent adult abuse, the section finds there is good cause to waive the 72-hour reporting requirement.

c. Sexual abuse victim. For a victim of sexual abuse, the section finds there is good cause to waive the 72-hour reporting requirement if a sexual abuse evidentiary examination was completed within 72 hours of the crime and the victim files a subsequent law enforcement report.

d. Domestic abuse victim. For a victim of domestic abuse, the section finds there is good cause to waive the 72-hour reporting requirement if a pro se protection order pursuant to Iowa Code chapter 236 is entered by the court and the victim files a subsequent law enforcement report.

e. Victim of a sexually violent predator. For a victim of sexual abuse, the section finds good cause to waive the 72-hour reporting requirement when the offender is referred pursuant to Iowa Code chapter 229A.

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

9.30(1) *Reasonable cooperation.* Reasonable cooperation by the victim may include but is not limited to the following:

a. Providing law enforcement with a true and accurate report of the crime.

b. Participating in the investigation of the crime to assist law enforcement in the identification of a suspect as requested, including the review of photographs, composites, and lineups.

c. Participating in prosecution procedures including deposition and trial testimony as requested.

9.30(2) *Determination of cooperation.* In determining whether a victim reasonably cooperated with law enforcement, the program may consider the victim's age, physical condition, psychological state, and cultural or linguistic barriers and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.30(3) *Polygraph testing.* In determining whether a victim reasonably cooperated with law enforcement, the refusal of a victim to undergo a polygraph examination shall not be the basis of denial.

9.30(4) *Sexual abuse victim.* A victim of sexual abuse shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual abuse evidentiary examination.

9.30(5) *Domestic abuse victim.* A victim of domestic abuse shall be deemed to have reasonably cooperated with law enforcement if a report of the crime was made to law enforcement.

61—9.31(915) Contributory conduct. The program shall reduce or disqualify compensation when there is a causal relationship between the contributory conduct on the part of the victim and the victim's injury or death. Contributory conduct includes consent, provocation, or incitement of the crime on the part of the victim.

9.31(1) *Consent, provocation, or incitement.* In assessing consent, provocation or incitement on the part of the victim pursuant to Iowa Code section 915.87(2)*"a,"* the program may consider factors including but not limited to the following:

a. Whether charges are filed against the suspect;

b. Whether the victim attempted to withdraw from the incident;

c. Comparable or reasonable force on the part of the suspect in response to an action of the victim;

d. The amount of time from the beginning of the interaction between the victim and the suspect and the criminal act committed by the suspect;

e. The age of the victim; and

f. Comparable size or strength of the victim and suspect.

9.31(2) *Additional assessment of consent.* In assessing the causal nature of consent pursuant to Iowa Code section 915.87(2)*"a,"* the program may consider the victim's age, physical condition, psychological state, and cultural or linguistic barriers and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.31(3) *Consent in intoxicated driving cases.* A victim who was the passenger in the vehicle of a driver who has been determined to have been legally intoxicated at the time of the crash shall not be automatically denied eligibility for compensation. The program may consider whether the victim could have reasonably known the intoxication level of the driver, the driver's behavior or judgment appeared impaired, the victim encouraged or discouraged the driver from driving, or the victim's judgment was impaired.

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

a. Retaliatory action. The crime was committed as retaliation for a prior physical assault or injury committed by the victim against the perpetrator, and the victim could have reasonably foreseen the likelihood of retaliation.

b. Gang action. The crime was a direct result of gang activity, including gang initiation, or was inflicted as retaliation for prior gang activity in which the victim participated in a criminal street gang as defined in Iowa Code section 723A.1(2).

c. Mutual combat. The crime was an incident of mutual combat if the victim:

(1) Initiated a physical altercation;

(2) Made a credible threat of bodily harm against the person and took action to indicate the intent to carry out the threat and a physical altercation immediately followed; or

(3) Accepted a verbal challenge to engage in a physical altercation and took action to indicate acceptance of the challenge and a physical altercation immediately followed.

d. Exception to mutual combat. Incitement and provocation are not present in an incident of mutual combat when a significant escalation of the fight, such as the introduction of a deadly weapon, is made by a person other than the victim or when a third party becomes involved resulting in more serious injury than the victim could have reasonably expected.

9.31(5) *Victim's criminal act.* Contributory conduct includes assisting in, attempting, or committing a criminal act by the victim. A causal relationship must be documented between the injury or death for which compensation is sought and the criminal act of the victim.

61—9.32(915) Eligibility for compensation. The program shall determine the eligibility of an application for compensation.

9.32(1) *Determination of eligibility.* A denial of eligibility shall be based on written documentation that an application does not satisfy the requirements of Iowa Code chapter 915. An applicant shall be deemed eligible for compensation if the section has not obtained written documentation supporting a

denial within six months of the date of the application. Notwithstanding the foregoing, the section may extend the determination of eligibility beyond six months if a court date or grand jury hearing is pending and is reasonably expected to result in information necessary to render an eligibility decision.

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

9.32(3) *Withdrawal of application.* An applicant may withdraw the application for compensation from consideration.

9.32(4) *Maximum compensation.* Compensation shall be reduced or disqualified to the extent that the maximum compensation allowable pursuant to Iowa Code chapter 915 and these rules has been awarded.

61—9.33(915) Emergency award of compensation. Emergency awards of compensation may be made if the applicant has incurred a loss of income or pecuniary loss as a direct result of the crime.

9.33(1) *Preliminary eligibility determination.* The program must determine that the application is likely to be eligible based on documentation available including, at a minimum, the law enforcement verification form provided to law enforcement by the program.

9.33(2) *Documentation.* To make an emergency award of compensation, the program must have documentation of the lost wages or the pecuniary loss.

9.33(3) *Emergency award decision.* A decision denying an emergency award shall not be appealable.

9.33(4) *Offset.* Any emergency award shall be deducted from the final award of compensation made to the claimant.

61—9.34(915) Computation of compensation. The section shall determine the amount of compensation to be awarded to an eligible applicant.

9.34(1) *Benefit limits.* Compensation shall be made up to the benefit category limits in effect on the date the application is filed. For an eligible victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, compensation shall be paid for expenses incurred after referral of the offender.

9.34(2) *Payer of last resort.* The program is a payer of last resort pursuant to federal law 34 U.S.C. 20102. Compensation shall not be paid for services when the provision for those services is mandated by law or administrative rule to be the responsibility of another governmental unit, private agency or program. Payments shall be reduced by payments made by offenders and third parties responsible for the damages of the crime.

9.34(3) *Voluntary financial programs.* Compensation applicants will be encouraged to apply for other financial assistance programs to pay costs resulting from the crime-related injury. However, no applicant will be denied compensation benefits based on the applicant's refusal to seek funds from a voluntary financial assistance program.

9.34(4) *Insurance providers.* Eligible victims and claimants must give service providers the information necessary to bill insurance providers for crime-related treatment. Payment of compensation will not be made if the victim refuses or fails to provide information requested by the service or insurance provider or to sign the required assignment of benefits within a reasonable time frame.

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

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

9.35(1) *Medical care.* Compensation may be paid for the reasonable expenses of medical care provided to eligible crime victims by, or under the supervision of, a person licensed by the state under Iowa Code chapter 147, 148, 148A, 148E, 149, 150A, 151, 152C, or 153. When preexisting medical conditions are treated during crime-related medical care, the program may reduce payment to a percentage equal to the portion of the medical care determined to be directly related to the compensable crime. Medical care expenses include the following:

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

b. Medical counseling costs. Compensation may be paid for counseling provided under the direct supervision of a psychiatrist or other physician and shall be applied toward the medical benefit maximum.

c. Medical care for homicide victim survivors. Compensation may be paid to a spouse, fiancé or fiancée, child, parent, sibling, or person related by blood or affinity to a homicide victim for the same types of medical care that are allowable for primary victims, including but not limited to hospital and physician care, psychiatric care, prescriptions, and transportation expenses related to injury from the crime.

d. Medical equipment and property alteration. Compensation may be paid for equipment and property alteration that are prescribed as medically necessary care due to injury from the crime.

e. Medical supplies. Compensation may be paid for medical care supplies and incidental supplies necessary for medical care due to injury from the crime.

f. Medical care for pregnancy. Compensation may be paid for medical care costs related to pregnancy resulting from the crime of sexual abuse. Eligible expenses for the care of the victim shall be paid. Expenses incurred for the care of a newborn child are not compensable.

g. Medical devices. Compensation may be paid for the replacement of a medical device including but not limited to a sight or hearing device, dentures, a prosthetic device, a wheelchair, and medication that was taken, lost or destroyed during the crime.

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

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

j. Transportation medical benefit. Compensation may be paid for transportation from the applicable medical care or counseling benefit category. The available funds to the victim from the applicable benefit category will be reduced by the amount of compensation paid for transportation.

k. Health insurance. Compensation may be paid for premiums to continue a health insurance policy that was provided in whole or in part by the victim's employer prior to the crime and the employment ceased as a result of the crime.

9.35(2) *Medical care records.* When compensation for medical care is requested, the provider shall submit medical records that document the care provided and show that the medical care is for injury from crime.

9.35(3) *Mental health counseling.* Compensation may be paid for the reasonable costs of mental health counseling for eligible crime victims and survivors of a homicide victim. When preexisting mental health issues are addressed during crime-related counseling, the program may reduce payment to a percentage equal to the portion of the counseling determined to be directly related to the compensable crime. The mental health counseling provider shall submit a vitae establishing the provider's educational qualifications for compensation. A provider who is required to be licensed under Iowa law must provide proof of licensure and good standing with the department of inspections, appeals, and licensing. Compensation shall be paid for mental health counseling provided by the following:

a. Master's level counselor. Compensation may be paid for mental health counseling provided by a person holding at least a master's degree in a mental health or counseling field including but not limited to social work, psychology, guidance and counseling, behavioral sciences, art therapy, marriage and family therapy, child life therapy, and advanced mental health registered nursing.

b. Supervised mental health counselor. Compensation may be paid for mental health counseling provided by a counselor who does not have a master's degree but is under the supervision of a counselor with a master's degree. The supervising mental health counselor must sign the session notes that must be submitted for review by the program.

c. Intern mental health counselors. Compensation may be paid for mental health counseling provided by an intern candidate for a master's degree when the counseling is provided within a course of professional education and the intern is supervised by a provider eligible for compensation.

d. Out-of-state providers. Compensation may be paid to mental health counselors outside Iowa who provide services to victims of crime eligible for the Iowa program if the mental health counselor meets the professional licensure criteria of the state in which the counselor works.

9.35(4) *Mental health counseling records.* When compensation for mental health counseling is requested, the provider shall complete verification forms related to the counseling as follows:

a. Treatment plan and certification form. Information submitted on the treatment plan and certification form shall include but not be limited to a summary of the initial evaluation, any preexisting mental health diagnoses currently being treated, current diagnoses, issues addressed, counseling goals, expected length of counseling services, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

b. Treatment progress and certification form. At six-month intervals for the duration of the crime-related mental health counseling, the provider shall submit a treatment progress and certification form. Information on the form shall include progress on previously stated goals of counseling, current goals, current diagnosis, expected length of additional counseling, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

c. Session notes. The program may require submission of session notes to determine if the mental health counseling is directly related to the crime when:

(1) The counseling expenses for a victim exceed $3,000.

(2) The provider has not completed the treatment and certification plan with statement of the percentage of treatment directly related to the crime.

(3) The counseling begins, or is provided, more than one year after the crime.

(4) The treatment plan or progress summary indicates that the victim is receiving treatment for a diagnosis or issue not exacerbated by the crime.

9.35(5) *Victim service counseling.* Reasonable charges for counseling provided by a victim counselor as defined in Iowa Code sections 236A.2 and 915.20A, when fees for services of a similar nature to the general public have not previously been established, may be paid within the following guidelines:

a. Counseling provided by victim counselors whose position is funded, in whole or in part, with or whose position is used as match requirement for federal Victims of Crime Act funds shall not be eligible for compensation payment.

b. Counseling services provided to an eligible victim by a victim counselor may be compensated as follows:

(1) Individual counseling at an hourly rate of $35.

(2) Group counseling at an hourly rate of $20.

c. Compensation paid, combined with other funding sources for the service, shall not be in excess of the total cost of providing the counseling hour.

9.35(6) *Victim service counseling records.* A record of each counseling session, including the date of service, the length of service, the name of the victim counselor who provided the service, the general topics addressed, and referrals made, shall be maintained in the victim's file.

9.35(7) *Counseling with the perpetrator.* Compensation for mental health counseling that includes the perpetrator of the crime may be payable when the perpetrator takes part only to take responsibility for the crime and apologize to the victim and, at the request of the victim, the victim is allowed to confront the perpetrator regarding the effects of the crime; or where treatment is court-ordered.

9.35(8) *Family counseling.* Compensation for family mental health or victim service counseling may be paid only for sessions where the victim is present and the focus of the session is to assist the victim in recovery from a compensable crime.

9.35(9) *Lost wages or income.* Compensation may be paid for reasonable lost wages or income when an eligible crime victim is unable to work as the result of injury from a crime or as a result of cooperation with the investigation or prosecution of the crime. Lost wages or income due to crime is determined as follows:

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

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

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

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

9.35(10) *Lost wages or income due to disability.* Compensation shall be paid for lost wages incurred by an eligible crime victim within two weeks after injury from a crime or by an eligible survivor of a homicide victim after the death of a victim without an authorized disability statement. Compensation for lost wages may be paid to a spouse, fiancé or fiancée, child, foster child, sibling, foster sibling, stepsibling, brother-in-law, sister-in-law, grandparent, parent, grandchild, aunt, uncle, first cousin, legal ward, son-in-law, daughter-in-law, niece, nephew, or spouse of a first cousin of or a person cohabitating with or related by affinity to the homicide victim for up to one month without a disability statement as determined reasonable by the program. A victim or survivor of a homicide victim seeking lost wages for a longer period of time shall submit a disability statement from a licensed physician for a physical injury or an injury related to mental health or from a licensed mental health provider as included in paragraph 9.35(3)*"a"* for an injury related to mental health. Compensation shall be made for lost wages under the following circumstances:

a. Victim injured. Compensation may be paid when the victim cannot work due to injury from crime.

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

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

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

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

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

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

9.35(11) *Lost wages or income for cooperation in an investigation and prosecution.* Compensation may be paid for lost wages or income incurred by an eligible primary victim, survivor of a deceased victim as described in Iowa Code section 915.86(8), parent or guardian of a minor-aged primary victim, or caretaker of a dependent primary victim while cooperating with the investigation and prosecution of the crime, including but not limited to participation at identification sessions, arraignment, deposition, plea agreement meetings, trial, sentencing, parole and probation hearings, and sexually violent predator civil commitment proceedings.

9.35(12) *Residential crime scene cleanup.* Compensation may be paid for the reasonable costs of an eligible victim or applicant for cleaning a residential crime scene, which includes a home, or a private vehicle if the vehicle serves as the primary residence, in which the crime was committed. Cleaning a residential crime scene means to remove, or attempt to remove, from the crime scene blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. Compensation shall be paid for the reasonable out-of-pocket cost of cleaning supplies, equipment rental and labor and the value of property that is essential to the victim and that is held by law enforcement for evidentiary purposes. Cleaning a residential crime scene does not include replacement or repair of property damaged in the crime.

9.35(13) *Loss of support.* Compensation for loss of support may be paid for the dependents of an eligible homicide victim or of a victim disabled for a period of 60 days or more when the applicant documents that the dependent relied on the victim wholly or partially for physical care or financial support.

a. Period of dependency. Compensation may be paid for loss of support for the remaining period of dependency, up to the limits established in Iowa Code section 915.86(5), in an amount equal to the lost wages or income the victim was earning at the time of death or disability. The amount of compensation shall be subject to reduction by the amount of collateral sources designated as support pursuant to Iowa Code section 915.87(1).

b. Dependent care. Compensation may be paid for loss of support at the current hourly rate of the Iowa minimum wage for dependent care provided by a person other than the victim if the victim was providing physical care to the dependent at the time of the crime.

9.35(14) *Clothing and bedding.* Compensation may be paid for clothing and bedding held as evidence by law enforcement. Compensation shall not be made for a deceased victim's clothing that is held as evidence.

9.35(15) *Funeral, burial, and memorial expenses.* Compensation may be paid for reasonable expenses incurred for the funeral and burial or cremation for an eligible victim who has died as the result of a crime committed against the victim. An estate may be reimbursed for this benefit if the application is filed by the victim's surviving spouse, fiancé or fiancée, children, parents, or siblings or by a person cohabiting with or related by blood or affinity to the victim. This benefit cannot be used if there are no surviving eligible applicants. Life insurance will only be considered a collateral source if there is a specific funeral expense clause in the life insurance policy. The following expenses may be paid up to the maximum expense established in Iowa Code section 915.86:

a. Funeral service. Compensation may be paid for expenses related to funeral and burial or cremation preparation and services. Funeral services may also include a memorial service or items commemorating the deceased victim.

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

c. Burial effects. Compensation may be paid for miscellaneous funeral and burial expenses including, but not limited to, flowers, burial clothing for the victim, transportation of the victim's body, and travel and lodging expenses for survivors of the deceased victim as described in Iowa Code section 915.86 with priority for the surviving spouse, children, and parents of the victim. Documentation must be provided for all miscellaneous funeral and burial expenses.

9.35(16) *Dependent care.*

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

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

9.35(17) *Residential security.*

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

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

9.35(18) *Transportation and lodging expenses.* Compensation may be paid for reasonable transportation and lodging expenses incurred by the victim, secondary victim, parent or guardian of the victim, or survivor of a deceased victim for medical and counseling services, criminal justice proceedings, or funeral activities, not to exceed the benefit limit established in Iowa Code section 915.86(15).

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

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

61—9.36(915) Appeal of compensation decisions. An applicant shall be informed in writing of the basis for the denial of eligibility or the amount of an award.

9.36(1) *Applicant appeal.* An applicant may appeal a compensation decision as follows:

a. Appeal to chief. An applicant aggrieved by a denial decision or the amount of compensation awarded by the program may appeal to the chief.

b. Appeal to board. An applicant may appeal the chief's decision to the board.

c. Appeal to district court. An applicant who disagrees with the decision of the board has the right to appeal to the district court for judicial review within 30 days of receipt of the board's decision.

9.36(2) *Chief appeal period.* An applicant shall submit to the chief a written request for reconsideration within 30 days of the date the notice of the crime victim compensation program decision is mailed or otherwise issued by the section. Any request for reconsideration postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 30 days of the receipt of the request for reconsideration, the chief shall issue a decision.

9.36(3) *Board appeal period.* An applicant may file with the board a request for consideration of the chief's decision. This written request for consideration by the board shall be submitted within 30 days of the date the notice of the chief's decision is mailed or otherwise issued by the chief. Any request

for review postmarked within the prescribed time period shall be considered timely filed by the section. Barring any unusual circumstances, within 90 days of the receipt of the request, the board, or a committee designated by the chair of not fewer than five members of the board, shall issue a decision.

