IOWA ADMINISTRATIVE BULLETIN

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Filed, Promotion of Iowa agricultural products at rest areas; adopt-a-highway program; highway helper sponsorship program, rescind chs 106, 121, 124 **ARC 8244C** 3168

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PREFACE

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

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

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

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

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

CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rulemaking
2024

NOTICE† SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
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
9	**Friday, October 11, 2024**	**October 30, 2024**
10	**Wednesday, October 23, 2024**	**November 13, 2024**
11	**Wednesday, November 6, 2024**	**November 27, 2024**

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 15, 2024, at 11 a.m. in Room 116, State Capitol, Des Moines, Iowa. For more information, contact Jack Ewing at jack.ewing@legis.iowa.gov. The following rules will be reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Meat and poultry inspections—adoption by reference, amendments to ch 76 Filed **ARC 8225C** 9/18/24

ATTORNEY GENERAL[61]

Crime victim assistance program, ch 9 Notice **ARC 8220C** 9/18/24

ECONOMIC DEVELOPMENT AUTHORITY[261]

Entrepreneur investment awards program, ch 102 Notice **ARC 8224C** 9/18/24
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 Notice **ARC 8221C** 9/18/24
Strategic infrastructure program, ch 118 Notice **ARC 8222C** 9/18/24
Manufacturing 4.0 technology investment program, ch 119 Notice **ARC 8223C** 9/18/24

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Authorizations—career and technical cluster endorsement, 22.9(3)"c" Filed **ARC 8235C** 10/2/24

EDUCATION DEPARTMENT[281]

Dates certain; school bus construction standards; special education mediation, amendments to chs 12, 21, 41, 43, 44, 98 Filed **ARC 8240C** 10/2/24
Charter schools; Iowa public charter and innovation zone schools, adopt ch 19; rescind ch 68 Filed **ARC 8241C** 10/2/24

INSPECTIONS AND APPEALS DEPARTMENT[481]

Health care employment agencies and health care technology platforms, amendments to ch 55 Amended Notice **ARC 8214C** 9/18/24

IOWA FINANCE AUTHORITY[265]

Multifamily housing, ch 3 Notice **ARC 8232C** 10/2/24
Low-income housing tax credits; senior living revolving loan program; Iowa aftercare services rent subsidy program; transitional housing revolving loan program; council on homelessness; public service shelter grant fund; Iowans helping Iowans housing assistance program, rescind chs 12, 20, 22, 23, 31, 36, 40 Notice **ARC 8233C** 10/2/24
Home- and community-based services rent subsidy program, ch 24 Notice **ARC 8231C** 10/2/24

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Rules of practice for OSHA variances, ch 5 Notice **ARC 8237C** 10/2/24
General industry safety and health rules, ch 10 Notice **ARC 8234C** 10/2/24
Construction safety and health rules, ch 26 Notice **ARC 8238C** 10/2/24
Occupational safety and health standards for agriculture, ch 28 Notice **ARC 8239C** 10/2/24

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Organization and general administration, ch 1 Notice **ARC 8209C** 9/18/24
Fair information practices, ch 5 Notice **ARC 8210C** 9/18/24
Public communications and records, ch 6 Notice **ARC 8211C** 9/18/24
Parole and work release considerations, ch 8 Notice **ARC 8212C** 9/18/24

PUBLIC HEALTH DEPARTMENT[641]

Smokefree air, ch 153 Amended Notice **ARC 8215C** 9/18/24

PUBLIC SAFETY DEPARTMENT[661]

Educator professional permit to carry a weapon; private school security officer firearms training, amendments to chs 91, 121 Filed **ARC 8226C** 9/18/24

TRANSPORTATION DEPARTMENT[761]

Organization of the department of transportation; provisions applicable to all rules, rescind chs 1, 2 Filed **ARC 8242C** 10/2/24

Iowa transportation map; secondary road fund distribution committee; Iowa byways program; highway bridge program for cities and counties; allocation of farm-to-market road funds; availability of instructional memorandums to local public agencies; preparation of secondary road construction programs, budgets, and county annual reports; reimbursable services and supplies, rescind chs 28, 102, 132, 161, 170, 172 to 174 Filed **ARC 8243C** 10/2/24
Promotion of Iowa agricultural products at rest areas; adopt-a-highway program; highway helper sponsorship program, rescind chs 106, 121, 124 Filed **ARC 8244C** 10/2/24

UTILITIES COMMISSION[199]
Restoration of agricultural lands during and after pipeline construction, ch 9 Notice **ARC 8219C** 9/18/24
Service supplied by water, sanitary sewage, and storm water drainage utilities, ch 21 Notice **ARC 8229C** 10/2/24
Energy efficiency and demand response planning and reporting for rate-regulated natural gas and electric utilities, ch 35 Notice **ARC 8230C** 10/2/24
Competitive bidding process, rescind ch 40 Filed **ARC 8236C** 10/2/24
Ratemaking principles proceeding, ch 41 Notice **ARC 8213C** 9/18/24

WORKFORCE DEVELOPMENT DEPARTMENT[871]
New employment opportunities fund, rescind ch 13 Filed **ARC 8227C** 9/18/24
Employer innovation fund, rescind ch 16 Filed **ARC 8228C** 9/18/24
Unemployment insurance services division, ch 21 Notice **ARC 8216C** 9/18/24
Employer records and reports, ch 22 Notice **ARC 8218C** 9/18/24
Benefit payment control, ch 25 Notice **ARC 8217C** 9/18/24

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mike Klimesh
Chair
Senate District 32

Senator Nate Boulton
Senate District 20

Senator Mike Bousselot
Senate District 21

Senator Chris Cournoyer
Senate District 35

Senator Cindy Winckler
Senate District 49

Representative Michael Bergan
Vice Chair
House District 63

Representative Amy Nielsen
House District 85

Representative Rick Olson
House District 39

Representative Mike Sexton
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Representative David Young
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ADMINISTRATIVE SERVICES DEPARTMENT[11]

Organization and operation; state library of Iowa, 1.4(7), 111.2(12), ch 130; programs and funding, ch 131; Internet use policy, ch 132 IAB 10/2/24 **Regulatory Analysis**	Room 310—Library Conference Room Ola Babcock Miller Building Des Moines, Iowa	October 24, 2024 1 to 2 p.m.

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.
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.

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.

CREDIT UNION DIVISION[189]

Credit union review board—meeting frequency, 1.3(2); board of directors—meeting frequency, 2.9(1) IAB 10/2/24 **Regulatory Analysis**	Video call link: meet.google.com/brb-hssd-qnj Join by phone: 1.813.773.5922 PIN: 808 235 241#	October 22, 2024 2 to 2:30 p.m.

DENTAL BOARD

Agency realignment; rescind chs 1, 10 to 16, 20 to 23, 25 to 27, 29 to 31; agency realignment, rescind ch 32; agency realignment, rescind chs 6 to 9, 33, 35, 36, 50 to 52 IAB 10/2/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#	October 22, 2024 12 noon

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.
Public records and fair information practices, ch 195 IAB 10/2/24 **Regulatory Analysis**	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	October 22, 2024 9 to 9:15 a.m.
Petition for rulemaking, ch 197 IAB 10/2/24 **Regulatory Analysis**	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	October 22, 2024 9:15 to 9:30 a.m.
Petition for declaratory order, ch 198 IAB 10/2/24 **Regulatory Analysis**	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	October 22, 2024 9:30 to 9:45 a.m.
Waivers from administrative rules, ch 199 IAB 10/2/24 **Regulatory Analysis**	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	October 22, 2024 9:45 to 10 a.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.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Dental board administration, ch 570; dental board fees, ch 571; dental licensure, registration, renewal and reinstatement, ch 572; dental continuing education, ch 573; general requirements and standards of practice, ch 574; dental assistants, dental radiography qualifications, and dental laboratory technicians, ch 575 IAB 10/2/24 **Regulatory Analyses**	6200 Park Avenue, Suite 100 Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#	October 22, 2024 12 noon
Behavioral health professionals licensing, ch 880, rescind chs 885, 895; Continuing education for marital and family therapists, mental health counselors, social workers, and psychologists, adopt ch 881, rescind chs 886, 892, 896; discipline for marital and family therapists, mental health counselors, behavior analysts, psychologists, and social workers, adopt ch 882, rescind chs 887, 893, 898; prescribing psychologists, adopt ch 883; rescind ch 889; practice of social workers, psychologists, marriage and family therapists, and mental health counselors, adopt ch 884; rescind chs 888, 891, 897 IAB 10/2/24 **Regulatory Analyses**	6200 Park Avenue, Suite 100 Des Moines, Iowa Via videoconference call: meet.google.com/mku-itia-ciq Or dial: 1.573.342.3106 PIN: 861 856 486#	October 22, 2024 9 to 9:30 a.m.

INTERIOR DESIGN EXAMINING BOARD[193G]

Description of organization, ch 1; registration, ch 2; continuing education, ch 3; grounds for discipline, disciplinary investigations, and disciplinary proceedings, ch 5; disciplinary investigations, rescind ch 6; disciplinary proceedings, rescind ch 7 IAB 10/2/24 **Regulatory Analyses**	6200 Park Avenue Des Moines, Iowa us02web.zoom.us/j/87157328415?pwd=MUJIuarfeYpA4aEog7FSkQfzHyXifN.1	October 22, 2024 3 p.m.

IOWA FINANCE AUTHORITY[265]

Multifamily housing, ch 3 IAB 10/2/24 **ARC 8232C**	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review/	October 22, 2024 10:15 to 10:30 a.m. October 24, 2024 2:15 to 2:30 p.m.
Low-income housing tax credits; senior living revolving loan program; Iowa aftercare services rent subsidy program; transitional housing revolving loan program; council on homelessness; public service shelter grant fund; Iowans helping Iowans housing assistance program, rescind chs 12, 20, 22, 23, 31, 36, 40 IAB 10/2/24 **ARC 8233C**	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review/	October 22, 2024 10:30 to 10:45 a.m. October 24, 2024 2:30 to 2:45 p.m.
Home- and community-based services rent subsidy program, ch 24 IAB 10/2/24 **ARC 8231C**	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review/	October 22, 2024 10 to 10:15 a.m. October 24, 2024 2 to 2:15 p.m.
Petition for declaratory order, ch 16 IAB 10/2/24 **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/	October 22, 2024 9:30 to 9:45 a.m.
Public records and fair information practices, ch 13 IAB 9/18/24 **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/	October 8, 2024 9 to 9:15 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.
Rules of practice for OSHA variances, ch 5 IAB 10/2/24 **ARC 8237C**	Dial: 312.626.6799 Meeting ID number: 813 6327 9319 Pass code: 590253	November 5, 2024 8:30 to 9 a.m. November 6, 2024 8:30 a.m.

LABOR SERVICES DIVISION[875](cont'd)

General industry safety and health rules, ch 10 IAB 10/2/24 **ARC 8234C**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 22, 2024 9:30 to 9:45 a.m. October 23, 2024 9:30 to 9:45 a.m.
Construction safety and health rules, ch 26 IAB 10/2/24 **ARC 8238C**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	November 5, 2024 8:30 to 9 a.m. November 6, 2024 8:30 to 9 a.m.
Occupational safety and health standards for agriculture, ch 28 IAB 10/2/24 **ARC 8239C**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	November 5, 2024 8:30 to 9 a.m. November 6, 2024 8:30 to 9 a.m.
Amusement ride inspections, ch 61; safety rules for amusement rides, amusement devices, and concession booths, ch 62; safety rules for bungee jumps, ch 63 IAB 10/2/24 **Regulatory Analyses**	Geode Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 23, 2024 8:30 to 9 a.m.
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.