9.36(4) *District court appeal period.* An applicant shall submit a petition for judicial review to the district court within 30 days of the receipt of the notice of the board's decision.

61—9.37(17A) Waiver from rules. This rule establishes a uniform process for granting waivers from rules adopted by the board governing the crime victim compensation program.

9.37(1) *When waiver is appropriate.* The board may grant a waiver from a rule the board has adopted if the board has rulemaking authority to promulgate the rule and no statute or rule otherwise controls the granting of a waiver from the rule. No waiver may be granted from a rule that defines a term. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

9.37(2) *Criteria for discretionary waivers.* The board may grant a waiver from a rule, in whole or in part, in response to a request from an applicant, as applied to a specific claim, if the board finds that:

a. The application of the rule to the claim at issue would result in hardship or injustice to the person seeking compensation; and

b. The waiver would be consistent with the public interest, or the public interest will be protected by other means substantially equivalent to full compliance with the rule; and

c. The waiver in the specific case would not prejudice the substantial legal rights of any person.

9.37(3) *Board discretion.* The decision about whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors.

9.37(4) *Criteria for mandatory waivers.* In response to an applicant's request, the board shall grant a waiver from a rule, in whole or in part, as applied to the particular circumstances, if the board finds that the application of the rule in that specific case would not, to any extent, advance or serve any of the purposes of the rule.

9.37(5) *Administrative deadlines.* When the rule from which a waiver is sought establishes deadlines, the board shall balance the specific individual circumstances of the applicant with the overall goal of uniform treatment of all applicants.

9.37(6) *Conditions.* The board may condition the granting of a waiver on reasonable conditions to achieve the objectives of the particular rule in question through alternative means.

9.37(7) *Public availability of waiver decisions.*

a. A board decision granting or denying a waiver shall be included in the board minutes with reference to the following:

(1) The particular case and the rule or portion thereof to which the decision pertains;

(2) The relevant facts and reasons upon which the action is based; and

(3) The scope and operative period of the waiver if one is issued.

b. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the department shall maintain a record of all orders granting and denying waivers under this chapter. All waiver decisions shall be indexed and available to members of the public at the section office.

9.37(8) *Voiding or cancellation.* A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver upon notice to the victim by regular mail and an opportunity to be heard if:

a. The facts as stated in the request are not true or material facts have been withheld, or

b. The applicant has failed to comply with the conditions of the waiver.

9.37(9) *Effectiveness of waiver.* After the board issues a waiver, a person seeking compensation may rely on the terms of that waiver for the purposes of the particular case for which it was issued. A waiver shall only be effective in the case for which it is issued.

9.37(10) *Appeals from waiver decisions.* Any request for an appeal from a decision granting or denying a waiver shall be in accordance with the procedures provided in Iowa Code chapter 17A and the board's rules. An appeal shall be taken within 30 days of the issuance of the waiver decision unless a contrary time is provided by rule or statute.

61—9.38 to **9.49** Reserved.

61—9.50(13) Administration of the victim services support program. The victim services support program of the Iowa department of justice shall administer the victim services grant funds as provided in Iowa Code chapters 13 and 236. All questions, comments, requests for information, or applications for grant funds shall be directed to the victim services support program by calling 515.281.5044 or 1.800.373.5044.

61—9.51(13) Definitions. For rules related to the victim services support program, the following definitions apply:

"Applicant" means a local or statewide government agency or a public or private nonprofit program that provides direct services and advocacy to crime victims; training and education to professionals and community agencies on crime-related issues, prevention, or justice support; or technical assistance to crime victim service providers and that makes an application for funds from the victim services support program.

"Application" means a request that complies with federal and state requirements for funds from the following funding streams:

1. The federal Victims of Crime Act.
2. The state domestic and sexual abuse program funds provided for in Iowa Code chapter 236.
3. The federal Family Violence Prevention and Services Act.
4. The federal Violence Against Women Act.
5. Other grants or funds available by law for crime victim assistance.

"Application review committee" means a committee, convened by the section, to review and assess applications and make funding recommendations to the crime victim assistance board.

"Competitive grant application" means an application for funding that the section solicits from eligible applicants and reviews for eligibility and completeness and for which the section convenes the application review committee to recommend grant awards to the board outlined in Iowa Code chapter 915.

"Crime victim center" means the same as defined in Iowa Code section 915.20A(1).

"Focus grant application" means the application for a grant for specific activities, including but not limited to training, travel, or materials, that is solicited at the discretion of the section and used in awarding the grant.

"Funding stream" means a distinct source of federal or state funding available to the section to distribute to entities eligible to receive such funds.

"Grant award" means funds granted to a local or statewide government agency or a public or private nonprofit program by the section.

"Grantee" means a local or statewide government agency or public or private nonprofit program that is awarded or receives funds from the section through a competitive or focus grant application.

"Justice support" means duties performed in the justice system related to investigation, prosecution, or disposition of a criminal case that assist or inform a victim of crime.

"Program" means the victim services support program of the Iowa department of justice.

"Victim" means a crime victim as defined in Iowa Code section 915.80.

61—9.52(13) Program description. Any eligible local or statewide government agency, any public or private nonprofit program, or a combination thereof may apply for and receive a grant award through the program. A contractual agreement specifying the terms of the grant award shall be executed between the department and the approved applicant.

61—9.53(13) Availability of grants. The program shall administer a competitive application process every three years unless otherwise directed by the board. The amount of the funds awarded shall be contingent upon the funds available through state and federal sources. The chief shall announce the opening of an application period through public notice, including but not limited to notice to current

grantees and other eligible agencies identified by the program. Applications must be received by the designated due date.

9.53(1) Competitive grant applications will be awarded based on the availability of funds, history and demonstration of quality of services provided, compliance with the requirements of the section, number of victims served or other statistical data deemed useful by the program to demonstrate successful and cost-effective use of awarded funds, population served, and geographical distribution of funds across the state. A preference shall be given to continued funding of agencies and programs that have demonstrated success.

9.53(2) Focus grants will be awarded at the discretion of the chief and of the deputy attorney general who oversees the section. Funds utilized for focus grant applications must comply with all applicable state and federal rules and regulations. The award total of focus grant applications from one funding source may not exceed 3 percent of the funds available from the source in one fiscal year.

61—9.54(13) Application requirements. Applicants shall submit applications to the section in the form and manner prescribed by the section. Applications shall be available upon request to all interested parties.

9.54(1) To be included in the review process and considered for funding, an application shall be received by the section by the designated due date. Applications shall be submitted to the section in the format prescribed by the section. An extension of the filing deadline may be requested of the victim service support program prior to the deadline and may be granted for good cause. If the victim services support program administrator denies a request for extension, the applicant may file a written appeal to the chief delivered within seven days of the date of denial, stating the reason(s) for reconsideration of the request for extension of the deadline. The determination of a good cause extension by the chief shall be final.

9.54(2) An applicant shall have on file with the program current copies of the applicant's table of organization and, for all private nonprofit programs, articles of incorporation as required.

9.54(3) An applicant shall have on file with the program evidence of any insurance coverage the applicant carries for liability or property.

9.54(4) The program may allow combined applications from two or more local or stateside government agencies if a combined application will encourage cooperation between those agencies on behalf of crime victims, as determined by the program. Each agency receiving funds under a combined application shall sign a separate contract for the awarded funds.

61—9.55(13) Contents of application. Each application shall contain the following information:

9.55(1) A paragraph describing the agencies, units of government, or public or private nonprofit programs requesting the funds.

9.55(2) A description of services for which funding is being requested. The description shall include but not be limited to the following:

a. The geographical area to be served.

b. The crime victim population to be served.

c. Victim eligibility requirements for the applicant's services.

d. A description of substantial financial support from other sources.

e. The intended use of volunteers, if any.

f. The stated goals and objectives or measurable activities of the program.

g. A description of the proposed services to be implemented during the funding year.

h. The amount of funds requested.

i. The amount of cash or in-kind resources or combination thereof that is committed where required by the division.

j. Proof of coordination with appropriate agencies at the local level.

k. A total program budget for all services provided by the applicant's crime victim program.

l. A proposed budget for the requested funds.

m. A list of other anticipated sources of income, including written commitments, if possible, and plans for continued funding of the funded activities.

n. Other information identified by the section to be included in the application to assist the application review committee and the board.

o. Signed certified assurances as required by statute or regulation or otherwise designated by the section.

61—9.56(13) Eligibility requirements. Funds must be used only to provide victim services, justice support to victims of crime, training, community education, crime prevention, or technical assistance to victim service providers and allied professionals. Awarded funds shall not be used to supplant other available or mandated funds. An applicant must meet the following additional requirements:

9.56(1) The applicant shall be a local or statewide agency, a public or private nonprofit organization, or combination thereof, as stated in rule 61—9.51(13).

9.56(2) The applicant shall provide services to victims of crime through crime victim centers, law enforcement agencies, prosecution offices, state or local agencies, culturally specific service organizations, faith-based programs, and other allied professionals. Services provided to victims shall include but are not limited to crisis intervention, civil and criminal court advocacy and support, group and individual follow-up counseling, transportation, and information and referral. Applicants may contact the program at 515.281.5044 or 1.800.373.5044 for additional services that qualify for funding.

9.56(3) An applicant providing services to victims of domestic abuse, sexual abuse, and other violent crimes must also provide or arrange safe shelter or housing for victims and their children when needed at no cost to the victims. To ensure staff training and compliance with best practice standards, preference will be given to domestic abuse programs certified by the Iowa coalition against domestic violence and sexual abuse programs certified by the Iowa coalition against sexual assault.

9.56(4) An applicant providing services to victims of sexual abuse must also provide support to victims at the time of an evidentiary sexual abuse examination. To ensure staff training and compliance with best practice standards, preference will be given to sexual abuse programs certified by the Iowa coalition against sexual assault.

9.56(5) The applicant shall promote within the community a coordinated public and private effort to assist crime victims.

9.56(6) The applicant shall be an equal-opportunity employer and provide services on an equal-opportunity basis.

9.56(7) The applicant shall comply with applicable federal and state statutes and rules, all requirements specified in the grant between the section and any funding source, and all requirements set forth in the funding application or any other contractual document.

9.56(8) The applicant shall assist victims in seeking state crime victim compensation benefits.

9.56(9) The applicant shall have a grievance procedure established for victims, employees, and volunteers.

9.56(10) The applicant shall ensure that all employees and volunteers of crime victim centers providing direct services to victims are trained as victim counselors as defined in Iowa Code section 915.20A.

9.56(11) The applicant shall provide services within the geographical service area without regard to a victim's ability to pay.

9.56(12) An existing program must document results of prior program activities demonstrating that the needs of victims have been met.

61—9.57(13) Selection process. The program shall conduct a preliminary review of each application to ensure that the applicant is eligible, the application is complete, and the proposed services are consistent with the section's mission of providing quality assistance to crime victims and crime victim programs throughout the state.

9.57(1) In selection of competitive applicants, the program may utilize generally accepted methods of grant review, including but not limited to checklists; quality scales; written comments by application

review committee members; and formulas based on past funding, population, clients served and available funds.

9.57(2) In selection of competitive applications, the program shall establish an application review committee. The committee shall submit recommendations for funding awards to the chief. The chief shall submit to the board the recommendations of the application review committee and any alternative recommendations by the program staff.

a. The application review committee shall be comprised of representatives from the crime victim assistance board and experts in the fields of victim services, funding administration and management, and criminal justice. Committee members shall be selected solely by section staff.

b. The program shall provide the committee with information related to an applicant's performance with previous awards, the quality and quantity of services provided, and community support for an applicant.

c. The committee shall review the contents of the applications and information provided by the section and members of the committee regarding an applicant and the geographical area to be served.

9.57(3) The board shall consider the recommendations of the application review committee and the chief to determine final competitive awards to the extent that funds are available and to the extent to which applications meet the application criteria. The board may reject any or all applications.

9.57(4) In selection of an applicant for a focus grant, a written proposal shall be solicited from current grantees. Interested grantees shall submit a proposal to the chief outlining the purpose, cost, and outcome of the proposed activities and funds. The chief shall submit a recommendation to the deputy attorney general for criminal justice who oversees the section, and the deputy attorney general shall make a final decision based on the availability of funds and the merits of the proposal.

61—9.58(13) Notification of applicants. An applicant shall be notified within 90 days after the application due date whether the application has been denied or approved by the board and the amount of funds approved for the application.

61—9.59(13) Request for reconsideration.

9.59(1) An applicant may file with the board a request for reconsideration of the denial of an application or of the amount of an award. The request for reconsideration must be submitted within ten working days of the date the notice of decision is mailed or otherwise issued by the section to the applicant. The request must be in writing and state grounds for reconsideration. The grounds for reconsideration the board shall consider are limited to the following: victim assistance misconduct, ineffective review processes, disparities in funding, or miscalculation of funding amounts. The appeals process is not an opportunity to resubmit an application or to provide additional information for consideration. The board or a committee designated by the board chairperson shall review the request in a timely manner. A decision of the board or designated committee shall constitute final agency action.

9.59(2) At the time a request for reconsideration is received by the chief, notice that a request for reconsideration has been filed shall be sent to all approved applicants whose funds may be affected by the request.

9.59(3) Funds shall not be disbursed pending a request for reconsideration to the extent the funds are affected by the outcome of the request. Every applicant that would be adversely affected shall be notified if a request for reconsideration is approved, and grant awards shall be reduced as necessary.

61—9.60(13) Contract agreement.

9.60(1) A contract shall be negotiated by the section and each applicant.

9.60(2) Prior to entering into a contract, the section or the board may require modification of the proposed program, submission of further information or documentation, or other stipulation by the applicant. The required modification, information, documentation, or stipulation shall be specified in the notification of award contract.

9.60(3) The applicant or the section may request a modification of the program budget to reflect the amount, expenses and activities allowed by the award. Both parties must agree to any modification of the applicant budget.

9.60(4) In the event of a state, federal, or other audit, the grantee shall be responsible for the audit and liable for payment of any funds required to conduct the audit, to compensate for any grant disallowance, or to repay any funds received or spent contrary to the contract, these rules, or applicable law.

9.60(5) Funds shall be spent to meet the stated services and activities as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa in the form and manner as designated by the section.

9.60(6) The grantee shall sign the certified assurances for the award at the time of application and at any time requested by the section.

9.60(7) Nothing in these rules shall be construed as limiting the remedies available to the state or the section for improper use of awarded funds or other breach of the grantee's duties under the contract and applicable law.

61—9.61(13) Performance reports. Performance reports shall be submitted to the program from all grantees. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee by the program until such time as the report is received. Delinquent or inadequate reports from prior grants may detrimentally affect any award to a grantee for the following year.

61—9.62(13) Termination. Contracts may be terminated for the following reasons:

9.62(1) *Termination by grantee.* The grantee may terminate the contract at any time during the contract period by providing written notice to the section.

9.62(2) *Termination by department.* The section may terminate a contract upon a ten-day written notice when the grantee or any of its subcontractors fail to comply with the grant award stipulations, standards, or conditions. When there is a reduction of funds by executive order or by another method, the section may terminate a contract by providing a grantee with written notice.

9.62(3) *Termination for cause.* If the grantee fails to fulfill its obligations under the contract properly or on time, uses grant funds for purposes other than crime victim services approved by the program, or otherwise violates any provision of the contract, the board may terminate the contract by providing written notice to the grantee. Funds shall not be used for social justice activities. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished products and services provided by the grantee shall, at the option of the section, become state property. The section shall pay the grantee fair and equitable compensation for satisfactory performance prior to receipt of notice of termination minus any funds owing to the department (e.g., damages for breach, improperly spent funds).

61—9.63(13) Financial statement supplied. Within 45 days of the termination, the grantee shall supply the section with a financial statement detailing all costs incurred up to the effective date of the termination. The section's determination of costs and amounts to be paid shall be final.

61—9.64(13) Indemnification. The grantee shall defend, indemnify, and hold harmless the state of Iowa; its officers, agents and employees; and any of the state's federal funding sources for:

9.64(1) Grantee's performance or nonperformance of a contract entered into or violation of these rules.

9.64(2) Grantee's activities with subcontractors and all other third parties.

9.64(3) Any other act or omission by a grantee, its agents, officers, or employees.

61—9.65(13) Records. Grantees shall keep statistical records and documentation of services provided and any other activities as required by the program. The program shall have immediate access during working hours to records pertaining to the contract. No notice needs to be provided to the grantee prior to inspection of the records.

61—9.66 to **9.78** Reserved.

61—9.79(915) Iowa standards for sexual assault nurse examiners.

9.79(1) *General.* To ensure the highest standard of care for sexual assault victims, registered nurses, doctors of medicine or doctors of osteopathic medicine, advanced registered nurse practitioners, and physician assistants are eligible for reimbursement from the state for mileage and compensation for performing sexual assault examinations as long as they meet all of the requirements. All standards are submitted, reviewed, and either approved or recommended for denial by the sexual assault forensic response coordinator of the section. All recommendations for denial are reviewed by the strategy and compliance manager and are either approved or denied. Sexual assault nurse examiners or sexual assault nurse examiner candidates who disagree with the decision may appeal to the crime victim assistance board (additional information can be found in rule 61—9.87(915)). All sexual assault nurse examiners must be committed to being in regular contact with the sexual assault forensic response coordinator and communicating any changes in their ability or commitment to serve.

9.79(2) *Eligibility.* To be eligible to become a sexual assault nurse examiner in the state of Iowa, a qualified provider shall meet or exceed the following requirements:

a. Active and unrestricted qualified medical practicing licensure in accordance with subrule 9.79(1).

(1) An adult/adolescent sexual assault nurse examiner candidate shall have two years of nursing experience unless prior experience as a certified nursing assistant (CNA) or licensed practical nurse with experience in an acute care environment, including but not limited to an emergency department, intensive care, coronary care, cardiology, and neonatal intensive care, is deemed sufficient by the sexual assault forensic response coordinator.

(2) A pediatric sexual assault nurse examiner candidate shall have three years of nursing experience that includes a minimum of one year of specialty pediatric nursing experience.

b. A criminal history record check. All candidates shall request a background check from the division of criminal investigation online, by mail, by fax, by email, or in person. The fee is not reimbursed by the state but may be reimbursable through the candidate's employer.

(1) Iowa Code section 272C.15(2) describes criminal convictions that may disqualify a candidate from qualifying to serve as a sexual assault nurse examiner. Any convictions involving a crime of dishonesty or false statements shall be disclosed by the candidate since the conviction may be used to attack a witness's character and ultimately impeach the witness (more information can be found in Iowa Rule of Evidence 5.609).

(2) In cases where a conviction may disqualify a candidate, the sexual assault forensic response coordinator will provide a recommendation to the strategy and compliance manager, who will make the final determination of whether the conviction would disqualify the candidate. A candidate may appeal the decision to the crime victim assistance board up to 30 days after receiving the final decision.