LABOR SERVICES DIVISION[875](cont'd)

Construction contractor registration, ch 150; asbestos removal and encapsulation, ch 155 IAB 10/2/24 **Regulatory Analyses**	Geode Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 23, 2024 9 to 9:30 a.m.
General requirements for athletic commission events, ch 169; professional boxing, ch 173; mixed martial arts, ch 177 IAB 10/2/24 **Regulatory Analyses**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 24, 2024 10 to 10:30 a.m.
Grant applications and awards, ch 171; professional wrestling, ch 172; elimination tournaments, ch 174; amateur boxing, rescind ch 175; professional kickboxing, ch 176 IAB 10/2/24 **Regulatory Analyses**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 24, 2024 10:30 to 11 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.

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

Agency realignment, rescind chs 1 to 3, 6, 7, 10 to 12 IAB 10/2/24 **Regulatory Analysis**	Room 310—Library Conference Room Ola Babcock Miller Building Des Moines, Iowa	October 24, 2024 1 to 2 p.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.

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.
Standards for electrical work; electrical inspection program—organization and administration, definitions, permits and inspections, utility notifications and responsibilities of utilities; civil penalties, rescind chs 504, 550 to 553, 559; adopt ch 550 IAB 10/2/24 **Regulatory Analysis**	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa	October 22, 2024 9:30 to 10 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.
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.

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.
Interest on retained funds, ch 27 IAB 10/2/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 912 076 967	October 28, 2024 10 to 10:30 a.m.
Recovery of damages to highways or highway structures, ch 40 IAB 10/2/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 611 359 34	October 28, 2024 11 to 11:30 a.m.
Secondary road fund distribution methodology, ch 103 IAB 10/2/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 255 254 876	October 24, 2024 1 to 1:30 p.m.
Utility accommodation, ch 115 IAB 10/2/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 826 453 498	October 28, 2024 1 to 1:30 p.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.
Surface transportation block grant program, ch 162 IAB 10/2/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 938 298 103	October 24, 2024 11 to 11:30 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.
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.

TRANSPORTATION DEPARTMENT[761](cont'd)

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.
Vehicle registration and certificate of title, ch 400 IAB 10/2/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 231 627 177	October 24, 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.
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.
Driver education, ch 634 IAB 10/2/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 343 768 039	October 25, 2024 10 to 10:30 a.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.

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.
Service supplied by water, sanitary sewage, and storm water drainage utilities, ch 21 IAB 10/2/24 **ARC 8229C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	October 24, 2024 2 to 4 p.m. November 4, 2024 2 to 4 p.m.
Iowa electrical safety code, ch 25 IAB 8/21/24 **ARC 8200C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	October 15, 2024 9 to 11 a.m.

UTILITIES COMMISSION[199](cont'd)

Energy efficiency and demand response planning and reporting for rate-regulated natural gas and electric utilities, ch 35 IAB 10/2/24 **ARC 8230C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	October 23, 2024 9 to 11 a.m. November 13, 2024 2 to 4 p.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]

Unemployment insurance services division, ch 21 IAB 9/18/24 **ARC 8216C**	Lobby Conference Room 1000 East Grand Avenue Des Moines, Iowa 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 8 to 8:30 a.m. 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 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 8:30 to 9:30 a.m. October 8, 2024 1:30 to 2:30 p.m.
Employer's contribution and charges, ch 23 IAB 10/2/24 **Regulatory Analysis**	1000 East Grand Avenue Des Moines, Iowa	October 22, 2024 9 to 10 a.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

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

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.

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]
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  Soil Conservation and Water Quality Division[27]
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    Real Estate Commission[193E]
    Real Estate Appraiser Examining Board[193F]
    Interior Design Examining Board[193G]
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PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
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Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 11—subrules 1.4(7) and 111.2(12) and Chapter 130
"Organization and Operation; State Library of Iowa"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8A.104(5) and 8A.203(3) as amended by 2024 Iowa Acts, Senate File 2385

State or federal law(s) implemented by the rulemaking: Iowa Code sections 8A.201 through 8A.234

Public Hearing

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

October 24, 2024	Room 310—Library Conference Room
1 p.m.	Ola Babcock Miller Building

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

Tami Wiencek
Hoover State Office Building, Third Floor
1305 East Walnut Street
Des Moines, Iowa 50319
Email: tami.wiencek@iowa.gov

Purpose and Summary

The intended purpose of these proposed rules is to provide the public, local libraries, and any branch of state government with a framework for the organization of the State Library of Iowa. The State Library of Iowa became a part of the Department of Administrative Services through the state government alignment bill, 2023 Iowa Acts, Senate File 514, which has since been codified in Iowa Code chapter 8A. These proposed rules are being moved under agency number [11].

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

People who use the State Library of Iowa may incur some costs for information delivery or photocopying charges if they choose to use those services.

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

Stakeholders, including local libraries, community members, state employees, and other library patrons, benefit from the structure of organization and rules setting forth guidelines on the use of the State Library of Iowa's governance, resources, and collections.

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 approximately 543 libraries in the state and their patrons benefit from the structure of these proposed organizational rules.

- Qualitative description of impact:

Patrons of the State Library of Iowa receive the benefit of accessing archival, historical, legal and other resources not necessarily available in local libraries.

3. Costs to the State:

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

There are personnel costs to the State Library of Iowa.

- Anticipated effect on state revenues:

There is minimal effect on state revenues as a result of these rules.

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

Not applicable.

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

Not applicable.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Proposed rules outlining organization and use of the State Library of Iowa provide a platform for clarity and consistency for all patrons and local libraries.

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. Adopt the following **new** subrule 1.4(7):

1.4(7) *State library of Iowa.* The state librarian, appointed by the director, administers the operations of the state library of Iowa. The state librarian also works with the commission of libraries. The state library of Iowa is located at 1112 East Grand Avenue, Des Moines, Iowa 50319. Information regarding the library can be found at statelibraryofiowa.gov.

ITEM 2. Adopt the following **new** subrule 111.2(12):

111.2(12) *Disposal of library materials.* Disposal of library materials under the control of the state library of Iowa shall be undertaken by the state librarian only as a means of strengthening and benefiting the mission of the state library. Materials may be deaccessioned from the collections of the state library if they are no longer deemed relevant and appropriate to the mission of the state library or if they have deteriorated beyond repair and usefulness. Revenue from the disposition of any books or other library materials under the control of the state library of Iowa shall be credited to the state library fund established by the treasurer of state, and proceeds shall be used solely for the purchase of books and other information resources for the state library. Notwithstanding Iowa Code section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state. This subrule implements Iowa Code section 8A.204(2)*"c."*

ITEM 3. Reserve **11—Chapter 122** to **129**.

ITEM 4. Adopt the following **new**11—Chapter 130:

CHAPTER 130
STATE LIBRARY OF IOWA

11—130.1(8A) Definitions. The definitions used in Iowa Code chapters 8A and 17A will apply for terms used throughout this chapter. In addition, the following definitions will apply:

"Circulating materials" means items that may be loaned and used outside the library.

"Deaccession" means permanent removal of materials from the state library's collections.

"Department" means the department of administrative services.

"Director" means the director of the department of administrative services.

"Holds" means patron requests to reserve items checked out to other patrons. Materials may be placed on hold through the library's online catalog using a library card. When an item on hold becomes available, the patron placing the hold will be contacted and given five days to pick up the item(s) or make arrangements for receipt of items.

"Individual library card" means a card distributed by the state library that allows a patron to access the library's collections, reference assistance, and online resources.

"Library materials" includes but is not limited to books, journals, documents, audiovisuals, and software in any format.

"Proof of identity and state residence" means a government-issued form of identification with a photo and indication of Iowa residency, including but not limited to a driver's license, a passport, a nonoperator's identification card, or a military identification card; or, for minors, a school identification card.

"Resident" means a person who lives in Iowa or pays property taxes in Iowa.

"State employee library card" means a card distributed by the state library that allows a state employee to access the library's collections, reference assistance, online resources, and interlibrary loan services.

"State librarian" means the chief operating officer of the state library.

"State library" means the library agency within the department of administrative services.

11—130.2(8A) Organization and mission. The state library of Iowa exists to improve library services in Iowa and deliver specialized information services to state government and Iowans. The state librarian, appointed by the director, heads the state library of Iowa. The state library consists of the following three units: the library support network (includes the LSTA Grant Program, public library accreditation, library staff endorsement, Enrich Iowa, continuing education and consulting), specialized library services (includes state documents, the state publications depository program, special collections, the state law library, and technical services), and the state data center. Additionally, the commission of libraries advises the department and the state librarian concerning library services.

130.2(1) *Commission of libraries.* The commission of libraries consists of nine members as defined in Iowa Code section 8A.203. The commission shall meet at a time and place specified by the chairperson. All meetings are open to the public, and public notice of all meetings shall be posted in accordance with Iowa Code chapter 21. The current and archived minutes are accessible on the state library's website: statelibraryofiowa.gov.

130.2(2) *State library advisory panel.* The library services advisory panel consists of no fewer than 11 members as defined in Iowa Code section 8A.221. The advisory panel shall meet at a time and place specified by the chairperson. All meetings are open to the public, and public notice of all meetings shall be posted in accordance with Iowa Code chapter 21.

11—130.3(8A) Operations. The state library provides information services to the three branches of government and the general public in accordance with Iowa Code section 8A.211. Services include information delivery and collection access. In-person services are provided at the state capitol building in the state law library, located on the second floor. Digital access to services is available through the state library's website: statelibraryofiowa.gov.

130.3(1) *Information delivery.* Library staff, in conjunction with the patron needs, will determine the best method to process the materials for delivery. Processing fees may be applicable and will be posted on the state library's website: statelibraryofiowa.gov.

130.3(2) *Collection access.* The state library's collections are housed in the Ola Babcock Miller state office building, 1112 East Grand Avenue, Des Moines, and in the state capitol building. Primary research and study areas of the library's two locations are accessible to the disabled; however, upper tiers are generally closed to all public access. Staff will retrieve materials requested by library users or may authorize access on a case-by-case basis.

a. Library cards. A resident of Iowa may obtain an individual library card by providing proof of identity and state residence in person, by mail, or online. A state employee may obtain a state employee library card by providing proof of identity, state residence, and state employment in person, by mail, or online. Cards expire regularly but can be reactivated. Library privileges will be suspended or canceled when a patron's library card has expired.

b. Circulation of library materials. Circulating library materials are able to be checked out to library card holders and may be renewed. Patrons may renew materials in person, by contacting the state library, or through the library's online catalog.

c. Fines and fees. Fines are not assessed for overdue materials. Lost, unreturned or damaged materials may incur replacement costs. Replacement copies will not be accepted. Library privileges will be suspended or canceled when a patron has outstanding debt to the library.

d. Library records confidential. Library records are confidential pursuant to Iowa Code section 22.7(13). The state librarian is the custodian of the library's records.

e. Collection policy of the library. The purpose of this policy is to define the intended coverage and clientele; establish collection management and selection policies; provide staff with the means to ensure consistency, responsiveness, and wise use of funds in collection building; assist in development of performance measures; establish priorities to guide budget allocations and cataloging and preservation decisions; and document the library's commitment to intellectual freedom. The collection policy shall be developed and made available on the state library's website: statelibraryofiowa.gov.