(3) After the completion of the background check, any conviction other than a minor traffic infraction shall be disclosed to the sexual assault forensic response coordinator within 15 calendar days to determine whether the conviction disqualifies the individual from continuing to serve as a sexual assault nurse examiner. The sexual assault forensic response coordinator will provide a recommendation to the strategy and compliance manager, who will make the final determination of whether the conviction would disqualify the candidate. The sexual assault nurse examiner may appeal the decision to the crime victim assistance board within 30 days of receiving the final decision.

c. Commitment to practice as a sexual assault nurse examiner and maintain knowledge, standards and education. Every sexual assault nurse examiner in Iowa will complete the Commitment to Practice as a Sexual Assault Nurse Examiner in Iowa document and submit it to the sexual assault forensic response coordinator.

d. A letter of support to practice as a sexual assault nurse examiner in a facility. The letter of support will be written by a professional in the sexual assault field or a supervisor, state that the professional supports the candidate in providing services to sexual assault victims, and be submitted to the sexual assault forensic response coordinator. Examples of professionals or supervisors include but are not limited to a sexual assault nurse examiner coordinator, emergency department director, or advocacy sexual assault response team (SART) coordinator.

9.79(3) *Candidate approval.* All sexual assault nurse examiner candidates shall meet one of the following:

a. The candidate has completed an approved and accredited 40-hour adult and adolescent course that is consistent with sexual assault nurse examiner education guidelines established by the International Association of Forensic Nurses (IAFN), which includes the awarding of continuing education for course completion. Additionally, the course shall include training and objectives covering Iowa-specific knowledge, including but not limited to laws; regulations; Iowa kit tracking requirements; and medical, legal, and judicial protocols. The candidate shall submit all certificates of completion to the sexual assault forensic response coordinator; or

b. If the candidate has completed a sexual assault nurse examiner education course in another state, the course will be verified and either approved or denied by the sexual assault forensic response coordinator, indicating whether the course meets the standards required by Iowa (as referenced above). If the course is denied, the sexual assault forensic response coordinator will provide all documentation to the strategy and compliance manager for a second review and decision. If the 40-hour course meets approved standards but is missing the Iowa-specific education, the sexual assault forensic response coordinator will make a recommendation to fulfill this training requirement.

c. A practitioner who holds doctor of medicine or doctor of osteopathic medicine licensure will be considered a qualified provider in accordance with the Iowa standards for sexual assault nurse examiners approved by the department upon completion of an approved 30-hour adult and adolescent course.

9.79(4) *Completion of clinical training log/preceptorship.* All sexual assault nurse examiner candidates shall complete the following within six months of successfully completing coursework:

a. Complete and turn in a training log to the sexual assault forensic response coordinator, who will maintain the initial certificate and all CE.

b. Clinical experience, which may be obtained by working with an experienced practicing sexual assault nurse examiner, through a live clinical simulation training, or a combination of the two. Documentation shall be submitted to the sexual assault forensic response coordinator.

c. Submit a log of a preceptorship to the sexual assault forensic response coordinator for review and approval. The log shall include acute examination evaluation and skill verification, including demonstration of use and the ability to perform the following: components of a medical and forensic examination and interview; documentation; understanding and obtaining patient consent forms; kit collection; tracking system use and education to patient; prophylactic medication administration and education; and verbalizing and demonstrating interaction of the multidisciplinary team (MDT) approach and collaboration.

9.79(5) *Reapproval, practice expectations, and CE.* Every three years, sexual assault nurse examiners will submit reapproval documentation to the sexual assault forensic response coordinator by March 31 of the year reapproval is due. The sexual assault forensic response coordinator will provide confirmation of reapproval by April 30 of the same year. The documentation will include:

a. 200 total hours of sexual assault nurse examiner-related practice or education, which can be achieved in the following ways:

(1) A minimum of 150 hours of intended direct care of sexual assault patients. “Intended direct care” means a qualified provider is available and expected to provide services to patients presenting for sexual assault if the provider is on duty during a scheduled shift or on call or a combination of both; and

(2) 50 hours of education related to sexual assault patient care. This can include topics such as trauma neurobiology, sexual assault, testifying, human trafficking, and other related topics.

b. Continuing education. All sexual assault nurse examiners shall complete the following:

(1) Attend at least one virtual or in-person biannual meeting led by the sexual assault forensic response coordinator.

(2) Submit proof of attendance for at least 50 hours of education in the area of sexual assault patient care every three years. This can include topics such as neurobiology of trauma, MDT response, human trafficking, testifying, and other related topics.

(3) Submit verification of the number of examinations completed. If fewer than two examinations are completed in a 16-month period, attendance at an approved clinical simulation training or collaboration with a designated preceptor for skill validation will be required.

61—9.80(915) Administration of sexual abuse examination payment. The section shall administer the sexual abuse examination program as provided in Iowa Code section 915.41. That Iowa Code section states in part that the cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing sexually transmitted disease and preventing pregnancy shall be borne by the department of justice. Questions regarding payment should be made by calling 515.281.5044 or 1.800.373.5044.

61—9.81(915) Definitions. For rules related to sexual assault nurse examiners and sexual abuse payments, the following definitions apply:

"Administration" means the administrator of the section.

"Eligible claimant" means a medical provider that provides a sexual abuse examination to a sexual assault victim. The following are eligible to file a claim with the crime victim assistance program in the event that they have made payment to a medical provider for the costs of a sexual abuse examination:

1. A victim of sexual abuse.
2. A person responsible for the maintenance of a sexual abuse victim.
3. A dependent of a victim who has died as a result of injuries sustained in a sexual assault.
4. The guardian of a sexual abuse victim.

"Reasonable charges" means those ordinarily charged by the provider of the service to the general public for services of a similar nature.

"Sexual abuse" means the same as "sexual abuse" as defined in Iowa Code section 709.1 or "incest" as described in Iowa Code section 726.2.

"Sexual abuse examination" means a medical examination provided to a woman, man, or child to collect evidence of sexual abuse victimization of that person as described in Iowa Code sections 709.1 and 726.2 and provide treatment for the prevention of sexually transmitted disease and prevention of pregnancy pursuant to Iowa Code section 915.41. When applicable, the provider of a sexual abuse examination shall file a child abuse report with the Iowa department of health and human services as required by Iowa Code section 232.70.

61—9.82(915) Application for sexual abuse examination payment.

9.82(1) *Consideration for payment.* The department will consider payment upon receipt of a claim for reimbursement from a medical provider indicating that the claim is for the collection of evidence by sexual abuse examination. In the case that a victim, guardian of a victim, person responsible for the victim, or dependent of a victim who died of injuries sustained in a sexual assault has paid part or all of the charges incurred, a copy of the provider bill and documentation of personal payment of the bill must be submitted for reimbursement. An application for sexual abuse examination payment must include the federal identification number or social security number of the claimant.

9.82(2) *Application filing.* To apply for payment under the sexual abuse examination program, the form or bill submitted must identify the sexual assault victim by name, birth date, and patient number; indicate that the claim is for a sexual abuse examination; and itemize all services rendered and the fee for each service.

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

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

a. Examiner's fee:

(1) To collect the patient's medical history;

(2) To conduct a physical examination;

(3) To collect laboratory specimens; and

(4) To test for sexually transmitted diseases.

b. Treatment for the prevention of sexually transmitted disease.

c. Examination facility, including:

(1) Emergency room, clinic room or office room fee;

(2) Pelvic tray and medically required supplies;

(3) Additional facility or equipment fees that the department determines to be reasonable.

d. Laboratory collection and processing of specimens for criminal evidence, sexually transmitted disease, and pregnancy testing.

9.83(2) *Provider payment.* Any sexual assault forensic examination performed or any sexual abuse services provided by a qualified provider within the first 30 days after a sexual abuse will qualify the provider to receive a $400 provider fee and the $300 facility fee. Qualified providers serving sexual abuse patients with follow-up care will receive a $200 provider fee and a $300 facility fee, if it applies. Services provided by nonqualified providers will only be reimbursed the $300 facility fee, if it applies. Qualified providers are sexual assault nurse examiners as well as other professionals, including doctors of medicine or doctors of osteopathic medicine, advance registered nurse practitioners, and physician assistants who meet or exceed the Iowa standards for sexual assault nurse examiners (more information can be found in rule 61—9.79(915)). For this purpose, an individual does not have to be certified by IAFN to be a qualified provider. Additionally, child protection centers (CPCs) in Iowa that have been accredited by the National Children's Alliance or equivalent accrediting body will be reimbursed by the state at a rate equivalent to that of those individuals who meet or exceed the Iowa standards for sexual assault nurse examiners. The medical exam shall be completed within 30 days of the disclosure of sexual abuse to the CPC. A qualified sexual assault nurse examiner shall also be reimbursed for travel at the per-mile rate established by the department of administrative services for state employees using a privately owned vehicle for state business. No reimbursement will be provided until the appropriate reimbursement invoice and the sexual assault forensic examination consent form are submitted. Any charges in excess of these amounts will require additional documentation from the provider. The crime victim assistance program will pay only those charges determined by the department to be reasonable and fair.

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

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

61—9.85(915) Sexual abuse examination—right to restitution. In all criminal cases under Iowa Code chapter 709 and sections 726.2 and 710.2 in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, restitution may be ordered from the offender to the crime victim assistance program for the cost paid by the department for a sexual abuse examination rendered to the victim of that crime pursuant to Iowa Code section 910.2.

61—9.86(915) Erroneous or fraudulent payment—penalty. If a payment or overpayment of a reparation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipients, the recipient is liable for repayment of the reparation. However, if the program does not notify the recipient of the erroneous payment or overpayment within one year of the date of payment, the recipient is not responsible for repayment to the department. If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment to the department.

61—9.87(915) Right to appeal. An eligible claimant who disagrees with the program's decision concerning payment or amount of payment has the right to request reconsideration of the decision by the

crime victim assistance board. The request for reconsideration must be received by the department within 60 days after the decision of the program is mailed.

These rules are intended to implement Iowa Code chapter 915.

ARC 8216C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Proposing rulemaking related to unemployment insurance services division and providing an opportunity for public comment

The Director of the Workforce Development Department hereby proposes to rescind Chapter 21, "Unemployment Insurance Services Division," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

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.

Pursuant to Executive Order 10, the Department proposes to rescind Chapter 21 relating to the organization of bureaus within the Unemployment Insurance Services Division and adopt a new chapter in lieu thereof. The new chapter eliminates language that duplicates statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on June 26, 2024. A public hearing was held on the following date(s):

- July 9, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 871—Chapter 41.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on October 8, 2024. Comments should be directed to:

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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 8 to 8:30 a.m.	Lobby Conference Room 1000 East Grand Avenue Des Moines, Iowa
October 8, 2024 1 to 1:30 p.m.	Microsoft Teams Join the meeting now Meeting ID: 238 220 939 885 Passcode: FZr5ym Dial in by phone: +1 469.998.6043 Find a local number Phone conference ID: 247 375 18#

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 via email at jeffrey.koncsol@iowa.gov at least 48 hours prior to the hearing date.

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. 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.

ARC 8218C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Proposing rulemaking related to employer records and reports and providing an opportunity for public comment

The Director of the Workforce Development Department hereby proposes to rescind Chapter 22, "Employer Records and Reports," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Acts, Senate File 514.

Purpose and Summary

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

Pursuant to Executive Order 10, the Department proposes to rescind Chapter 22 relating to employer records and reports and adopt a new chapter in lieu thereof. The new chapter eliminates language that duplicates statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on June 26, 2024. A public hearing was held on the following date(s):

- July 9, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 871—Chapter 41.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on October 8, 2024. Comments should be directed to:

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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 8:30 to 9:30 a.m.	Lobby Conference Room 1000 East Grand Avenue Des Moines, Iowa
October 8, 2024 1:30 to 2:30 p.m.	Microsoft Teams Join the meeting now Meeting ID: 294 534 025 083 Passcode: sYXZ8C Dial in by phone: +1 469.998.6043 Find a local number Phone conference ID: 410 461 869#

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 via email at jeffrey.koncsol@iowa.gov at least 48 hours prior to the hearing date.

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

CHAPTER 22
EMPLOYER RECORDS AND REPORTS

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).

ARC 8217C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Proposing rulemaking related to benefit payment control and providing an opportunity for public comment

The Director of the Workforce Development Department hereby proposes to rescind Chapter 25, "Benefit Payment Control," Iowa Administrative Code and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Chapter 25 governs benefit payment control regarding fraudulent activity in unemployment insurance benefits as provided in Iowa Code chapter 96.

Pursuant to Executive Order 10, the Department proposes to rescind Chapter 21 relating to the organization of bureaus within the Unemployment Insurance Services Division and adopt a new chapter in lieu thereof. The new chapter eliminates language that duplicates statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on June 26, 2024. A public hearing was held on the following date(s):

- July 9, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 871—Chapter 41.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on October 8, 2024. Comments should be directed to:

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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 9:30 to 10:30 a.m.	Lobby Conference Room 1000 East Grand Avenue Des Moines, Iowa
October 8, 2024 2:30 to 3:30 p.m.	Microsoft Teams Join the meeting now Meeting ID: 214 735 809 322 Passcode: QcWckb Dial in by phone: +1 469.998.6043

Find a local number
Phone conference ID: 599 810 078#

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 via email at jeffrey.koncsol@iowa.gov at least 48 hours prior to the hearing date.

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. 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 functions of the investigation and recovery unit are 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 subrule 25.13(1) or 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 8219C

UTILITIES COMMISSION[199]

Notice of Intended Action

Proposing rulemaking related to restoration of agricultural lands during and after pipeline construction and providing an opportunity for public comment

The Utilities Commission hereby proposes to rescind Chapter 9, "Restoration of Agricultural Lands During and After Pipeline Construction," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 476.1, 476.1B, 476.2, 478.19 and 478.20.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 479.29 and 479B.20.

Purpose and Summary

The Commission commenced this rulemaking as part of its Executive Order 10 review. The proposed rulemaking promulgates the standards by which the Commission requires utilities to follow to maintain safe electrical infrastructure within the state of Iowa.

The Commission issued an order commencing rulemaking on August 14, 2024. The order is available on the Commission's electronic filing system, efs.iowa.gov, under Docket No. RMU-2023-0009.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on April 3, 2024. A public hearing was held on the following date(s):

- May 7, 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

No waiver provision is included in the amendments because the Commission has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

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 Commission no later than 4:30 p.m. on October 30, 2024. Comments should be directed to:

IT Support
Iowa Utilities Commission
Phone: 515.725.7300
Email: ITSupport@iub.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 17, 2024 2 to 4 p.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa
October 31, 2024 9 to 11 a.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa

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 Commission 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. Rescind 199—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION

199—9.1(479,479B) General information.

9.1(1) *Authority and purpose.* The rules in this chapter are adopted by the Iowa utilities commission pursuant to the authority granted to the commission in Iowa Code sections 479.29 and 479B.20 to establish standards for the restoration of agricultural lands during and after pipeline construction. These rules constitute the minimum standards for restoration of agricultural lands disturbed by pipeline construction. These rules do not apply to land located within city boundaries, unless the land is used for agricultural purposes, or to interstate natural gas pipelines.

When a project-specific land restoration plan is required pursuant to Iowa Code section 479.29(9) or 479B.20(9), following notice and comment, the commission may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project. Where a project-specific land restoration plan is not needed pursuant to Iowa Code section 479.29(9) or 479B.20(9), the rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction.

9.1(2) *Definitions.* The following words and terms, when used in these rules, have the meanings indicated below:

"Affected person" means any person with a legal right or interest in the property, including but not limited to a landowner, a contract purchaser of record, a person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

"Agricultural land" means any land devoted to agricultural use, including but not limited to land used for crop production, cleared land capable of being cultivated, hay land, pasture land, managed woodlands and woodlands of commercial value, truck gardens, farmsteads, commercial agricultural-related facilities, feedlots, rangeland, livestock confinement systems, land on which farm buildings are located, and land used to implement management practices and structures for the improvement or conservation of soil, water, air, and related plant and animal resources.

"County inspector" means a professional engineer who is licensed under Iowa Code chapter 542B, who is familiar with agricultural and environmental inspection requirements and who is designated by the county commission of supervisors to be responsible for completing an on-site inspection for compliance with this chapter and Iowa Code chapters 479 and 479B.

"Drainage structures" or *"underground improvements"* means any permanent structure used for draining agricultural lands, including tile systems and buried terrace outlets.

"Hazardous liquid" means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

"Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

"Pipeline" means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through Iowa.

"Pipeline company" means any person engaged in or organized for the purpose of owning, operating, or controlling pipelines.

"Pipeline construction" means activity associated with installation, relocation, replacement, removal, or operation or maintenance of a pipeline that disturbs agricultural land but does not include work performed during an emergency, tree clearing, or topsoil surveying completed on land under easement with written approval from the landowner. Emergency means a condition involving clear and immediate danger to life, health, or essential services or a risk of a potentially significant loss of property. When the emergency condition ends, pipeline construction will be in accordance with these rules.

"Proper notice to the county inspector" means that the pipeline company and its contractors shall keep the county inspector continually informed of the work schedule and any changes to the schedule and shall provide at least 24 hours' written notice before commencing or continuing any construction activity to be inspected by the county inspector, including but not limited to right-of-way staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, tile screening, tile repairs, backfilling, decompaction, cleanup, restoration, or testing at any project location. The pipeline company may request that the county inspector designate a person to receive such notices. If proper notice is given, construction may begin regardless of the county inspector's presence on the site.

"Soil conservation practices" means any land conservation practice recognized by federal or state soil conservation agencies, including but not limited to grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

"Soil conservation structures" means any permanent structure recognized by federal or state soil conservation agencies, including but not limited to toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

"Surface drains" means any surface drainage system, such as shallow surface field drains, grassed waterways, open ditches, or any other conveyance of surface water.

"Till" means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

"Topsoil" means the uppermost layer of the soil with the darkest color or the highest content of organic matter, generally referred to as the "A" horizon. In areas where the "A" horizon is determined by a certified professional soil scientist to be less than 12 inches, the topsoil depth shall include both the "A" and the "Bw" horizons as determined by the March 2017 United States Department of Agriculture Soil Survey Manual. Topsoil depth is to be determined under the supervision of a certified professional soil scientist.

"Underground storage" means storage of either natural gas or hazardous liquid in a subsurface stratum or formation of the earth.

"Wet conditions" means adverse soil conditions due to rain events, antecedent moisture, or ponded water, where the passage of construction equipment may cause rutting that mixes topsoil and subsoil, may prevent the effective removal or replacement of topsoil and subsoil, may prevent proper decompaction, or may damage underground tile lines.