These rules are intended to implement Iowa Code sections 8A.202, 8A.203, 8A.210, 8A.211, and 8A.221.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 11—Chapter 131
"Programs and Funding"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8A.104(5) and 8A.203(3) as amended by 2024 Iowa Acts, Senate File 2385

State or federal law(s) implemented by the rulemaking: Iowa Code sections 8A.201 through 8A.234

Public Hearing

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

October 24, 2024	Room 310—Library Conference Room
1 p.m.	Ola Babcock Miller Building

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

Tami Wiencek
Hoover State Office Building, Third Floor
1305 East Walnut Street
Des Moines, Iowa 50319
Email: tami.wiencek@iowa.gov

Purpose and Summary

The purpose of this chapter is to combine rules addressing similar topics and move them from the former State Library of Iowa rules under agency number [286] to the Department of Administrative Services rules under agency number [11]. The State Library of Iowa moved to the Department of Administrative Services as part of state government alignment in 2023 Iowa Acts, Senate File 514, which has been codified in Iowa Code sections 8A.201 through 8A.234.

This new chapter addresses proposed rules for library programs. These proposed rules have been condensed from the two chapters the rules previously existed in. The chapter provides the public, local libraries, and any branch of state government information on the statewide programs and services provided by the State Library of Iowa.

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 people will bear the costs other than taxpayers in their role of supporting state government. No new costs for any persons are anticipated by these proposed rules.

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

The public, local libraries, and all branches of state government benefit from rules regarding these programs.

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:

These rules set forth programs required by law that support local libraries and their customers, which consist primarily of community members. These programs are intended to support access to library materials, employment and economic development, civic engagement, and equity in access to information across Iowa's communities.

- Qualitative description of impact:

The programs and description of funding in these proposed rules outline benefits to libraries, the people who use them, and the people who administer the services. The proposed rules describe guidelines of many benefits from library program development to staff development. The programs strengthen the roles of libraries, their connection to the State Library of Iowa, and information access.

3. Costs to the State:

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

There are personnel costs to the State Library of Iowa in administering these programs and managing grant funds.

- Anticipated effect on state revenues:

There is minimal effect on state revenues.

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

Not applicable.

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

No less intrusive methods exist because the rules provide clarity for the public and libraries across Iowa.

6. Alternative methods considered by the agency:

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

None were considered.

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

These proposed rules are the proper vehicle to lay out guidelines for State Library of Iowa programs, including descriptions of funding. The rules, as proposed, are the least bureaucratic method of implementing federal and state legal obligations.

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. Adopt the following **new**11—Chapter 131:

CHAPTER 131
PROGRAMS AND FUNDING

11—131.1(8A) Purpose. The state library is charged with developing a long-range plan, known as the State Library of Iowa Library Services and Technology Act (LSTA) Five-Year Plan, for the continued improvement of library services in the state. The major outcomes of this planning effort include the maintenance of the State of Iowa Libraries Online (SILO) program; professional development and continuing education of Iowa library staff, including a voluntary endorsement program for public library staff; the development of standards for public libraries that includes a voluntary accreditation program; the IA Shares delivery service for public libraries; providing Iowans access to the publications of state government; and digital information resources.

11—131.2(8A) Financial support.

131.2(1) *Funding.* Funding for the stated outcomes is provided through both state appropriations and federal funding to the state library.

a. Funding for the Enrich Iowa program, through a state appropriation, allows the state library to implement the program as outlined in Iowa Code section 8A.209.

b. Funding from the federal government is provided through the Grants to States program from the Institute for Museum and Library Services (IMLS). The program's focus is on the following six focal areas: lifelong learning, information access, institutional capacity, employment and economic development, human services, and civic engagement. The current authorization is through the Museum and Library Services Act of 2018 (PL 115-410).

131.2(2) *Federal funding administration.* The state library administers and uses the state-based LSTA funds (in any proportion) directly or through subgrants or cooperative agreements. The actual amount, timing, and availability of funds for projects is determined by the state library in consultation with the Iowa library community. In accordance with the principles set forth in the basic guidelines of the Five-Year Plan for the use of LSTA funds, individual grants are not anticipated. However, when individual grants are deemed to be the appropriate vehicle to meet the identified needs as well as the intent of the guidelines, information on grants will be published and distributed statewide.

a. Eligibility. Eligibility of projects will be determined by the Five-Year Plan for the use of LSTA funds. The use of the funds will have a major impact on library service to Iowans; increase access to information; have a statewide benefit; foster cooperation, resource sharing, and partnerships; involve all types and sizes of libraries; encourage innovation; and emphasize evaluation. The plan is found on the state library's website: statelibraryofiowa.gov.

b. Reporting procedures. All LSTA grant recipients shall submit to the state library documentation of LSTA project-related expenses and periodic and final project reports. LSTA-funded projects are subject to on-site monitoring by state library personnel.

11—131.3(8A) Enrich Iowa.

131.3(1) *Purpose.* The Enrich Iowa program is set forth in Iowa Code section 8A.209. Enrich Iowa provides direct state assistance to public libraries, supports the open access and interlibrary loan programs, provides public libraries with an incentive to improve library services, and reduces inequities among communities in the delivery of library services. Enrich Iowa funding is intended to supplement, not replace, local funding.

131.3(2) *Eligibility.* All Iowa libraries are eligible to participate in the Enrich Iowa program. Direct State Aid funding is limited to public libraries meeting Tier 1 requirements or higher. Open

Access funding is limited to public libraries meeting Tier 1 requirements or higher and academic libraries. Interlibrary loan reimbursement funding is available to all public, academic, AEA, institutional, school, and special libraries. To participate in the Enrich Iowa program, an Iowa library must sign an agreement from the state library that outlines the general provisions and assurances. Information, including forms for signature, terms of agreement, and program reporting requirements are made available on the state library's website: statelibraryofiowa.gov.

11—131.4(8A) State of Iowa Libraries Online (SILO). Pursuant to Iowa Code section 8A.202, the state library provides resource sharing services, including the Iowa Locator, the statewide union catalog used to locate library items, and the SILO Interlibrary Loan System to all types of libraries in Iowa. SILO also offers hosted services including DNS, email lists, and web hosting to any public library.

11—131.5(8A) Standards and accreditation program. Pursuant to Iowa Code section 8A.202, the state library provides performance measures to encourage the ongoing development of high-quality public library service in the state. "In Service to Iowa: Public Library Standards" is the manual for the state library of Iowa's standards program. Iowa's voluntary public library standards program was established to give public libraries a tool to identify strengths and areas for improvement. It is also used to document the condition of public library service in Iowa, to distribute Direct State Aid funding, and to meet statutory requirements. Program information can be found on the state library's website: statelibraryofiowa.gov.

This rule is intended to implement Iowa Code section 8A.202(1)*"k."*

11—131.6(8A) Endorsement program for the Iowa public library community. Pursuant to Iowa Code section 8A.202, the state library improves library service in Iowa by developing the skills of public library directors and staff, providing recognition for public librarians, enhancing the public image of librarians and libraries, and providing guidelines that public library boards may use in developing staff hiring policies. Program information can be found on the state library's website: statelibraryofiowa.gov.

11—131.7(8A) Summer library program. Pursuant to Iowa Code section 8A.202, the state library aids public libraries in planning summer reading programs by working with an outside vendor for promotional and programming materials, which are locally adaptable, to help improve library service to youth in Iowa and to improve skills of librarians. Program information can be found on the state library's website: statelibraryofiowa.gov.

11—131.8(8A) State publications depository program. Pursuant to Iowa Code sections 8A.202 and 8A.208, the state publications depository program is established within the state library for the collection and distribution of publications issued by state agencies to designated depository libraries around the state and maintains a digital repository for electronic government publications. The program shall be administered by the state librarian and coordinated through the library's specialized library services unit. The state library shall serve as the last copy depository for predepository state information products and for those products never deposited with the center since its 1979 inception. Both print and digital materials are collected for the program.

131.8(1) *Definitions.*

"State agency" means a legislative, executive, or judicial office of the state and all of its respective offices, departments, divisions, bureaus, boards, commissions, committees, and state institutions of higher education governed by the state board of regents.

"State publications" are defined as any multiply produced informational products or materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by

private bodies such as research and consultant firms under contract with or supervision of any state agency. State information products specifically include but are not limited to public documents appearing as reports, directories, statistical compendiums, bibliographies, lists, state plans, statutes, codes, laws and bills, rules, regulations, transcripts of public hearings, journals, newsletters, bulletins, periodicals, books, pamphlets, brochures, charts, maps, surveys, other printed matter, audiovisual materials, microfilm, microfiche, and all electronic information sources in all electronic formats. State information products do not include correspondence and memoranda intended solely for internal use within the agency or between agencies, materials designated by law as being confidential, materials excluded from this definition by the department through the adoption and enforcement of rules, and materials determined by the depository library center staff to be exempt.

131.8(2) *State agency requirements.* Pursuant to Iowa Code section 8A.205, upon issuance of a state publication in any format, a state agency shall provide the state library an electronic version of the publication at no cost to the state library. The publication will be deposited into Iowa Publications Online, publications.iowa.gov, a digital repository of documents produced by Iowa state agencies. Print documents are accepted. It shall be the responsibility of the issuing state agency to create duplicate copies of publications in limited supply to meet the minimal copy requirements of the depository program as specified by the state library.

131.8(3) *Depository libraries.* The state library and the University of Iowa shall be designated as the two permanent depositories for Iowa state publications. The Library of Congress shall receive one copy of each state publication collected. Depository status shall be determined by the state librarian. Information about the depository libraries program can be found on the state library's website: statelibraryofiowa.gov.

11—131.9(8A) IA Shares. A statewide delivery service program has been established in the state library to provide a method of sending and receiving library materials between public libraries and the state library. Program information can be found on the state library's website: statelibraryofiowa.gov.

11—131.10(8A) People's law library of Iowa. The state library, in conjunction with the University of Iowa law library, provides an easy-to-understand, basic information website about the law. The people's law library of Iowa is available at: www.peopleslawiowa.org.

These rules are intended to implement Iowa Code sections 8A.202, 8A.205, 8A.208, and 8A.209.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 11—Chapter 132
"Internet Use Policy"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8A.104(5) and 8A.203(3) as amended by 2024 Iowa Acts, Senate File 2385

State or federal law(s) implemented by the rulemaking: Iowa Code sections 8A.104 and 8A.201 through 8A.234

Public Hearing

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

October 24, 2024	Room 310—Library Conference Room
1 p.m.	Ola Babcock Miller Building

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

Tami Wiencek
Hoover State Office Building, Third Floor
1305 East Walnut Street
Des Moines, Iowa 50319
Email: tami.wiencek@iowa.gov

Purpose and Summary

The State Library of Iowa is now a part of the Department of Administrative Services as a result of state government alignment. As part of Executive Order 10, these proposed rules have been reviewed and are being repromulgated under agency number [11]. The purpose of these proposed rules is to show that the State Library of Iowa's Internet Use Policy is in compliance with 20 U.S.C. §9134(f) and the Children's Internet Protection Act as required by the Institute for Museum and Library Services (IMLS). IMLS is the main federal funding agency.

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, so there is no cost to bear.

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

Members of the public, including parents and children, benefit from these rules as they pertain to Internet use guidelines.

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 costs associated for the public directly in creating and maintaining these rules.

- Qualitative description of impact:

There are benefits to the public and anyone who uses the State Library of Iowa in applying rules for Internet use. The rules provide guidelines in accessing information and being respectful to others regarding how some information may be perceived. The rules also restrict use of obscene and inappropriate material.

3. Costs to the State:

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

There are personnel costs to the State Library of Iowa.

- Anticipated effect on state revenues:

Any anticipated effect is minimal.

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

The State Library would stand to lose at least $2 million in federal funding if these policies were not in place.

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.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Rules for the State Library of Iowa's Internet Use Policy are the appropriate vehicle to enact such a policy in the interest of clarity for the public. Rules are the appropriate vehicle in which to set expectations.