199—9.2(479,479B) Filing of land restoration plans. Pursuant to Iowa Code sections 479.29 and 479B.20, a land restoration plan is required for any pipeline construction that requires a permit from the commission and for any proposed amendment to an existing permit that involves pipeline construction, relocation, or replacement. The land restoration plan shall be filed with the appropriate petition and be identified as Exhibit I. For pipelines that do not need a permit from the commission and that are

constructed across agricultural land, the pipeline company shall have on file with the commission a general land restoration plan covering pipelines that do not need a permit from the commission.

9.2(1) *Content of plan.* A land restoration plan includes but is not limited to the following:

a. A brief description of the purpose and nature of the pipeline construction project.

b. A description of the sequence of events that will occur during pipeline construction.

c. A description of how the pipeline company will comply with rules 199—9.4(479,479B) and 199—9.5(479,479B).

d. The point of contact for landowner inquiries or claims as provided for in rule 199—9.5(479,479B).

e. A unique identification number that follows a linearly sequential pattern on each parcel of land over which the pipeline will be constructed.

9.2(2) *Plan variations.* The commission may by waiver allow variations from the requirements in this chapter if the pipeline company requesting a waiver is able to satisfy the standards set forth in rule 199—1.3(17A,474,476) and if the alternative methods proposed by the pipeline company would restore the land to a condition as good as or better than provided for in this chapter.

9.2(3) *Mitigation plans and agreements.* Preparation of a separate land restoration plan may be waived by the commission where a pipeline company enters into an agricultural impact mitigation plan or similar agreement with the appropriate agencies of the state of Iowa that satisfies the requirements of this chapter. If a mitigation plan or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the commission and will be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

199—9.3(479,479B) Procedure for review of plan.

9.3(1) *Timing.* The commission will review the proposed land restoration plan, as established in rule 199—9.2(479,479B), at the same time it reviews the petition. Objections to the proposed plan may be filed as part of the permit proceeding. The pipeline company shall modify the plan as determined by the commission.

9.3(2) *Distributing approved plan.* After the commission has approved the plan as part of the commission's review and approval of the petition, but prior to construction, the pipeline company shall provide copies of the final plan approved by the commission to all landowners of property and persons in possession of the property under a lease that will be disturbed by the construction, the county commission of supervisors in each county affected by the project, the county engineer of each affected county, and the county inspector in each affected county.

199—9.4(479,479B) Staking and clearing of agricultural land.

9.4(1) *Easement staking.* The pipeline company shall allow the county inspector and the landowner to be present during the staking of the easement. Written notice of the staking shall be provided to the landowner and the county inspector in the same manner as provided for in proper notice to the county inspector. Pipeline construction is prohibited until seven days after the easement is staked unless the landowner waives the seven-day period after the easement staking has been completed. If proper notice is given, easement staking may begin regardless of the county inspector's or landowner's presence on the site.

9.4(2) *Trees and brush.* If trees are to be removed from the easement, the pipeline company shall consult with the landowner to determine if there are trees of commercial or other value to the landowner.

a. If there are trees of commercial or other value to the landowner, the pipeline company shall allow the landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to commencement of land clearing or, if the landowner does not want to retain ownership of the trees, the pipeline company shall hire a forester with local expertise to appraise the commercial value of any timber to be cut for construction of the pipeline. The pipeline company shall compensate the landowner for the full appraised commercial value of any timber removed. The pipeline company shall remove all cleared trees and debris left on or adjacent to the easement.

b. If the trees to be cleared have been determined to have no commercial or other value to the landowner and there is no negotiated agreement between the pipeline company and the landowner for the disposition of the trees in advance of clearing of the easement, removal and disposal of the material shall be completed at the discretion of the pipeline company.

9.4(3) *Fencing.* The pipeline company may remove all field fences and gates, located within the pipeline company's easement, during clearing of the easement and may construct temporary fences and gates where necessary. Upon completion of the pipeline construction, the pipeline company shall replace any temporary field fences or gates with permanent field fences or gates. The pipeline company and landowner may negotiate separate agreements regarding field fences and gates. If livestock is present, the pipeline company shall construct any temporary or permanent fences and gates in a manner that will contain livestock.

199—9.5(479,479B) Restoration of agricultural lands.

9.5(1) *Topsoil survey.*

a. Prior to the removal of any topsoil, the pipeline company will conduct a topsoil survey to be performed under the supervision of a certified professional soil scientist across the full extent of the easement for any pipeline that requires a commission permit.

(1) A minimum of three soil depths shall be physically measured in the field at each cross section as follows:

1. One on the left edge of the easement;
2. One at 15 feet of the centerline of the pipeline on the working side of the right-of-way; and
3. One on the right edge of the working easement.

(2) Cross sections shall be taken a minimum of every 500 linear feet for the full extent of the easement. Each parcel of land shall have a minimum of two cross sections.

b. The pipeline company shall provide the results of the topsoil survey to the county commission of supervisors, county inspector, county engineer, and affected persons at least six weeks prior to commencing construction.

9.5(2) *Topsoil separation and replacement.*

a. Removal. Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with pipeline construction unless otherwise provided in these rules. The actual depth of the topsoil, as determined by a topsoil survey, shall be stripped from the full extent of the easement. Topsoil shall also be removed and replaced in accordance with these rules at any location where land slope or contour is significantly altered to facilitate construction. Topsoil removal shall not occur during wet conditions.

b. Soil storage. The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The stored topsoil and subsoil shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be used to construct field entrances or drives, or be otherwise removed from the property, without the written consent of the landowner. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

c. Stockpile stabilization. Topsoil stockpiles shall be stabilized with seeding and mulch within 14 calendar days of stockpiling. Between October 15 and March 15, soil tackifier shall be used in place of seeding and mulch.

d. Topsoil removal not required. Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods that do not require the opening of a trench. If provided for in a written agreement between the pipeline company and the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

e. Backfill. The topsoil and subsoil shall be replaced in the reverse order in which they were excavated from the trench. The depth of the replaced topsoil shall conform as near as possible to the depth of topsoil that was removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as near as possible.

9.5(3) *Pumping of water from open trenches.*

a. In the event it becomes necessary to pump water from open trenches, the pipeline company shall pump the water in a manner that avoids damaging adjacent agricultural land. Damages from pumping water from trenches include but are not limited to inundation of crops and depositing of sediment in fields, pastures, and surface drains.

b. If water-related damages result from pumping water from trenches, the pipeline company shall either compensate the landowner for the damages or restore the land, pasture, surface drains, or similar land to the preconstruction condition, at the landowner's discretion.

c. Written permission from the landowner is required before the pipeline company can pump water from trenches onto land outside of the pipeline company's easement.

d. All pumping of water shall comply with existing state drainage laws, local ordinances, and federal statutes.

9.5(4) *Temporary and permanent repair of drain tile.*

a. Pipeline clearance from drain tile. Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

b. Temporary repair. The following standards shall be used to determine if temporary repair of agricultural drainage tile lines encountered during pipeline construction is required.

(1) Any underground drain tile damaged, cut, or removed and found to be flowing or that subsequently begins to flow shall be temporarily repaired as soon as practicable, and the repair shall be maintained as necessary to allow for its proper function during construction of the pipeline. The temporary repairs shall be maintained in good condition until permanent repairs are made.

(2) Any underground drain tile damaged, cut, or removed and found to not be flowing shall have the upstream exposed tile line screened or otherwise protected to prevent the entry of foreign material and small animals into the tile system. The downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if the water level rises in the trench.

c. Marking. Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker will remain until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector. If proper notice is given, construction may begin regardless of the county inspector's presence on the site.

d. Permanent repairs. Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed within 14 days after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. The county inspector shall inspect each permanent repair for compliance with this chapter. If proper notice is given, construction may begin regardless of the county inspector's presence on site. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

(1) All damaged, broken, or cracked tile shall be removed.

(2) Only unobstructed tile shall be used for replacement.

(3) The tile furnished for replacement purposes shall be of a quality, size, and flow capacity at least equal to that of the tile being replaced.

(4) Tile shall be replaced using a laser transit, or similar instrument or method, to ensure that the tile's proper gradient and alignment are restored, except where relocation or rerouting is required for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUC PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUC PL-1 at the end of this chapter.

(6) Before completing permanent tile repairs, all tile lines shall be examined visually by televising on both sides of the trench over the full extent of the working easement to check for tile that might have been damaged or misaligned by construction equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction.

e. Inspection. Prior to the applicable trench area being backfilled, each permanent tile repair shall be inspected by the county inspector for compliance.

f. Backfilling. The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile line. The county inspector shall inspect that backfill for compliance with this chapter. If proper notice is given, construction may begin regardless of the county inspector's presence on the site.

g. Subsurface drainage. Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

9.5(5) *Removal of rocks and debris from the easement.*

a. Removal. The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile or above the frost line. In addition, the pipeline company shall examine areas adjacent to the easement and along access roads and shall remove any large rocks or debris that may have rolled or blown from the right-of-way or fallen from vehicles.

b. Disposal. Rock that cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris includes spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal or treated by appropriate in situ remediation.

9.5(6) *Restoration after soil compaction and rutting.*

a. Agricultural restoration. Agricultural land, including off right-of-way access roads traversed by heavy construction equipment that will be removed, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches deep on other lands and shall be performed under soil moisture conditions that result in a maximum standard penetration test (SPT) reading of 300 psi pursuant to ASTM D1586/D1586M-18e1, as published on November 30, 2018, performed by a qualified person. Decompaction shall not occur in wet conditions. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

b. Rutted land restoration. Rutted land shall be graded and tilled until restored as near as practical to its preconstruction condition. Rutting shall be remedied before any topsoil that was removed is replaced.

9.5(7) *Restoration of terraces, waterways, and other erosion control structures.* Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the elevation and grade existing prior to the time of pipeline construction. Any drain tiles or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUC PL-2 at the end of this chapter. The county inspector shall inspect restoration of terraces, waterways, and other erosion control structures for compliance with this chapter. If proper notice is given, construction may begin regardless of the county inspector's presence on the site.

9.5(8) *Revegetation of untilled land.*

a. Crop production. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original or a comparable ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph 9.5(9)*"b"* applies.

b. Delayed crop production. Agricultural land used for row crop or small grain production that will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the land the following year. The landowner may request ground cover where the construction is completed too late in the year for a cover crop to become established to prevent soil erosion.

c. Weed control. On any easement, including but not limited to construction easements and easements relating to valve sites, metering stations, and compression stations, the pipeline company shall provide for weed control in a manner that prevents the spread of weeds onto adjacent lands used for agricultural purposes. Spraying shall be done by a pesticide applicator that is appropriately licensed for the spraying of pesticide in Iowa. If the pipeline company fails to control weeds within 45 days after receiving written notice from the landowner, the pipeline company shall be responsible for reimbursing all reasonable costs of weed control incurred by owners of adjacent land.

9.5(9) *Future installation of drain tile or soil conservation practices and structures.*

a. Future drain tile. The pipeline company shall consult with affected persons regarding plans for future drain tile installation. Where an affected person provides the pipeline company with written plans prepared by a qualified tile technician for future drain tile improvements before an easement is secured, the pipeline shall be installed at a depth that will allow proper clearance between the pipeline and the proposed future tile installation.

b. Future practices and structures. The pipeline company shall consult with any affected person's plans for future use or installation of soil conservation practices or structures. Where an affected person provides the pipeline company with a design for such practice or structure prepared by a qualified technician before an easement is secured, the pipeline shall be installed at a depth that will allow for future installation of the planned soil conservation practice or structure and that will retain the integrity of the pipeline.

9.5(10) *Restoration of land slope and contour.* Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as near as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area that visibly affects land contour or undesirably alters surface drainage shall be remediated by the pipeline company by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished. The county inspector shall inspect restoration of land slope and contour for compliance with this chapter.

9.5(11) *Restoration of areas used for field entrances or temporary roads.* Upon completion of construction and land restoration, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.5(10) and deep tilled as required by subrule 9.5(6). If by agreement, or at landowner request, and subject to any necessary approval by local public road authorities, a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition. The county inspector shall inspect restoration of areas used for field entrances or temporary roads for compliance with this chapter.

9.5(12) *Construction in wet conditions.* The county inspector, in consultation with the pipeline company and the landowner or person in possession of the land pursuant to a lease, if present, shall

determine when construction should not proceed in a given area due to wet conditions. The county inspector shall have the sole authority to determine whether construction should be halted due to wet conditions. Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed or underground drainage structures may be damaged. To facilitate construction in wet soils, the pipeline company may elect to remove and stockpile the topsoil from the traveled way, install mats or padding, or use other methods acceptable to the county inspector. Topsoil removal, storage, and replacement shall comply with subrule 9.5(2).

9.5(13) *Access to land.* Nothing in this rule shall prohibit a landowner or person in possession of the land pursuant to a lease from having access to the property. A landowner or person in possession of the land pursuant to a lease shall not disrupt ongoing construction and shall not compromise the safety considerations of the construction. A landowner or person in possession of the land pursuant to a lease shall abide by any and all safety instructions established by the pipeline company during construction.

199—9.6(479,479B) Designation of a pipeline company point of contact for landowner inquiries or claims.

9.6(1) For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for inquiries or claims from affected persons. The designation shall include the name of an individual to contact and a toll-free telephone number, an email address, and an address through which that person can be reached. The pipeline company shall also provide the name of and contact information for the county inspector. This information shall be provided to all affected persons prior to commencement of construction. Any change in the point of contact shall be promptly communicated in writing to affected persons. A designated point of contact shall remain available for all affected persons for at least one year following project completion and for affected persons with unresolved damage claims until such time as those claims are settled.

9.6(2) If requested by an affected person, any notice required to be given to the county inspector shall also be given to the affected person.

199—9.7(479,479B) Separate agreements. This chapter does not preclude the application of provisions for protecting or restoring property that are different from those contained in this chapter, or in a land restoration plan, which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing, and the pipeline company shall provide a copy to the county inspector and the commission.

199—9.8(479,479B) Notice of violation and halting construction.

9.8(1) *Notice of violation.* If the county inspector identifies a violation of the standards adopted in this chapter, Iowa Code section 479.29 or 479B.20, or a separate agreement between the pipeline company and the landowner, the county inspector shall give verbal notice, followed by written notice, to the pipeline company and the pipeline company's contractor and require the pipeline company to take corrective action.

9.8(2) *Halting construction.* A county inspector may temporarily halt construction at the location of the dispute if construction is not in compliance with the standards adopted in this chapter, the land restoration plan, or the terms of an independent agreement between the pipeline company and landowner regarding land restoration or line location until the county inspector consults with a supervisor of the pipeline company or contractor. If, after consultation with a supervisor of the pipeline company or contractor, agreement on corrective action to address the violation cannot be reached, the county inspector may submit a request to the county commission of supervisors for resolution of the issue. Construction may resume at the disputed location either (1) after the county inspector and supervisor of the pipeline company reach an agreement on a resolution or (2) where the commission of supervisors has been contacted, after the commission of supervisors has responded or after one business day after contact by the county inspector. If a resolution is not reached, construction may continue; however, the pipeline company will be responsible for any damages or for correcting any violation.

199—9.9(479,479B) Enforcement. A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections 479.29 and 479B.20, including giving proper notice before staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, silt screening, tile repair or backfilling, decompaction, cleanup, restoration, or testing of any easement. The pipeline company shall pay the reasonable costs for any work provided during the pipeline construction by the county inspector. If the pipeline company or its contractor does not comply with the requirements of Iowa Code section 479.29 or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county commission of supervisors may petition the utilities commission for an order requiring corrective action to be taken. The county commission of supervisors may also file a complaint with the commission seeking imposition of civil penalties.

199—9.10(479,479B) Project completion. The county inspector for each county affected by the pipeline project shall recommend to the county commission of supervisors that the pipeline project be considered complete upon completion of restoration of all affected agricultural lands and 70 percent growth is established in locations requiring seeding after receiving written notification by the pipeline company to the same effect. The county commission of supervisors shall determine whether the project is completed.

199—9.11(479,479B) Document submittal. Once a project is completed, project documents shall be submitted as follows.

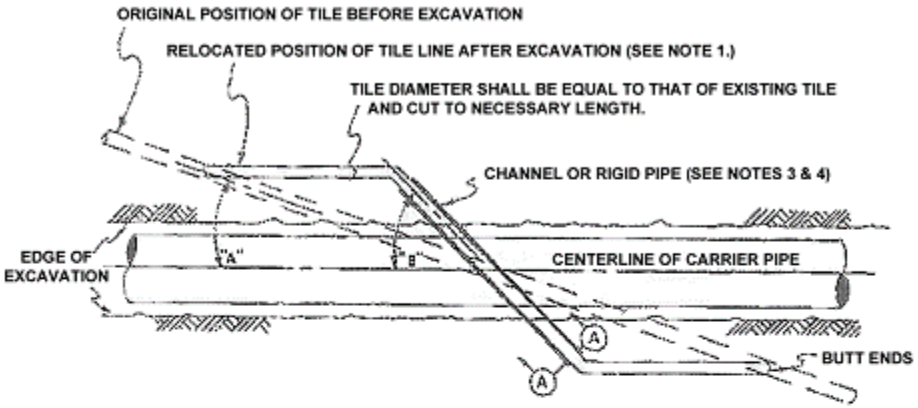
9.11(1) *Document turnover.* The county inspector shall submit to the county commission of supervisors and the pipeline company copies of inspection reports; tile reports and maps; punch lists; notice of violation documents; decompaction agreements; separate agreements, including those that excuse the pipeline company from certain construction responsibilities; and landowner agreements. The documents shall also be available for inspection by the commission or an affected person upon request.

9.11(2) *As-built drawings.* The pipeline company shall provide the county inspector and affected landowners with copies of pipe alignment as-built drawings and underground drain tile as-built drawings, including the Global Positioning System location of drain tile.

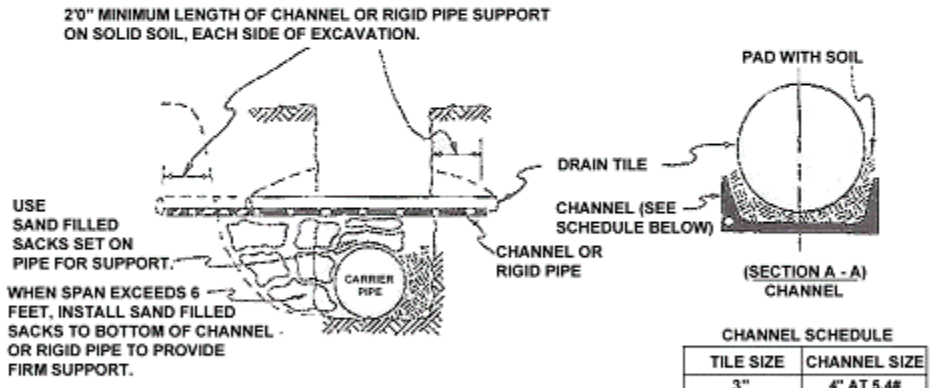
These rules are intended to implement Iowa Code sections 479.29 and 479B.20.