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. Adopt the following **new**11—Chapter 132:

CHAPTER 132
INTERNET USE POLICY

11—132.1(8A) Rights and responsibilities. The state library expects the use of all its electronic sources such as the Internet to be responsible, ethical, and legal, and consistent with the purpose for

which those resources are provided. The state library complies with the Children's Internet Protection Act (PL 106-554 and 47 U.S.C. 254(h)). To this end:

a. The state library affirms the right of every individual to have access to constitutionally protected material as stated in the library's collection development policy.

b. Parents or guardians, not the library or its staff, are responsible for the Internet use by their children.

c. Internet access is provided in a public area shared by users of all ages, backgrounds, and sensibilities. Users should consider this when accessing potentially controversial information and images.

d. The state library reserves the right to ask users to discontinue the display of information and images that cause a disruption.

e. Users should respect the privacy of other Internet users by not observing what sites others are accessing.

f. Users will not misrepresent themselves as any other user; will not attempt to modify or gain access to files, passwords, or data belonging to others; will not seek unauthorized access to any computer system; and will not damage or alter software components of any network or database.

g. Illegal activities subject to prosecution include:

(1) Destruction of or damage to equipment, software, or data belonging to the library;

(2) Violation of computer system security or system configuration;

(3) Violation of the copyright laws of the United States;

(4) Downloading or provision of child pornography or display of pornography where it may be seen by children.

h. To the extent practical, steps shall be taken to promote the safety and security of users of the Internet when they are using electronic mail, chat rooms, instant messaging and other forms of direct electronic communications.

i. Safety and security of minors.

(1) Prevention of inappropriate network usage.

1. Technology measures shall be used to prevent unauthorized access and other unlawful activities.

2. Technology measures shall be used to prevent unauthorized disclosure, use, and dissemination of personal identification information.

(2) Prevention of access to inappropriate material.

1. Technology protection measures, i.e., Internet filters, shall be used to block or filter access to inappropriate material on the Internet.

2. Blocking shall be applied to visual depictions of material deemed obscene, to child pornography, or to any material deemed harmful to minors.

3. Technology protection measures may be disabled by library staff for adults or, in the case of minors, minimized for bona fide research or other lawful purposes.

11—132.2(8A) Violation of policy. Violation of this computer use policy shall result in the loss of computer privileges and may lead to financial responsibility. Illegal activities will be prosecuted.

11—132.3(8A) Internet access. The Internet can be accessed via wireless connection for any user on a personal device who visits the state library. Devices may be available to visitors for use during the library's normal business hours. The Internet may be unavailable due to unforeseen problems with hardware, software or telecommunications. Downloading and saving files to the user's own portable device is allowed. Files saved to the computer's drives are erased at the end of each user's session.

11—132.4(8A) Staff assistance. State library staff will answer basic questions about Internet use or help locate resources. Staff reserves the right to waive these procedures as circumstances warrant.

These rules are intended to implement Iowa Code sections 8A.202, 8A.205, 8A.206, 8A.207, and 8A.208.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code subrule 1.3(2) "Description of Organization"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 533.104

State or federal law(s) implemented by the rulemaking: 2024 Iowa Acts, Senate File 2385, and Iowa Code section 533.107

Public Hearing

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

October 22, 2024 2 to 2:30 p.m.	Google Meeting Link Or dial: (US) +1 813.773.5922 PIN: 808 235 241#

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

Jessica Pollmeier
200 East Grand Avenue, Suite 370
Des Moines, Iowa 50309
Phone: 515.725.0500
Email: jessica.pollmeier@iowa.gov

Purpose and Summary

The proposed rulemaking updates subrule 1.3(2) in accordance with changes to Iowa Code section 533.107. The changes call for the deletion of the quarterly Credit Union Review Board requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

This rulemaking has no fiscal impact.

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

Iowa state-chartered credit unions and committee members 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 proposed rulemaking has no quantitative impact. The proposed rulemaking removes the requirement of quarterly Credit Union Review Board meetings.

- Qualitative description of impact:

The proposed rulemaking removes the requirement of quarterly Credit Union Review Board meetings.

3. Costs to the State:

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

This rulemaking has no fiscal impact.

- Anticipated effect on state revenues:

This rulemaking has no fiscal impact.

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

There is no benefit to inaction. This rulemaking has no fiscal impact.

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 for achieving the purpose of the proposed rulemaking. This rulemaking has no fiscal impact.

6. Alternative methods considered by the agency:

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

There are no less costly or intrusive methods for achieving the purpose of the proposed rulemaking. This rulemaking is a conforming change to ensure consistency with the Iowa Code.

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

This rulemaking is a conforming change to ensure consistency with 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?

There is no impact on small business. The proposed rulemaking applies equally to all credit unions and businesses. No reduction is possible.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 1.3(2) as follows:

1.3(2) *Credit union review board.* The credit union review board is composed of seven members who are appointed by the governor and approved by the senate. With the exception of four members first appointed as of January 1, 1979, board members serve for a three-year term. The board may adopt, amend, and repeal rules or take other action it deems necessary or suitable to effect the provisions of the credit union law. The board ~~meets at least four times each year and special~~ meetings may be called by the chairperson. A majority of the members of the board shall constitute a quorum to transact business.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code subrule 2.9(1)
"Organization, Chartering and Field of Membership of a Credit Union"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 533.104
State or federal law(s) implemented by the rulemaking: 2024 Iowa Acts, House File 131

Public Hearing

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

October 22, 2024 2 to 2:30 p.m.	Google Meet Link Or dial: (US) +1 813.773.5922 PIN: 808 235 241#

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

Jesscia Pollmeier
200 East Grand Avenue, Suite 370
Des Moines, Iowa 50309-1827
Phone: 515.725.0500
Email: jessica.pollmeier@iowa.gov

Purpose and Summary

The proposed rulemaking updates subrule 2.9(1) in accordance with changes to Iowa Code section 533.206. The proposed rulemaking calls for deletion of the annual meeting requirement for the credit union board of directors.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

This rulemaking has no fiscal impact.