Drawing No. IUC PL-1

RESTORATION OF DRAIN TILE



(PLAN VIEW)

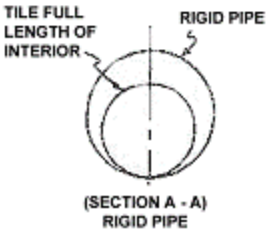


(METHOD OF SUPPORT - - ELEVATION)

CHANNEL SCHEDULE

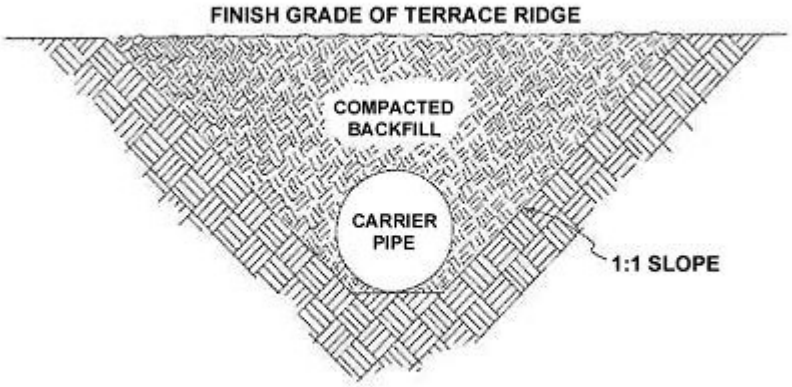
TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4#
4" - 5"	5" AT 6.7#
6" - 9"	7" AT 9.8#
10" & LARGER	10" AT 15.3#

NOTES:
1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.



Drawing No. IUC PL-2

RESTORATION OF TERRACE



NOTE:

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

ARC 8210C

PAROLE BOARD[205]

Notice of Intended Action

Proposing rulemaking related to fair information practices and providing an opportunity for public comment

The Parole Board hereby proposes to rescind Chapter 5, "Fair Information Practices," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 22, 904A, and 906.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 514.

Purpose and Summary

This proposed rulemaking contains revisions of administrative rules based on requirements of Executive Order 10 as well as statutory changes based on 2023 Iowa Acts, Senate File 514. Chapter 5 provides information to the public on how to request public records. It also provides information about confidential records that would not be subject to a public record request.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on May 29, 2024. A public hearing was held on the following date(s):

- June 18, 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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on October 8, 2024. Comments should be directed to:

Steven Clarke
Board of Parole
510 East 12th Street
Des Moines, Iowa 50319
Email: steven.clarke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 3:30 to 4 p.m.	Virtual Hearing Room 2 meet.google.com/vyg-jtks-ccr?hs=122&authuser=0
October 15, 2024 3:30 to 4 p.m.	Virtual Hearing Room 2 meet.google.com/vyg-jtks-ccr?hs=122&authuser=0

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 Board 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. Rescind 205—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
FAIR INFORMATION PRACTICES

The board of parole hereby adopts, with the following exceptions and amendments, the uniform rules on agency procedure relating to fair information practices, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

205—5.1(17A,22) Definitions. As used in this chapter:

"Agency" means the board of parole.

"Confidential records" means records as defined under Iowa Code sections 22.7, 22.8, 904.601, 904.602, and 904.603.

"Open records" means those records that are defined by Iowa Code section 22.7, 22.8, 904.601, or 904.602 or any other provision of the law.

205—5.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22. Agency staff will cooperate with members of the public in implementing the provisions of that chapter.

205—5.3(17A,22) Requests for access to records.

5.3(1) *Location of record.* A request for access to a record should be directed to the office where the record is kept. Records of current inmates, work releasees, and parolees are maintained in the office of the Board of Parole, Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa 50319; telephone 515.725.5757.

5.3(2) *Office hours.* Open records will be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

5.3(3) *Request for access.* Requests for access to records may be made in writing, in person, by telephone, or by electronic means if the request is for open record information. Requests should identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests should include the name, address, and telephone number of the person requesting the information. A person is not required to give a reason for requesting an open record.

5.3(4) *Response to requests.* The custodian is authorized to grant or deny access to the record according to the provisions of Iowa Code chapter 22 and sections 904.601, 904.602, and 904.603 and this chapter. The decision to grant or deny access may be delegated to one or more designated employees. Unless the size or nature of the request requires time for compliance, the agency should comply with the request as soon as practicable. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4) or for good cause. The agency should promptly inform the requester of the reason for the delay. A request to review a confidential record should be in writing and enumerate the specific grounds justifying access to the confidential record and should provide any proof necessary to establish relevant facts prior to receiving access to the record.

5.3(7) *Fees.*

c. Hourly fee. A reasonable hourly fee may be charged for actual agency expenses in providing requested records when the time required is in excess of 30 minutes. That hourly fee will not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this function. Reasonable costs may also be assessed for copying and providing records through means other than electronic mail.

205—5.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.

5.5(5) *Request granted or deferred.* If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be placed in the agency's public file in lieu of the original record. If the agency subsequently receives a request for access to the original record, the agency will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record.

205—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to

review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is the subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requesters should send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the Board of Parole, Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa 50319. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and should include the current address and telephone number of the requester or the requester's representative.

205—5.7(17A,22) Consensual disclosure of confidential records.

5.7(1) *Consent to disclose by a subject individual.* To the extent allowed by law, the subject may consent in writing to agency disclosure of confidential records.

5.7(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

5.7(3) *Obtaining information from a third party.* The board is required to obtain information to assist in making decisions regarding classification, programming, security, and administrative management. Requests to third parties for this information may involve the release of confidential information about individuals. Except as provided by law, the board may make these requests only when the individual has authorized the release.

205—5.8(17A,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of all agency records:

5.8(1) Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

5.8(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

5.8(3) Disclosure to the department of inspections, appeals, and licensing for matters in which it is performing services or functions on behalf of the agency.

5.8(4) Transfers of information within the agency, to other state agencies, or to units of local government as appropriate to administer the program for which the information is collected.

5.8(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

5.8(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

205—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Below are instances when disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as permitted by law and in the particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written

request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

h. In the course of ordinary deliberations during an open meeting.

205—5.10(17A,22) Release to subject.

5.10(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the board need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code sections 22.7(18) and 904.602.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

d. Other records as otherwise authorized by law need not be released.

5.10(2) When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

205—5.11(17A,22) Availability of records.

5.11(1) *Open records.* Board records are open for public inspection and copying unless otherwise prohibited by current rule or law.

5.11(2) *Confidential records.* Public records as identified in Iowa Code section 22.7 may be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information.

205—5.12(17A,22) Personally identifiable information.

5.12(1) *Personally identifiable information.* This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in this rule. For each record system, this rule:

a. Describes the legal authority for the collection of that information and the means of storage of that information; and

b. Indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

5.12(2) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons requesting copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court that maintains the official copy.

5.12(3) *Personnel files.* The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, and tax withholding information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

205—5.13(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes. This rule describes groups of records maintained by the board other than record systems as previously defined. These records are routinely available to the public. However, the board's files of these records may contain confidential information, as discussed in rule 205—5.11(17A,22). The following records are available:

5.13(1) *Rulemaking records.* Rulemaking records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

5.13(2) *Board meeting records.* Agendas, minutes, and materials presented to the board are available from the board's business office, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5(4) or that are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by an individual identifier.

5.13(3) *Publications.* News releases, annual reports, project reports, and related documents are available from the board office. Board news releases, annual reports, and project reports may contain information about individuals, including board staff or members of the board councils or committees. This information is not retrieved by an individual identifier.

5.13(4) *Statistical reports.* Periodic reports of the board for various board programs are available from the board office. Statistical reports do not contain personally identifiable information.

5.13(5) *Grants.* Records on persons receiving grants for various projects or programs are available through the board's business office. These records may contain information about employees or a grantee. This information is not retrieved by an individual identifier and is not stored on an automated data processing system. The information is collected under the authority of Iowa Code chapter 904.

5.13(6) *Published materials.* The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

5.13(7) *Policy manuals.* The board employees' manual, containing procedures describing the board's regulations and practices, is available. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the board office. Policy manuals do not contain information about individuals.

5.13(8) *Other records.* All other records that are not exempt from disclosure by law are available from the board office.

205—5.14(17A,22) Applicability. This chapter does not:

5.14(1) Require the agency to index or retrieve records that contain information about an individual by that person's name or other personal identifier.

5.14(2) Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

5.14(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency that are governed by the regulations of another agency.

5.14(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5.14(5) Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings are governed by applicable legal and constitutional principles, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11 and chapter 17A.

ARC 8211C

PAROLE BOARD[205]

Notice of Intended Action

Proposing rulemaking related to public communications and records and providing an opportunity for public comment

The Parole Board hereby proposes to rescind Chapter 6, "Public Communications and Records," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 22, 904A, and 906.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 514.

Purpose and Summary

This proposed rulemaking contains revisions to administrative rules based on the requirements of Executive Order 10 as well as statutory changes based on 2023 Iowa Acts, Senate File 514. Chapter 6 provides information to the public on how to obtain public information and how to make submissions to the Board. It provides the public with the Iowa Code sections that specify what information is public and what is confidential concerning inmates and parolees.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on May 29, 2024. A public hearing was held on the following date(s):

- June 18, 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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on October 8, 2024. Comments should be directed to:

Steven Clarke
Board of Parole
510 East 12th Street
Des Moines, Iowa 50319
Email: steven.clarke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 3:30 to 4 p.m.	Virtual Hearing Room 2 meet.google.com/vyg-jtks-ccr?hs=122&authuser=0
October 15, 2024 3:30 to 4 p.m.	Virtual Hearing Room 2 meet.google.com/vyg-jtks-ccr?hs=122&authuser=0

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 Board 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. Rescind 205—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
PUBLIC COMMUNICATIONS AND RECORDS

205—6.1(22) General. The public may obtain information or make submissions to the board through the board's business office.

205—6.2(22) Communications from persons other than victims.

6.2(1) *Written communication.* Communications by a person other than a victim, as defined in Iowa Code section 915.10, concerning an inmate, parolee, or work releasee should be in writing so that the communication may readily be made a permanent part of the case file. Oral communications concerning an inmate, parolee, or work releasee by a person other than a victim will be heard only with the consent of the board.

6.2(2) *Disclosure to inmate.* The board will place a written communication concerning an inmate, parolee, or work releasee in the case file.

205—6.3(22) Examination of board records.

6.3(1) *General.* The public may examine and copy public records belonging to the board pursuant to Iowa Code chapter 22 at the board's business office. An individual wishing to examine or copy a record in person should schedule an appointment with the board's business office a minimum of three working days prior to the date on which the individual will review the information in question. When making the appointment, the requesting party should specifically indicate the information desired. Complete inmate files will not be released except by court order. When photocopies of documents or copies of audiotapes or videotapes are provided, the board may require the requester to pay the cost of the copies plus a reasonable charge for copying pursuant to 205—subrule 5.3(7). The board may refer anyone requesting information that has been generated by a source outside the board to the agency or individual that generated the information.

6.3(2) *Lawful custodian.* The chairperson or the chairperson's designee as the lawful custodian of the records will be responsible for implementing the board's rules regarding disclosure of public records

and coordination of staff in this regard and generally ensuring compliance by the staff with public records disclosure requirements.

205—6.4(904) Disclosure of information regarding inmates and parolees.

6.4(1) *Public information.* Iowa Code section 904.602(1) defines what information regarding individuals receiving services from the department of corrections may be disclosed by the board to anyone who requests such information.

6.4(2) *Confidential information regarding inmates and parolees.* Iowa Code section 904.602(2) defines information regarding individuals receiving services from the department of corrections that is confidential and will not be disclosed to the public.

a. Correspondence of a personal or confidential nature as determined by the board or the department directed to the board or the department of corrections from an individual's family, victims, or employers is confidential.

b. Communications to the board by members of the public other than public officials to the extent that the board believes that those members of the public would be discouraged from making the communications if the communications were available for general public examination is confidential.

c. Victim registrations pursuant to 205—Chapter 7. A record containing information that is both public and confidential that is reasonably segregable is not confidential after deletion of the confidential information.

6.4(3) *Exceptions.* The board may disclose confidential information described in subrule 6.4(2) as follows:

a. The board may release statistical information that does not identify particular individuals.

b. The board may disclose information to the department of corrections; public officials for use in connection with their duties relating to law enforcement, audits, and other purposes directly connected with the administration of their programs; and public and private agencies providing services to individuals. Those receiving information are subject to the same standards as the board in dissemination and redissemination of information.

c. The board may disclose information when necessary for civil or criminal court proceedings pursuant to court order. The board may seek to have the court limit disclosure of confidential information.

d. The board will give a supervised individual or former supervised individual access to the individual's own records in the custody of the board, except for those records that could result in physical or psychological harm to the individual or others, and disciplinary reports. Upon written authorization by a supervised individual or former supervised individual, the board may release information to any party included in the written release. This information is restricted to that which the individual can obtain.

These rules are intended to implement Iowa Code chapter 22 and sections 904.601, 904.602, and 904A.4.

ARC 8212C

PAROLE BOARD[205]

Notice of Intended Action

Proposing rulemaking related to parole and work release considerations and providing an opportunity for public comment

The Parole Board hereby proposes to rescind Chapter 8, "Parole and Work Release Considerations," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 904, 904A, and 906.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 514.

Purpose and Summary

This proposed rulemaking contains revisions of administrative rules based on the requirements of Executive Order 10 as well as statutory changes based on 2023 Iowa Acts, Senate File 514. Chapter 8 provides information to the public about who may be considered for parole and work release, as well as what factors the Board considers, and sets out the notification procedures.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on May 29, 2024. A public hearing was held on the following date(s):

- June 18, 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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on October 8, 2024. Comments should be directed to:

Steven Clarke
Board of Parole
510 East 12th Street
Des Moines, Iowa 50319
Email: steven.clarke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 3:30 to 4 p.m.	Virtual Hearing Room 2 meet.google.com/vyg-jtks-ccr?hs=122&authuser=0
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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 Board 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. Rescind 205—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
PAROLE AND WORK RELEASE CONSIDERATIONS

205—8.1(906) Purpose of parole and work release considerations. The board shall determine whether there is reasonable probability that an inmate committed to the custody of the department of corrections who is eligible for parole or work release can be released without detriment to the community or the inmate. The board considers the best interests of society, and parole or work release is not granted as an award of clemency.

205—8.2(904,906) Parole and work release eligibility.

8.2(1) *Mandatory sentences.* The board will not grant parole to an inmate serving a mandatory minimum sentence. The board will not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within six months of completing the mandatory minimum portion of the sentence. A parole or work release granted contrary to this rule will be rescinded. Mandatory minimum sentences are set out in the Iowa Code and are incorporated herein.

8.2(2) *Release to residential facility first.* A person on parole or work release who is serving a sentence under Iowa Code section 902.12 shall begin parole or work release in a residential facility operated by the department of correctional services.

8.2(3) *Parole to detainer.* The board may grant parole to an inmate against whom a detainer has been placed by another jurisdiction. A person paroled who has a detainer lodged against the person under the provisions of Iowa Code chapter 821 may be paroled directly to the receiving state rather than to a residential facility operated by the department of correctional services.

8.2(4) *Parole to other states.* The board may grant parole to another state pursuant to the provisions of the interstate compact for adult offender supervision set forth in Iowa Code chapter 907B.

205—8.3(904A) Risk assessment. The board will assess the risk of an inmate committed to the custody of the department of corrections. The board will review a risk assessment instrument approved by the board.

205—8.4(906) Parole and work release considerations.

8.4(1) *Case reviews.* The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate's prospects for parole or work release at any time. The board will notify an inmate only if the inmate is granted parole or work release, except as provided in subrule 8.14(3).

8.4(2) *Interviews.* The board may, in its discretion, interview an inmate committed to the custody of the department of corrections at any time.

8.4(3) *Frequency of inmate review.* The board will review the status of each inmate who is eligible for parole annually as directed by the Iowa Code and shall provide the inmate with notice of its parole or

work release decision. The board will not place an inmate on work release for longer than 6 months in any 12-month period unless approval is given by a majority of the full board.

8.4(4) *Annual review not required.* Inmates who are not currently eligible for parole because of Iowa Code section 906.5(1)*"a"* are excepted from the annual review requirement of subrule 8.4(3).

8.4(5) *Department initiated review.* The department of corrections may recommend an inmate for parole or work release consideration at any time.

205—8.5(906) Parole and work release information. The board will notify the department of corrections when an inmate is to be considered for parole or work release. The receipt of notice by the department of corrections constitutes a request for updated information on the inmate. The board will request information required for parole or work release decision making. The department of corrections will furnish updated information to the board.

205—8.6(906) Interview notice. The board or the board's designee will notify an inmate to be interviewed for parole or work release consideration of the time and purpose of the interview. Notice given to the department of corrections is considered notice to the inmate. Not less than 20 days prior to the interview, the board will also notify the department of corrections of the scheduling of the interview, and the department shall make the inmate available to the board for the interview. The interview may be conducted electronically by videoconference. However, if health, safety, or security conditions require moving the inmate to another institution or facility prior to the scheduled interview, the department of corrections will notify the board.

205—8.7(906) Continuance. The board may reschedule or continue a parole or work release interview upon its own motion or upon a showing of good cause, as determined by the board.

205—8.8(906) Factors considered in parole and work release decisions.

8.8(1) *Release considerations.* The board may consider the following factors and others deemed relevant to the parole and work release decisions:

a. Previous criminal record;
b. Nature and circumstances of the offense;
c. Recidivism record;
d. Convictions or behavior indicating a propensity for violence;
e. Participation in institutional programs, including academic and vocational training;
f. Psychiatric and psychological evaluations;
g. Length of time served;
h. Evidence of serious or habitual institutional misconduct;
i. Success or failure while on probation;
j. Prior parole or work release history;
k. Prior refusal to accept parole or work release;
l. History of drug or alcohol use;
m. A parole plan formulated by the inmate;
n. General attitude and behavior while incarcerated;
o. Risk assessment.

8.8(2) *Psychological and psychiatric evaluations.* The board may request a complete psychiatric or psychological evaluation of an inmate whenever, in the opinion of the board, it would be beneficial to the board's decision. The board may routinely request an evaluation of an inmate convicted of a crime involving sexual abuse or personal violence or of an inmate who has committed assaults or violent acts while incarcerated.

205—8.9(906) Information disclosure to inmate. The board normally considers only information that has been reviewed by the inmate, except when the board deems such review not feasible. The information is considered only if the following safeguards are followed:

8.9(1) The staff of the department of corrections discusses the information with the inmate and discloses to the inmate any factual allegations if the disclosure can be done in a manner that protects confidential sources.

Factual allegations include but are not limited to:

a. Any statements attributed to the inmate;

b. Any allegations of criminal or antisocial behavior with or without court conviction from within or without the institution;

c. Any allegations of threats made by the inmate;

d. Any allegations of drug addiction or alcoholism;

e. Any allegations regarding family history, employment or education;

f. The inmate's disciplinary record at the institution.

8.9(2) If any information from outside institutions under the supervision of the department of corrections is to be considered by the board, and it is necessary to protect the source, the inmate will be informed of at least the following:

a. The general substance of the information;

b. The number of communications;

c. The type of communications.

The inmate will be given the opportunity to respond to the information.

8.9(3) The inmate's reports from institutions under the supervision of the department of corrections, including reception reports, progress reports, medical reports, and social information or reports, should, to the extent possible, be structured so as to separate opinion from factual information. The factual information will be made available for review by the inmate; opinion information shall be confidential. Psychiatric or psychological test results or diagnoses may be deemed confidential.

205—8.10(906) Interview procedure. The board may, in its discretion, interview the inmate and consider the inmate's records with respect to history, current situation, parole and work release prospects, and other pertinent matters. If the inmate is interviewed, the board or board panel will give the inmate ample opportunity to express views and present materials.

205—8.11(906) Case review procedure. The board or board panel may consider the inmate's records and other information with respect to history, current situation, parole and work release prospects, and other pertinent matters. A case review may take place at any time and is in addition to any other required review.

205—8.12(906) Conduct at parole proceedings.

8.12(1) Parole interview proceedings are open meetings and generally conducted by electronic means and governed by Iowa Code chapter 21.

8.12(2) The board panel or panel's designee will maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

8.12(3) Parole interviews are conducted electronically via videoconference. All interested persons should contact the board's business office prior to the start of the hearing to ensure that the persons have the proper information to allow the persons to view the proceedings online. Such information will also be maintained on the board's website: bop.iowa.gov.

8.12(4) Spectators, other than registered victims, do not participate in the parole proceedings.

205—8.13(904,906) Parole authorized following work release.

8.13(1) The board grants parole to an inmate on work release status if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board will deny parole.

8.13(2) The board grants parole or work release to an inmate if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board will deny parole or work release.

8.13(3) The board may determine if an inmate is required to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release. The board considers the deterrent effect of DNA profiling, the likelihood of repeated violations by the offender, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds have been provided by other public or private sources, the board will order DNA profiling, if appropriate.

205—8.14(906) Notice of parole and work release decisions.

8.14(1) The board will give notice of a decision to grant parole by issuing an order for parole to the facility where the inmate in question is incarcerated.

8.14(2) The board will give notice of a decision to grant work release by issuing an order for work release to the facility where the inmate in question is incarcerated.

8.14(3) The board will give notice of a decision to deny parole or work release by issuing a notice of parole or work release denial to the facility where the inmate in question is incarcerated.

8.14(4) The board need not disclose a decision to grant or deny parole or work release to anyone other than the inmate in question and the facility where the inmate is incarcerated until at least two working days have elapsed from the date of the decision.

205—8.15(906) Parole authorized following work release.

8.15(1) The board may, at the time of granting work release, grant an offender parole contingent upon successful completion of work release. Whenever the board grants parole contingent upon successful completion of work release, it will indicate in the offender's file any special conditions for parole and that parole is contingent upon successful completion of work release.

8.15(2) The residential manager makes a determination whether the offender has successfully completed the work release. For the purpose of this rule, successful completion of work release means, at a minimum, the absence of any violent acts or threats of violence by the offender from the time the work release was authorized and either (1) the offender has completed all board-recommended programs or (2) the offender has enrolled in all recommended programs not completed and is making satisfactory progress toward completion and the facility is able to arrange for continued program participation while the offender is on parole. When an offender successfully completes the work release program, the residential manager shall certify that fact to the board in a written or electronic certification. Upon receipt of the certification, the chairperson or the chairperson's designee will cause a parole order to be issued and forwarded to the residential facility where a parole agreement will be executed by the offender with such parole conditions as the board may require in its original release decision. Parole is effective only upon execution of the parole order and agreement by the parole officer and the parolee. No further action is required by the parole board for said parole. Before the parole becomes effective, the chairperson or the chairperson's designee may refer the case back to the board for further consideration. Nothing in this rule shall prevent the parole board from considering revocations of work release or parole for violations of the parole order, agreement, or any other provision of law, as otherwise provided in the board's administrative rules.

8.15(3) If the residential manager does not certify that an offender has successfully completed work release within the six-month limit established in Iowa Code section 904.904, and if the offender's work release has not otherwise been revoked, the offender's case will be reviewed by the board. The board may grant parole, extend work release, refer the offender back to prison, or take any other action authorized by law.

8.15(4) The grant of parole contingent upon successful completion of work release will comply with subrules 8.13(1) and 8.13(2).

8.15(5) An offender who has been granted parole contingent upon successful completion of work release and who fails to successfully complete work release for whatever reason will be reviewed for further release consideration according to the board's administrative rules.

8.15(6) Parole granted under this rule is administered and supervised according to the board's administrative rules, 205—Chapters 10 and 11.

These rules are intended to implement Iowa Code chapters 904, 904A, and 906.

ARC 8209C

PAROLE BOARD[205]

Notice of Intended Action

Proposing rulemaking related to organization and general administration and providing an opportunity for public comment

The Parole Board hereby proposes to rescind Chapter 1, "Organization and General Administration," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 904A and 906 and 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 514.

Purpose and Summary

This proposed rulemaking includes revisions to administrative rules based on the requirements of Executive Order 10 and statutory changes based on 2023 Iowa Acts, Senate File 514. Chapter 1 provides information to the public about the Board's organization and responsibilities as well as how to contact the Board's business office.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on May 29, 2024. A public hearing was held on the following date(s):

- June 18, 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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on October 8, 2024. Comments should be directed to:

Steven Clarke
Board of Parole
510 East 12th Street
Des Moines, Iowa 50319
Email: steven.clarke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 8, 2024 3:30 to 4 p.m.	Virtual Hearing Room 2 meet.google.com/vyg-jtks-ccr?hs=122&authuser=0
October 15, 2024 3:30 to 4 p.m.	Virtual Hearing Room 2 meet.google.com/vyg-jtks-ccr?hs=122&authuser=0

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 Board 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. Rescind 205—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
ORGANIZATION AND GENERAL ADMINISTRATION

205—1.1(904A) Board description.

1.1(1) The board of parole is established by Iowa Code chapter 904A and consists of five members, including a chairperson and vice chairperson.

1.1(2) Requirements for the composition of the board and the selection of a chairperson, a vice chairperson, and board members are set out in Iowa Code chapter 904A.

1.1(3) As used in the rules of the board of parole, the term "board" means the Iowa board of parole.

205—1.2(904A) Board responsibilities. The statutory responsibilities of the board are set out in Iowa Code chapter 904A.

205—1.3(904A) Business location and hours. The board's business office address is Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa 50319; telephone 515.725.5757. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

205—1.4(904A) Board meetings.

1.4(1) *Meetings.* The board may conduct the following meetings:

a. Business meeting. The board may meet each month to consider rules, procedures and other matters.

b. Public hearing. The board may conduct a public hearing to solicit input and comment on parole and work release procedures.

c. Board session. Board sessions will be held each month at any location designated by the chairperson. A board session may include:

(1) Parole and work release case reviews;
(2) Parole and work release interviews;
(3) Parole rescission;
(4) Parole discharge reviews; and

(5) Executive clemency reviews.

1.4(2) *Quorum.*

a. A majority of the members of the board constitutes a quorum.

b. The chairperson designates panels composed of at least three board members to conduct board sessions except as provided herein.

1.4(3) *Majority vote.* All questions are decided by a majority vote of the members.

1.4(4) *Minutes.* The board keeps copies of the minutes of board meetings on file at the business office. The list of individuals considered by the board for action constitutes the minutes of a board session.

1.4(5) *Public notice and agenda.* The board establishes the date, time, and location of all meetings. The board gives public notice of all meetings pursuant to Iowa Code chapter 21. The board mails copies of, or provides by electronic means, notices of public meetings and a tentative agenda to news media that have so requested. When it is determined that an emergency meeting is required, the board notifies any news media that have requested notification as soon as the need for an emergency meeting has been decided. The nature of the emergency will be stated in the minutes.

1.4(6) *Public access to meetings.* Members of the public have access to board meetings as provided in Iowa Code chapter 21. Persons wishing to appear before the board will submit their requests to the business office not less than three days prior to the business meeting. Members of the public wishing to attend board meetings conducted in department of corrections penal institutions should consult, in advance, department of corrections administrative rules relating to visitation and public access.

1.4(7) *Electronic meetings.* The board may conduct a meeting by electronic means as provided in Iowa Code section 21.8.

These rules are intended to implement Iowa Code chapter 904A.

ARC 8213C

UTILITIES COMMISSION[199]

Notice of Intended Action

Proposing rulemaking related to ratemaking principles proceeding and providing an opportunity for public comment

The Utilities Commission hereby proposes to rescind Chapter 41, "Ratemaking Principles Proceeding," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.3, 476.53 and 476.84.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 476.53 and 476.84.

Purpose and Summary

The purpose of this proposed chapter is to execute Iowa Code sections 476.53 and 476.84 by providing a procedure for utility companies to request ratemaking principles for electric power generating facilities, alternate energy production facilities, sanitary sewer facilities, and storm water facilities.

The Commission issued an order commencing rulemaking on August 5, 2024. The order is available on the Commission's electronic filing system, efs.iowa.gov, under Docket No. RMU-2023-0041.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on April 3, 2024. A public hearing was held on the following date(s):

- April 24, 2024
- April 30, 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

No waiver provision is included in the amendments because the Commission has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

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 Commission no later than 4:30 p.m. on November 11, 2024. Comments should be directed to:

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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 29, 2024 2 to 4 p.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa
November 12, 2024 2 to 4 p.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa

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 Commission 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. Rescind 199—Chapter 41 and adopt the following **new** chapter in lieu thereof:

CHAPTER 41
RATEMAKING PRINCIPLES PROCEEDING

199—41.1(476) Definitions. The following terms, when used in these rules, shall have the meanings set forth in Iowa Code sections 476.42 and 476.72: "affiliate," "alternate energy production facility," and "control."

In addition, as used in this chapter, the following definitions shall apply:

"AFUDC" means allowance for funds used during construction.

"Baseload generation" means generating units designed for normal operation to serve all or part of the minimum load of the system on an around-the-clock basis. These units are operated to maximize system mechanical and thermal efficiency and minimize system operating costs.

"Combined-cycle combustion turbine" means an electric generating technology in which the efficiency of electric generation is increased by using otherwise lost waste heat exiting from one or more combustion turbines. The exiting heat is routed to a boiler or to a heat recovery steam generator for utilization by a steam turbine in the production of electricity.

"Emission allowance" means an authorization, allocated by the federal Environmental Protection Agency under the Acid Rain Program, to emit up to one ton of sulfur dioxide during or after a specified calendar year.

"Facility" means a facility for which advance ratemaking principles may be sought pursuant to Iowa Code section 476.53(3)*"a."* The term includes energy storage systems located at the site of an alternate energy production facility.

"kWh" means kilowatt-hour.

"Opportunity sales" means sales of electricity from a particular facility at market price after all contracted and firm transactions have been met.

"Repowering" means either the complete dismantling and replacement of generation equipment at an existing project site or the installation of new parts and equipment to an existing alternate energy production facility in order to increase energy production, reduce load, increase service capacity, improve project reliability, or extend the useful life of the facility.

"RTO" means Regional Transmission Organization, which is a federally regulated entity that manages the electric power transmission system.

199—41.2(476) Applicability and purpose.

41.2(1) Rules 199—41.3(476) and 199—41.4(476) apply to any rate-regulated public electric utility proposing to build or lease in Iowa, either in whole or in part, a new baseload generating facility with a nameplate generating capacity equal to or greater than 300 megawatts, a new combined-cycle combustion turbine of any size, a new or repowered alternate energy production facility of any size, or any combination of the above, and desiring predetermination of ratemaking principles to be used in establishing the retail cost recovery of such a facility. These rules set the initial filing requirements in a ratemaking principles proceeding depending on the specific circumstances of a filing.

41.2(2) Rule 199—41.5(476) applies to any rate-regulated public utility acquiring a water, sanitary sewage, or storm water system with a purchase price of $3,000,000 or more from a non-rate-regulated entity described in Iowa Code section 476.1(3).

199—41.3(476) Application for predetermined ratemaking principles; contents. Each person or group of persons proposing to construct, repower, or lease a facility and desiring predetermination of ratemaking principles for costing that facility shall file an application with the commission. An application may be for one facility or a combination of facilities necessary to meet the current and future resource needs of the utility. An application for ratemaking principles must demonstrate that the utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. At a minimum, an application shall substantially comply with the following informational requirements to the extent such information is reasonably available. Any omission of required information on the basis that it is not reasonably

available shall be adequately justified by the applicant. The commission will consider such omissions on a case-by-case basis and may require the applicant to provide additional information.

41.3(1) *General information.* An application shall include the following general information:

a. The purpose of the proposed facility.

b. A complete description of the current and proposed rights of ownership in the proposed facility and current or planned purchased power contracts with respect to the proposed facility.

c. For a baseload electric power generating facility with a nameplate generating capacity equal to or greater than 300 megawatts, a combined-cycle electric power generating facility, or repowering of a facility, a general site description, including a legal description of the site; a map showing the coordinates of the site and its location with respect to state, county, and other political subdivisions; and prominent features, such as cities, lakes, rivers, and parks within the site impact area. For an alternative energy production facility, to the extent feasible, a general site description, including a description of the site location or locations; map(s) showing the coordinates of the site(s) and location(s) with respect to state, county, and other political subdivisions; and prominent features, such as cities, lakes, rivers, and parks within the site impact area(s).

d. A general description of the proposed facility, including a description of the expected principal characteristics of the facility such as the capacity of the proposed facility in megawatts expressed by the contract maximum generator megawatt rating, the expected net facility addition to the system in megawatts by net to the busbar rating, and the portion of the design capacity, in megawatts, of the proposed facility that is proposed to be available for use by each participant; the expected number and type of generating units; the primary fuel source for each such unit; the annual expected availability of the generation facility; the expected capacity factors; the expected accredited capacity of the facility, consistent with the accreditation methodology of the RTO; a description of the expected general arrangement of major structures and equipment to provide the commission with an understanding of the general layout of the facility; and a projected schedule for the facility's construction and utilization, including the projected date when a significant site alteration is proposed to begin and the projected in-service date of the facility and the projected date when accredited capacity for the facility will be recognized by the RTO. For this purpose, a group of several similar generating units operated together at the same location such that segregated records of energy output are not available are considered a single unit.

e. A general description of the raw materials, including fuel, used by the proposed facility in producing electricity and of the wastes created in the production process; a determination of the annual expected emissions from the facility; a plan for acquiring allowances sufficient to offset these emissions; a description of all transportation facilities currently operating that will be available to serve the proposed facility; and any additional transportation facilities needed to deliver raw materials and to remove wastes.

f. An identification, general description, and chronology of all material financial and other contractual commitments undertaken or planned to be undertaken with respect to the proposed facility.

g. A general map and description of the primary transportation corridors and the approximate routing of the rights-of-way in the vicinity of the settled areas, parks, recreational areas, and scenic areas.

h. An explanation of the selection process used to determine a prudent interconnect location of the facility, including consideration of existing transmission capability, lead time, and cost for requisite upgrades for interconnection.

i. Identification of the general contractor for the proposed facility and the method by which the general contractor was selected. If a general contractor has not yet been selected, the utility will identify the process by which the general contractor will be selected and the anticipated timeline for selecting a general contractor.

j. Identification of the plant operator for the proposed facility and the method by which the plant operator was selected. If a plant operator has not yet been selected, the utility will identify the process by which a plant operator will be selected and the anticipated timeline for selecting a plant operator.

41.3(2) *Economic evaluation of proposed facility.* An application shall include an overall economic evaluation of the proposed facility using conventional capital evaluation techniques and the proposed ratemaking principles. The economic evaluation shall include:

a. Material assumptions used in the analysis.

b. Net present value calculations. This includes projected annual and total net present value calculations of projected revenue requirements and capital costs over the expected life of the proposed facility. If a traditional revenue requirement analysis does not account for revenue-sharing arrangements, riders, or other mechanisms that impact Iowa retail customer bills, the utility will also provide projected annual and total net present value calculations that show the impact on amounts that will actually be paid by Iowa retail customers accounting for such mechanisms. To the extent the utility has projected revenue deficiencies within the period of analysis, the utility will also provide the estimated effect the proposed facility will have on these calculations. In making these calculations, the utility will detail the following cost assumptions:

(1) Installed cost. This includes an itemized statement of the estimated total costs to construct the proposed facility. Such estimated costs include but are not limited to the estimated cost of all electric power generating units; all electric supply lines within the proposed facility site boundary; all electric supply lines beyond the proposed facility site boundary with a voltage of 69 kilovolts or higher used for transmitting power from the proposed facility to the point of junction with the distribution system or with the interconnected primary transmission system; all appurtenant or miscellaneous structures used and useful in connection with the proposed facility or any part thereof; all rights-of-way, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance or operation of said facility; engineering and development; sales taxes; and AFUDC (if applicable). The estimated costs of all electric power generating units shall include all estimated costs of transmission and gas interconnection (if applicable). Estimated facility costs shall be expressed in absolute terms and in dollars per kilowatt. The absolute and per-kilowatt estimated construction costs shall be adjusted by the expected rate of inflation from the time the estimated construction costs are calculated to the time the proposed facility is scheduled for operation.

(2) Fixed expenses. For each year of the proposed facility's expected life from the time of application to the end of the proposed facility's expected life, the utility will include projected expense factors for fixed operation and maintenance costs; property, income, and other taxes; and straight-line and tax depreciation rights.

(3) Variable expenses. For each year of the proposed facility's expected life from the scheduled time of operation to the end of the proposed facility's expected life, the utility will include expected variable operation and maintenance costs, including the cost of fuel and emission allowances. These expected costs will be reported in absolute terms and on a kWh basis, assuming expected annual capacity factors for the proposed facility.

c. Cost of capital. This includes projected costs of capital for the proposed facility for each year of the proposed facility's expected life from the time of application to the end of the proposed facility's expected life. The utility will provide material assumptions used in the projections, including but not limited to capital structure, cost of preferred stock, cost of debt, and cost of equity.

d. Cash flows. This includes the estimated maximum, minimum and expected cash inflows and outflows associated with the proposed facility in each year from the date of the application throughout the proposed facility's expected life.

41.3(3) *Risk mitigation factors.* At a minimum, the utility will include in an application the following information regarding contractual risk mitigation factors:

a. Construction risk mitigation factors. This includes a general description of the contractual standards that the general contractor, if not the utility, must comply with to mitigate construction risks, including but not limited to cost overruns, labor shortages, failure to meet deadlines, and the need for replacement power if operational deadlines are not met. If the facility will be leased by the utility, the utility will identify the above factors for both the lessor and the general contractor constructing the facility. The general description shall include all remedies, financial and otherwise, available to the utility for noncompliance with the construction standards and schedules.

b. Operational risk mitigation factors. This includes a general description of the contractual standards that the general contractor or the plant operator, if not the utility, must comply with to mitigate operational risks of the facility, including but not limited to low-availability factor and higher-than-expected operation and maintenance costs. The general description shall include a list of all contractual inspections the general contractor must meet before the utility leases or takes ownership of the facility and all remedies, financial and otherwise, available to the utility for noncompliance with the operating standards. If the utility leases the facility from an affiliate, the lease shall contain specific performance standards that the affiliate must meet to avoid financial consequences.

41.3(4) *Noncost factors.* This includes a comparison of the proposed facility with other feasible sources of supply related to the following noncost factors:

a. Economic impact to the state and community where the facility is proposed to be located, including job creation, taxes, and use of state resources.

b. Environmental impact to the state and community where the facility is proposed to be located.

c. Electric supply reliability and security in the state.

d. Fuel diversity and use of nontraditional supply sources, such as alternate energy and conservation.

e. Efficiency and control technologies.

41.3(5) *Filing requirements for proposed ratemaking principles.* Each ratemaking principle proposed shall be supported as described in this subrule. Proposed ratemaking principles not envisioned by these rules shall be supported by sufficient evidence to justify the use of such principles in costing the facility for regulated retail rate recovery.

a. Cost of equity. Proposals for establishing the cost of equity shall be supported with analyses that demonstrate the reasonableness of the proposed equity rate for the proposed facility. If sufficient information is available, the analyses shall include a comparison with similar facilities built in the region in recent years.

b. Depreciable life. Proposals for establishing the depreciable life of the facility shall be supported by commission precedent for the depreciable lives of similar facilities, the manufacturer's opinion of depreciable life, the applicant's general depreciation study or analysis, or an engineering study of the depreciable life of the type of facility proposed.

c. Jurisdictional allocations. Proposals for allocating the cost or output of the proposed facility among jurisdictions shall be supported by jurisdictional allocation studies or recent commission-ordered or commission-approved allocations for the applicant.

41.3(6) *Additional application requirements for leasing arrangements.* The following additional information shall be filed when a utility is proposing an arrangement in which the utility leases a facility from an affiliate or an independent third party:

a. Identification of the method used in selecting the affiliate or independent third party to build the facility (competitive solicitation, sole source, etc.).

b. A copy of the lease agreement.

c. A detailed description of the lease agreement, including but not limited to the following:

(1) Commitment of capacity from the proposed facility to the utility under the lease agreement.

(2) Description of the final disposition of the leased facility at the end of the lease arrangement, including any options available to the utility and the terms of those options.

(3) Identification of the party responsible for operating, dispatching, and maintaining the facility.

(4) Identification of the party responsible for the cost of capital improvements, renewals and replacements, environmental compliance, taxes, and all other future costs associated with the facility.

(5) Identification of the party responsible for contracting capacity from the proposed facility.

(6) Identification of the party benefiting from revenues received through contracted capacity and opportunity sales.

d. If the lessor is an affiliate, a detailed description of the affiliate, including the affiliate's corporate structure and the utility's ownership stake in the affiliate, if any.

e. If the lessor is an affiliate, identification of utility assets transferred to the affiliate for use by the proposed facility and the cost at which those assets were transferred.

f. If the lessor is an affiliate, identification of any financial benefits and cost savings, including any tax advantages, accruing to the utility from leasing an affiliate-owned facility versus building a facility itself.

199—41.4(476) Coincident filing. The utility may file its application for ratemaking principles, as required by this chapter, coincident with the utility's application for a certificate of public convenience, use, and necessity under 199—Chapter 24. Identical information required by both chapters need only be included once in a joint principles and certification application.

199—41.5(476) Acquisition of a water, sanitary sewage, or storm water utility. A rate-regulated public utility proposing to acquire, in whole or in part, a water, sanitary sewage, or storm water system with a purchase price of $3,000,000 or more from a non-rate-regulated entity described in Iowa Code section 476.1(3) shall file an application for approval of the acquisition with the commission. If the acquisition is approved, ratemaking principles that will apply when the costs of the acquisition are included in regulated rates will be determined as part of the commission's review of the application. At a minimum, an application made under this rule shall substantially comply with the following informational requirements, to the extent such information is reasonably available. Any omission of required information on the basis that it is not reasonably available shall be adequately justified by the applicant. The commission will consider such omissions on a case-by-case basis and may require the applicant to provide additional information.

41.5(1) *General information.* An application shall include the following general information:

a. A general description of the system to be acquired, including the total number of customers, a description of the general arrangement of major structures and equipment, maps of the system, and a general description of the scope of the system.

b. The identification and general description of all material capital investments and operating expenses associated with the proposed acquisition anticipated within five years of the date of the acquisition.

c. A proposed procedural schedule that, at a minimum, provides proposed dates for direct testimony, rebuttal testimony, and a hearing for cross-examination of all testimony. The proposed schedule should generally comply with the commission's procedural rules in 199—Chapter 7.

41.5(2) *Acquisition information.* An application shall include the following information related to the acquisition:

a. If a city utility is being acquired, an affirmation that the city has timely and substantially complied with the requirements of Iowa Code section 476.84(2)*"a."*

b. Final fair market value of the system.

c. The final price for the system.

d. Final reports of appraisals.

e. Financial information sheets, which include information about the utility system being acquired (the cost of appraisals and closing costs), regulatory expenses, and legal expenses.

f. The proposed purchase agreement.

41.5(3) *Impact of acquisition.* An application shall include the following information related to the acquired system and its potential impact on the acquiring utility:

a. If the acquired system is not in compliance with applicable local, state, or federal standards, estimates of the approximate cost and time required to put the system in compliance with such standards.

b. A description of anticipated capital investments and retirements for the acquired system, including estimated dollar amounts, for each of the first five years after the acquisition.

c. Any anticipated staffing changes due to the proposed acquisition.

d. A description of the proposed accounting to be utilized in any transfer of assets necessary to accomplish the acquisition.

e. A description of the anticipated effects of the acquisition, including a cost-benefit analysis that describes the projected benefits and costs of the acquisition, quantified in terms of present value and identifying the sources of such benefits and costs.

f. An analysis of the projected financial impact of the acquisition on the ratepayers of each of the affected utilities for each of the first five years after the acquisition.

g. Historical and projected fixed expenses for the acquired system, including expense factors for fixed operation and maintenance costs.

h. Historical and projected variable expenses for the acquired system, including expected variable operation and maintenance costs.

i. The estimated maximum, minimum, and expected cash inflows and outflows for the acquired system.

j. A description of the financing components of the acquisition and an analysis of the impacts on the acquiring utility's ability to attract capital on reasonable terms and to maintain a reasonable capital structure.

41.5(4) *Ratemaking principles.* Each ratemaking principle proposed shall be supported as described in this subrule. Proposed ratemaking principles not envisioned by these rules shall be supported by sufficient information to justify the use of such principles.

a. Cost of equity. The utility shall file financial models demonstrating the proposed equity rate or range of equity rates necessary to attract equity capital for the proposed acquisition. The financial analysis shall include a risk assessment of the proposed acquisition, including a comparison with similar acquisitions.

b. Ratepayer allocations. Proposals for allocating the cost of the acquired system and anticipated improvements to customers of the acquired system and the utility's existing customers shall include information showing that the proposed allocation will result in rates that are just and reasonable for both groups of customers.

c. Initial depreciable value. Proposals for establishing the value of the acquired system to be used as the initial gross asset balance for depreciation shall be supported by the lesser of the sale price or the fair market value of the system as determined consistent with Iowa Code section 388.2A(2)*"b."* The utility shall also provide the accumulated depreciation balances for the assets.

d. Depreciable life. Proposals for establishing rates that will be used to depreciate the acquired system shall be supported by a depreciation study or by depreciation rates applied in the utility's last general rate case.

41.5(5) *At-risk systems.* An application shall state whether the system to be acquired is an at-risk system as defined by Iowa Code section 455B.199D. If the commission determines that an application to acquire an at-risk system does not contain sufficient information consistent with this rule to render a timely decision, the commission may reject the application without prejudice.

41.5(6) *Expedited timeline.* The shortened time limits applicable to expedited proceedings in 199—Chapter 7 shall apply to proceedings commenced under this rule.

These rules are intended to implement Iowa Code sections 476.53 and 476.84.

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:

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%
August 1, 2024 — August 31, 2024	6.25%
September 1, 2024 — September 30, 2024	6.25%
October 1, 2024 — October 31, 2024	5.75%

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the following interest rates of interest for public obligations and special assessments have been established. The usury rate for September is 6.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined 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 September 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 1.90%
180-364 days	Minimum 1.80%
One year to 397 days	Minimum 1.95%
More than 397 days	Minimum 1.65%

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.

ARC 8225C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Rulemaking related to adoption by reference

The Agriculture and Land Stewardship Department hereby amends Chapter 76, "Meat and Poultry Inspection," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 189A.13.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 189A.3 through 189A.5 and 189A.7.

Purpose and Summary

This rulemaking includes a number of routine updates to the chapter by adopting by reference updated federal regulations. These updates are required for Iowa's Meat and Poultry Inspection Program to maintain its "equal-to" status with the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS).

Specifically, the rulemaking does the following:

- Adds 9 CFR Part 316 back to the chapter after it was accidentally removed during a previous rulemaking.
- Updates a reference to a federal regulation that removed provisions that required packages of meat or poultry products over one pound to list the net weight or net contents in two different units of measurement on the product label.
- Updates a reference to a federal regulation that sets a time limit of 30 days after notification to appeal decisions or actions related to inspection activities.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on May 15, 2024, as **ARC 7934C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on August 1, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

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 October 23, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** implementation sentence in rule **21—76.1(189A)**:
This rule is intended to implement Iowa Code sections 189A.3 and 189A.7(8).

ITEM 2. Amend rule 21—76.2(189A) as follows:

21—76.2(189A) Federal Wholesome Meat Act regulations adopted. Part 303, Part 304, Part 305, Part 306, Parts 309 ~~through 315, Parts 317~~ through 320, Part 329, Part 332, Part 412, Part 416, Part 417, Part 418, Part 424, Part 430, Part 431, Part 441 and Part 442 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of December 31, ~~2021~~ 2023, are hereby adopted in their entirety by reference. Part 307 except Sections 307.5 and 307.6 and Part 325 except Section 325.3 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~July 30, 2018~~ December 31, 2023, are hereby adopted in their entirety by reference. Part 500 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~January 1, 2016~~ December 31, 2023, is adopted by reference, except that references in Sections 500.5, 500.6, 500.7, and 500.8 to the federal Uniform Rules of Practice are not adopted.

This rule is intended to implement Iowa Code sections 189A.3 and 189A.7(8).

ITEM 3. Amend rule 21—76.3(189A) as follows:

21—76.3(189A) Federal Poultry Products Inspection Act regulations adopted. Part 381, Title 9, Chapter III, of the Code of Federal Regulations, revised as of December 31, ~~2020~~ 2023, is hereby adopted in its entirety with the following exceptions: Sections 381.96, 381.97, 381.99, 381.101, 381.102, 381.104, 381.105, 381.106, 381.107, and 381.128, Subpart R, Subpart T, Subpart V, and Subpart W; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 381.1(b)(2) therein defining the term "Act" shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.
2. Sec. 381.1(b)(3) therein defining the term "administrator" shall include the supervisor of the Iowa meat and poultry inspection service, or any officer or employee of the Iowa department of agriculture and land stewardship.
3. Sec. 381.1(b)(10) therein defining the term "commerce" shall include intrastate commerce in the state of Iowa.
4. Sec. 381.1(b) therein defining the term "department" shall include the Iowa department of agriculture and land stewardship.
5. Sec. 381.1(b)(47) therein defining the term "secretary" shall include the secretary of agriculture of the state of Iowa.
6. Sec. 381.1(b)(53) therein defining the term "United States" shall include the state of Iowa.

This rule is intended to implement Iowa Code sections 189A.3 and 189A.7(8).

ITEM 4. Amend rule 21—76.4(189A) as follows:

21—76.4(189A) Inspection required. Every establishment except as provided in Section 303.1(a), (b), (c) and (d) of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of ~~July 30, 2018~~ December 31, 2023, in which slaughter of livestock or poultry, or the preparation of livestock

products or poultry products is maintained for transportation or sale in commerce, shall be subject to the inspection and other requirements of those parts of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of ~~July 30, 2018~~ December 31, 2023, enumerated in rules 21—76.1(189A), 21—76.2(189A) and 21—76.3(189A).

This rule is intended to implement Iowa Code sections 189A.4 and 189A.5.

ITEM 5. Adopt the following **new** implementation sentence in rule **21—76.5(189A)**:

This rule is intended to implement Iowa Code sections 189A.3 and 189A.7(8).

ITEM 6. Rescind the chapter implementation sentence in **21—Chapter 76**.

[Filed 8/23/24, effective 10/23/24]
[Published 9/18/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/24.

ARC 8226C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rulemaking related to educator professional permit to carry a weapon and private school security officer firearms training

The Public Safety Department hereby amends Chapter 91, "Weapons and Iowa Professional Permits to Carry Weapons," and Chapter 121, "Bail Enforcement, Private Investigation, and Private Security Businesses," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 724.6 as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 724.6 as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652.

Purpose and Summary

This rulemaking establishes training and curriculum requirements for a school employee to obtain an educator professional permit to carry a weapon on school grounds in accordance with 2024 Iowa Acts, House File 2652. This rulemaking includes an outline of requirements for persons or organizations interested in providing training(s) to be approved by the Department. Additionally, this rulemaking sets forth the requirement for a private school security officer who is employed or retained by a school district to participate in annual and quarterly firearms training.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 24, 2024, as **ARC 8141C**. A public hearing was held on the following date(s):

- August 13, 2024

A representative for the I-35 Board of Education provided comment both orally at the public hearing and electronically. The individual described some of the training requirements as onerous, specifically subrules 91.14(3), 91.16(1), and rule 661—91.17(724). The Department determined these requirements were specified in 2024 Iowa Acts, House File 2586 as amended by 2024 Iowa Acts, House File 2652, and were therefore incorporated into the rulemaking.

The Iowa Association of School Boards, the School Administrators of Iowa, Iowans for Gun Safety, and individual members of the general public provided written comment. These comments are summarized as follows:

1. Clarification to the definition of an "educator professional permit" to include the permit does not allow an individual granted this permit to carry on school grounds unless specifically approved by the school board of the district that employs the educator. The Department amended the definition to include this distinction.

2. On the Iowa professional permit to carry weapons (form WP 12), the commenter suggested including language to specify the permit does not allow an individual granted such a permit to carry on school grounds unless authorized by the school board of the district(s) in which the individual is employed. The Department is planning to add this clarification to the finalized version of the permit.

3. On the application for an Iowa educator professional permit to carry weapons (form WP 13), the commenter suggested the superintendent be the representative of the school district and the one to verify employment of the individual seeking the permit. The Department concluded that this change would exclude parochial schools and institutions of higher education and decided "school administrator" would be more inclusive.

4. Regarding application procedures for an educator professional permit, the commenter suggested notifying the individual's employer that a permit is being granted in addition to notification of suspension or revocation. The Department added new paragraph 91.11(1)"f" to authorize communication between the school district and the Department for purposes of carrying out this chapter.

5. On the Iowa educator professional permit to carry quarterly qualification form (form WP 14), the commenter suggested adding the superintendent as the school representative, along with the superintendent's signature to verify employment. The Department concluded that making this change would exclude parochial schools and institutions of higher education and decided "school administrator" would be more inclusive.

6. The commenter suggested including a requirement that an individual who has an educator professional permit to carry notify the Department when that individual is no longer employed by a school district. The commenter also suggested specifying the educator professional permit is to be surrendered and considered invalid effective upon the date the individual's employment with the school district ends. The Department added language to the application to specify the permit holder will surrender the permit to the Department of Public Safety upon separation from employment.

7. Regarding the curriculum for legal training in rule 661—91.15(724), the commenter suggested specifying that carrying on school grounds unless authorized by the district's school board as a limitation of the permit. The Department determined this is already laid out under the newly amended definition of "educator professional permit" and adding it again would be duplicative and unnecessary.

8. Clarification on the definition of a school employee and who is eligible for the permit was asked for. The Department used the definition provided by the Legislature in Iowa Code section 724.6(1)"a"(3) as enacted by 2024 Iowa Acts, House File 2586. No changes were made.

9. A suggestion was made to amend subrule 91.12(2) and paragraph 91.12(2)"a" to allow 30 days instead of 7 days for a permit holder to provide required training documentation to the Department upon discovery of failure to previously provide records. The Department concurred and made the change.

10. Several comments were received expressing general views on firearms on school grounds. The Department determined these comments were not relevant to training requirements or the permitting process and no changes were made as a result.

11. The process for firearm storage while on school grounds and concealed carry was questioned. This was determined to be outside the scope of the Department's rulemaking authority, and no changes were made as a result.

12. A suggestion was made to amend the definition of "annual" to mean at least once every 12 months instead of once per calendar year. After consideration, the Department elected to leave the definition as is.

13. A commenter suggested the Iowa Law Enforcement Academy (ILEA) be the only agency to provide training and certification. The Department determined an employee of ILEA is able to provide training if they choose under the proposed rulemaking and declined to make it a requirement.

The Department made four substantive changes from the Notice. First, the definition of "educator professional permit" was amended to include a permit is valid only if authorized by the district's school board and while the permitted person is engaged in the employment stated on the permit. Second, during the editing process, the Department determined it was necessary to reword subrule 91.11(1) to align with current professional permit application and permitting procedures. Third, new paragraph 91.11(1)"f" was added to require authorization of communication between the employing school district and the Department for purposes of carrying out this chapter. Finally, subrule 91.12(2) and paragraph 91.12(2) "a" were amended to provide a person 30 days instead of 7 days to provide proof of required annual and quarterly training records upon discovery of failure to produce.

Adoption of Rulemaking

This rulemaking was adopted by the Department on August 28, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 October 23, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** definitions of "Annual," "Approved educator professional permit training," "Educator professional permit," "Initial familiarization firearm and course of fire training," "Qualification course of fire," "Qualifying on a firing range for educator professional permits" and "Quarterly" in rule **661—91.1(724)**:

"Annual" means once per calendar year.

"Approved educator professional permit training" means any training that has satisfied the requirements to provide educational-setting training in Iowa for the purpose of obtaining an Iowa educator professional permit and has been approved by the commissioner.

"Educator professional permit" means a permit issued to a school employee pursuant to Iowa Code section 724.6(1)*"a"*(3) as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652, to allow for the concealed carry of a firearm. The permit holder's employer maintains the final authority to determine whether the permit holder may carry a firearm on the

employer's grounds. Such a permit is only valid while the permit holder is engaged in the employment stated on the permit.

"Initial familiarization firearm and course of fire training" means a training course of fire with a handgun, which is intended to familiarize, exercise, and improve a person's judgment, reaction, and firearms proficiency under stress when various conditions are present. A variety of scenarios and exercises may be utilized during familiarization course exercises.

"Qualification course of fire" means a specifically designated course of fire with the firearm the person will carry in the person's capacity as an educator professional permit holder that measures and documents the firearms proficiency level of the person. A pre-established qualifying score determines the proficiency that impacts the educator professional permit holder's authorization to carry the firearm in the course of the person's duties as an educator professional permit holder. The qualification course of fire standards are the standards adopted by the Iowa law enforcement academy for certified law enforcement in-service handgun qualification.

"Qualifying on a firing range for educator professional permits" means successful completion of an approved initial familiarization firearm and course of fire training and subsequent quarterly requirements of live fire on a firing range.

"Quarterly" means a period of three calendar months ending on March 31, June 30, September 30, or December 31.

ITEM 2. Amend rule **661—91.1(724)**, definitions of "Firearm training documentation," "Firearm training program," "New application," "Professional permit to carry weapons" and "Qualifying on a firing range," as follows:

"Firearm training documentation <u>*for professional permit*</u>*"* means a photocopy of a certificate of completion or any similar document indicating completion of any firearm training program course; an affidavit from the instructor, school, organization or group that conducted or taught a firearm training program; a copy of or the display of an honorable discharge or general discharge under honorable conditions or Form DD-214 for personnel released or retired from active duty with the armed forces of the United States; or possession of a certificate of completion of basic training with a service record of successful completion of small arms training and qualification for active duty personnel in the armed forces of the United States.

"Firearm training program" means any National Rifle Association handgun safety training course; any handgun safety training course available to the general public utilizing instructors certified by the National Rifle Association, an organization approved by the Iowa department of public safety pursuant to Iowa Code section 724.9A ~~as enacted by 2021 Iowa Acts, House File 756, section 20,~~ or the Iowa law enforcement academy or another state's department of public safety, state police department, or similar certifying body; any handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency approved by the Iowa department of public safety; or completion of small arms training while serving with the armed forces of the United States. Any person or entity seeking approval by the Iowa department of public safety for a handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency, other than those certified by the National Rifle Association, the Iowa department of public safety, or the Iowa law enforcement academy or courses conducted by instructors certified by the National Rifle Association or the Iowa law enforcement academy, shall submit a detailed description of the course content to the commissioner for review. Any handgun safety training course submitted for review shall be reviewed by the commissioner.

"New application" means an application for an Iowa professional permit to carry weapons <u>or an educator professional permit</u> that is filed when the applicant does not currently hold an Iowa permit to carry weapons <u>or an educator professional permit</u> or when the applicant does not file the application at least 30 days prior to the expiration of a currently held Iowa permit to carry weapons.

"Professional permit to carry weapons" means a permit to carry weapons issued to a person whose employment in a private investigation business or private security business licensed under Iowa Code chapter 80A, or whose employment as a peace officer, correctional officer with the Iowa department of

corrections, private security officer, bank messenger or other person transporting property of a value requiring security, or whose employment in police work reasonably justifies that person's going armed. Property of value includes large quantities of cash transported in an armored car, negotiable instruments, gems, other high-value items transported by couriers, and other high-value property that may be vulnerable. Such a permit is valid only while the permitted person is engaged in the employment stated on the permit and while the person is traveling to and from that employment. A professional permit to carry weapons does not include an educator professional permit.

"Qualifying on a firing range for professional permits to carry weapons" means successful completion of a course of live fire on a firing range under the supervision of an instructor certified by the National Rifle Association, the Iowa law enforcement academy, or another state's department of public safety, state police department, or similar certifying body.

ITEM 3. Amend rule 661—91.2(724) as follows:

661—91.2(724) Forms. The following forms, the use of which is required by provisions of this chapter, are provided by the commissioner to Iowa sheriffs:

1. Form WP1. Professional Permit to Carry Weapons.
2. Form WP2. Nonprofessional Permit to Carry Weapons.
3. Form WP3. Application for Annual Permit to Acquire Pistols or Revolvers.
4. Form WP4. Annual Permit to Acquire Pistols or Revolvers.
5. Form WP5. Application for Permit to Carry Weapons.
6. Form WP6. Revocation/Cancellation of Permit to Carry/Permit to Acquire Weapons.
7. Form WP7. Certified Peace Officer Permit to Carry Weapons.
8. Form WP8. Reserve Peace Officer Permit to Carry Weapons.
9. to 11. No change.
12. Form WP12. Educator Professional Permit.
13. Form WP13. Application for Educator Professional Permit.
14. Form WP14. Notification of Completion of Required Quarterly Training Recruitments for Educator Professional Permit.
15. Form WP15. Application for Approval of Educator Professional Permit Curriculum.
16. Form WP16. Handgun Marksmanship Training Drills.

ITEM 4. Amend paragraph **91.4(1)"b"** as follows:

b. Submit firearm training documentation for a professional permit. For a new application, training may have occurred at any time prior to the submission of the application. For a renewal application, training must have occurred within the 12-month period prior to the expiration date displayed on the applicant's current permit.

ITEM 5. Amend subrule 91.5(1) as follows:

91.5(1) Upon receipt of a completed application for a permit to carry weapons, a professional permit to carry weapons, or an educator professional permit, the commissioner shall conduct a background check to determine that issuance of a permit to the applicant is not prohibited pursuant to rule 661—91.3(724).

ITEM 6. Amend subrule 91.7(1) as follows:

91.7(1) If the commissioner denies, suspends or revokes a professional permit to carry weapons or an educator professional permit for any reason other than the federal disqualifiers in subrule 91.3(1) or 91.3(2) or the reasons in paragraph 91.3(3)*"e"* or *"f,"* the applicant or permit holder may file an appeal with an administrative law judge by filing a copy of the denial, suspension, or revocation notice with a written statement that clearly states the applicant's reasons rebutting the denial, suspension, or revocation.

ITEM 7. Amend rule 661—91.10(724), catchwords, as follows:

661—91.10(724) Application for approved training organization for permits to carry weapons.

ITEM 8. Adopt the following **new** rule 661—91.11(724):

661—91.11(724) Application procedures for an Iowa educator professional permit.

91.11(1) A person who is an employee of a school district, a private school, or an institution of higher education as defined in Iowa Code section 722.11 may apply to the commissioner for an educator professional permit. The applicant shall comply with all of the following:

a. Submit a fully and accurately completed and signed application for an educator professional permit to carry weapons, including documentation of a firearm safety training course provided in Iowa Code section 724.9(1), or proof of current permit to carry.

b. Submit firearm training documentation from the initial live familiarization firearm and course of fire training. For a new application, training must have occurred within the 12-month period prior to the application.

c. Submit documentation of the training required by Iowa Code section 724.6(1)*"a"*(3) as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652.

d. Submit the required fee of $50 per application.

e. Display identification documentation as defined in rule 661—91.1(724) or provide a photocopy thereof.

f. Authorize communication between the employing school district and the department for purposes of carrying out this chapter. Any correspondence between the school and the department shall not be considered public record.

91.11(2) The commissioner will return an incomplete application to the applicant.

ITEM 9. Adopt the following **new** rule 661—91.12(724):

661—91.12(724) Suspension or revocation of an educator professional permit.

91.12(1) When the commissioner finds that a person who has been issued an educator professional permit has been arrested for a disqualifying offense or is the subject of proceedings that could lead to the person's ineligibility for such permit, the commissioner may immediately suspend the permit.

a. If the arrest or proceeding does not result in a disqualifying conviction or finding against the permit holder, the commissioner shall immediately reinstate the educator professional permit upon proof of the matter's final disposition and shall return the permit to the permit holder.

b. If the arrest or proceeding results in a disqualifying conviction or finding against the permit holder, the commissioner shall revoke the permit.

91.12(2) When the commissioner discovers that a person has failed to provide the required annual and quarterly training records in a timely manner, the commissioner will suspend the educator professional permit and may, at the commissioner's discretion, provide the person 30 days to provide the required training documentation. If training documentation is not received after the thirtieth day, the commissioner shall revoke the educator professional permit.

a. If the suspension was for failing to provide training records, and training records indicating training was completed in accordance with Iowa Code section 724.6 as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652, are subsequently provided to the Iowa department of public safety within 30 days after the educator professional permit holder was notified of the suspension, the commissioner will immediately reinstate the educator professional permit and return the permit to the permit holder.

b. If the educator professional permit holder fails to complete the training required under these rules or fails to provide training documentation to the Iowa department of public safety, the commissioner will revoke the permit.

91.12(3) An educator professional permit holder will be notified immediately of such suspension by personal service or certified mail. The suspension becomes effective upon the educator permit holder's receipt of such notice. If notified by personal service, the educator professional permit will be surrendered to the person serving such notice for return to the commissioner. If notified by certified mail, the educator professional permit holder will be instructed to return the permit to the commissioner.

91.12(4) Notification of an educator professional permit suspension or revocation will be provided to the superintendent of the school in which the educator professional permit holder is employed.

ITEM 10. Adopt the following **new** rule 661—91.13(724):

661—91.13(724) Approval of required training for educator professional permit. Persons or organizations may provide one or more of the trainings required for an educator professional permit. Persons or organizations seeking approval by the Iowa department of public safety to provide training required by Iowa Code section 279.84(2), 279.84(3), or 724.6(1)*"a"*(3) as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652, will submit the following on department of public safety Form WP15:

91.13(1) The course syllabi or lesson plans and the goals or objectives for student courses as outlined, which demonstrate that students will receive the basic requirements for the required course.

91.13(2) Identification of the person providing the training and sufficient information to determine that the person is competent to provide the training.

ITEM 11. Adopt the following **new** rule 661—91.14(724):

661—91.14(724) Educator professional permit training requirements.

91.14(1) To receive an educator professional permit, the applicant must submit proof of successful completion of the following training courses:

a. One-time, in-person legal training as described in rule 661—91.15(724).

b. In-person emergency medical training as described in rule 661—91.16(724).

c. In-person communication training as described in rule 661—91.17(724).

d. In-person live scenario training as described in rule 661—91.18(724).

e. Initial live familiarization firearm and course of fire training as described in rule 661—91.19(724).

91.14(2) To maintain an educator professional permit, the permit holder must submit proof of successful completion of the following annual training courses:

a. Annual in-person emergency medical training as described in rule 661—91.16(724).

b. Annual in-person communication training as described in rule 661—91.17(724).

c. Annual in-person live scenario training as described in rule 661—91.18(724).

91.14(3) To maintain an educator professional permit, in addition to the above requirements, the permit holder must submit proof of successful completion of quarterly live firearm training, including successful completion of the prescribed qualification course.

91.14(4) All trainings shall be submitted to the Iowa department of public safety program services bureau via email at wpinfo@dps.state.ia.us.

ITEM 12. Adopt the following **new** rule 661—91.15(724):

661—91.15(724) Curriculum for one-time legal training for an educator professional permit. The one-time, in-person legal training for an educator professional permit shall be at minimum three hours and shall include all of the following information:

1. Parameters and limitations of the educator professional permit, including areas of potential liability, and requirements to maintain the permit.
2. State and federal law regarding legal principles of use of force and use of force generally, including modern principles of continuum of force.
3. State and federal laws regarding qualified immunity.
4. State law regarding the Iowa municipal tort claims Act.
5. Workers' compensation law with regard to school critical incidents.

ITEM 13. Adopt the following **new** rule 661—91.16(724):

661—91.16(724) Curriculum for annual emergency medical training for an educator professional permit.

91.16(1) Annual live, in-person emergency medical training for an educator professional permit shall be at minimum three hours and will include all of the following information and practical experience:

a. Cardiopulmonary resuscitation (CPR) and cardiac arrest management, including the use of an automated external defibrillator (AED).

b. Basic knowledge of first aid and trauma care, including casualty assessment, hemorrhage control, and assessment and initial treating of penetrating chest and abdominal wounds.

c. Basic knowledge and skills necessary to stop/slow life-threatening blood loss.

91.16(2) A current certification for CPR and first aid shall satisfy two hours of the required training.

ITEM 14. Adopt the following **new** rule 661—91.17(724):

661—91.17(724) Curriculum for annual communication training for an educator professional permit. The annual in-person communication training for an educator professional permit shall be at minimum two hours and shall include all of the following information:

1. De-escalation techniques, crisis intervention techniques, and the applicability and limitations of those techniques.
2. Communication capabilities and coordination, including principles of proper communication to first responders, such as communication of location, condition(s), actions, and needs.
3. Reporting of potential school threats, including to the governor's school safety bureau of the department of public safety and the Safe+Sound app.

ITEM 15. Adopt the following **new** rule 661—91.18(724):

661—91.18(724) Curriculum for annual live scenario training for an educator professional permit. The annual in-person live scenario training for an educator professional permit shall be at minimum 12 hours and will include all of the following information and practical experience:

1. Psychology of critical incidents.
2. Tactics of responding to critical incidents in schools.
3. Weapon retention.
4. Scenario-based or simulated training exercises, including both close-quarters and hallway scenarios.

ITEM 16. Adopt the following **new** rule 661—91.19(724):

661—91.19(724) Curriculum for firearms training for an educator professional permit. In-person firearms training for an educator professional permit shall consist of an initial live familiarization firearm and course of fire training for new educator professional permit applicants and quarterly continued training after the completion of the initial training.

91.19(1) Educator professional permit holders shall meet the minimum level of proficiency as established by Iowa department of public safety rules in the use of any weapon used in the capacity as an educator professional permit holder.

91.19(2) Initial live familiarization firearms and course of fire training, not including the qualification course of fire, will be at minimum 20 hours and will include all of the following:

a. Weapon safety, including but not limited to:

(1) Treating all firearms as if they are loaded,

(2) Pointing the muzzle in a safe direction at all times,

(3) Keeping fingers outside the trigger guard until the person's aim is on target and the person has decided to fire, and

(4) Being sure of the target and what is beyond.

b. Principals of good marksmanship, including but not limited to:

(1) Sight picture,
(2) Trigger squeeze,
(3) Proper stance,
(4) Drawing of the weapon,
(5) Grip of the weapon,
(6) Breathing,
(7) Follow-through, and
(8) Recovery.

c. Dry drills, including but not limited to:
(1) Administrative load,
(2) Combat load,
(3) Tactical load,
(4) Temporary stoppage drill,
(5) Double feed drill, and
(6) Holstering and reholstering.

d. Handgun marksmanship training, including but not limited to the drills prescribed by the Iowa department of public safety on Form WP16.

91.19(3) The qualification course of fire will be completed at the end of the initial live familiarization course and at each subsequent quarterly firearms training. This course must be completed utilizing the firearm that will be used in the person's capacity as an educator professional permit holder. The qualification course consists of the standards adopted by the Iowa law enforcement academy for the certified officer in-service handgun qualification course.

91.19(4) If a person fails to successfully satisfy the qualification course of fire after the second attempt, the person must retake the initial familiarization firearm and course of fire training and attempt the qualification course of fire again. If the person fails to successfully satisfy the qualification course of fire after the remedial training, the person must wait until the following quarter and may attempt again as if the person is a first-time applicant.

ITEM 17. Adopt the following **new** definition of "Private school security officer" in rule **661—121.2(80A)**:

"Private school security officer" means the same as described in Iowa Code section 279.84 as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652.

ITEM 18. Adopt the following **new** rule 661—121.25(80A):

661—121.25(80A) Private school security officer training requirements. A private school security officer shall participate in annual live scenario training as described in rule 661—91.18(724) and shall participate in an initial familiarization firearm and course of fire training and subsequent quarterly live firearm training as described in rule 661—91.19(724).

[Filed 8/30/24, effective 10/23/24]
[Published 9/18/24]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/24.

ARC 8227C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rulemaking related to new employment opportunities fund

The Director of the Workforce Development Department hereby rescinds Chapter 13, "New Employment Opportunities Fund," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Chapter 13 was originally created to provide administrative rules for the New Employment Opportunities Fund. This fund no longer exists, and, as part of the Department's review of rules under Executive Order 10, the chapter is being rescinded.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 24, 2024, as **ARC 8137C**. A public hearing was held on the following date(s):

- August 13, 2024

No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Director of the Workforce Development Department on August 28, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 October 23, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **871—Chapter 13**.

[Filed 8/28/24, effective 10/23/24]
[Published 9/18/24]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/24.

ARC 8228C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rulemaking related to employer innovation fund

The Director of the Workforce Development Department hereby rescinds Chapter 16, "Employer Innovation Fund," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Chapter 16 previously provided rules for the Employer Innovation Fund. However, this fund no longer exists, and, as part of the Department's review of rules under Executive Order 10, the chapter is being rescinded.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 24, 2024, as **ARC 8138C**. A public hearing was held on the following date(s):

- August 13, 2024

No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Director of the Workforce Development Department on August 28, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 October 23, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **871—Chapter 16**.

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The rules of the following boards have been editorially amended and transferred within the Iowa Administrative Code as indicated in the chart below. The transferred rules can be found in the September 4, 2024, Iowa Administrative Code Supplement and will be published concurrently in the Iowa Administrative Code on the same date.

Board	Previous Chapters	New Chapters
Chapters governing all boards	645 IAC 4, 5, 9, 11, 13, 14, 19	481 IAC 500-504, 506, 507
Board of Behavioral Science	645 IAC 31-34	481 IAC 891-894
Board of Chiropractic	645 IAC 41-46	481 IAC 841-896
Board of Barbering and Cosmetology Arts and Sciences	645 IAC 60, 61, 63-66	481 IAC 940, 941, 943-946
Board of Dietetics	645 IAC 81-84	481 IAC 921-924
Board of Mortuary Science	645 IAC 100-102, 104-106	481 IAC 900-902, 904-906
Board of Massage Therapy	645 IAC 131-135	481 IAC 821-825
Board of Nursing Home Administrators	645 IAC 141, 143-145	481 IAC 980-983
Board of Optometry	645 IAC 180-184	481 IAC 760-764
Board of Physical and Occupational Therapy	645 IAC 200-203, 206-210	481 IAC 800-808
Board of Podiatry	645 IAC 220-226	481 IAC 700-706
Board of Psychology	645 IAC 240-245	481 IAC 885-890
Board of Respiratory Care and Polysomnography	645 IAC 261, 262, 265, 266	481 IAC 720-723
Board of Social Work	645 IAC 280-284	481 IAC 895-899
Board of Speech Pathology and Audiology	645 IAC 300, 301, 303-305	481 IAC 740-744
Board of Physician Assistants	645 IAC 326-330	481 IAC 780-784
Board of Athletic Training	645 IAC 351-354	481 IAC 861-864
Board of Sign Language Interpreters and Transliterators	645 IAC 361-364	481 IAC 961-964

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.