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

Iowa state-chartered credit unions 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:

No additional costs will be incurred by the State or the regulated credit unions. This rulemaking conforms prior restrictions with new legislation. This rulemaking has no fiscal impact.

- Qualitative description of impact:

The proposed rulemaking removes the monthly meeting requirements of board of directors in order to conform with new legislation.

3. Costs to the State:

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

This rulemaking has no fiscal impact.

- Anticipated effect on state revenues:

This rulemaking has no fiscal impact.

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

There is no benefit to inaction. Inaction leaves a contradiction between Iowa Code chapter 533 and agency [189].

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 for achieving the purpose of the proposed rulemaking. This rulemaking has no fiscal impact.

6. Alternative methods considered by the agency:

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

There are no less costly or intrusive methods for achieving the purpose of the proposed rulemaking. This rulemaking is a conforming change to ensure consistency with the Iowa Code.

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

This rulemaking is a conforming change to ensure consistency with 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?

There is no impact on small business. The proposed rulemaking applies equally to all credit unions and businesses. The rulemaking removes a restriction.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 2.9(1) as follows:

2.9(1) The board of directors shall hold at least ~~12~~ six regular meetings each calendar year unless required to hold additional meetings. No more than one regular meeting shall be held in one calendar month.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 650—Chapters 1, 10 through 16, 20 through 23, 25 through 27, 29 through 31
"Rescission of Chapters"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3, 147.76, 153.33(1), and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 10A, 147, 153, and 272C and 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 12 noon	6200 Park Avenue Des Moines, Iowa Via video/conference call meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

As part of the government reorganization, the Board was realigned under the administrative authority of the Department of Inspections, Appeals, and Licensing (DIAL). More information can be found in Iowa Code section 10A.502. The Board proposes to rescind the chapters identified herein and repromulgate such rules, as necessary, under DIAL's agency number [481]. All substantive analysis related to the repromulgation of said chapters is contained within the Regulatory Analysis for the proposed repromulgated chapter, as identified in the table below:

Current [650] Chapter	**Proposed [481] Chapter**
650—Chapter 1, "Administration"	481—Chapter 570
650—Chapter 15, "Fees"	481—Chapter 571
650—Chapters 11, "Licensure and Registration"; 12, "Dental and Dental Hygiene Examinations"; 13, "Special Licenses"; and 14, "Renewal and Reinstatement"	481—Chapter 572
650—Chapter 25, "Continuing Education"	481—Chapter 573

650—Chapters 10, "General Requirements" (partial); 26, "Advertising"; and 27, "Standards of Practice and Principles of Professional Ethics"	481—Chapter 574
650—Chapters 20, "Dental Assistants"; 21, "Dental Laboratory Technician"; and 22, "Dental Assistant Radiography Qualification"	481—Chapter 575
650—Chapter 10, "General Requirements" (partial)	481—Chapter 576
650—Chapter 23 "Expanded Functions"	481—Chapter 577
650—Chapter 16, "Prescribing, Administering, and Dispensing Drugs"	481—Chapter 578
650—Chapter 29, "Sedation and Nitrous Oxide"	481—Chapter 579
650—Chapter 31, "Complaints and Investigations"	481—Chapter 580
650—Chapter 30, "Discipline"	481—Chapter 581

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 associated with this proposed rulemaking. Any costs associated with repromulgated rules are addressed in the pertinent Regulatory Analysis under agency [481].

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

Interested stakeholders (board licensees, associations, the public) will benefit from the removal of the identified chapters to streamline and reorganize pertinent Iowa Administrative Code in accordance with the goals and directives of realignment and Executive Order 10.

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 impact identified for the rescission of these chapters. Any impact associated with repromulgated rules is addressed in the pertinent Regulatory Analysis under agency [481].

- Qualitative description of impact:

There is no impact identified for the rescission of these chapters. Any impact associated with repromulgated rules is addressed in the pertinent Regulatory Analysis under agency [481].

3. Costs to the State:

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

There are no implementation and enforcement costs anticipated by the agency or any other 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:

The benefit of the proposed rulemaking compared to inaction is to streamline and reorganize pertinent Iowa Administrative Code chapters in accordance with the goals and directives of realignment and Executive Order 10.

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

No alternative methods exist to achieve the same purpose.

6. Alternative methods considered by the agency:

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

No alternative methods were identified or considered.

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

No alternative method was identified that would be any more efficient than this method of rulemaking.

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 has no different impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **650—Chapter 1**.

ITEM 2. Rescind and reserve **650—Chapter 10**.

ITEM 3. Rescind and reserve **650—Chapter 11**.

ITEM 4. Rescind and reserve **650—Chapter 12**.

ITEM 5. Rescind and reserve **650—Chapter 13**.

ITEM 6. Rescind and reserve **650—Chapter 14**.

ITEM 7. Rescind and reserve **650—Chapter 15**.

ITEM 8. Rescind and reserve **650—Chapter 16**.

ITEM 9. Rescind and reserve **650—Chapter 20**.

ITEM 10. Rescind and reserve **650—Chapter 21**.

ITEM 11. Rescind and reserve **650—Chapter 22**.

ITEM 12. Rescind and reserve **650—Chapter 23**.

ITEM 13. Rescind and reserve **650—Chapter 25**.

ITEM 14. Rescind and reserve **650—Chapter 26**.

ITEM 15. Rescind and reserve **650—Chapter 27**.

ITEM 16. Rescind and reserve **650—Chapter 29**.

ITEM 17. Rescind and reserve **650—Chapter 30**.

ITEM 18. Rescind and reserve **650—Chapter 31**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 650—Chapters 6 through 9, 33, 35, 36, 50 through 52
"Rescission of Chapters"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.7, 17A.9, 17A.22, 22.11(1), 68B.4, 147.76, 153.33(1), 272C.3, 272C.4, and 272C.12A

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 10A, 17A, 68B, 147, 153, 252J, 272C, and 272D and 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 12 noon	6200 Park Avenue Des Moines, Iowa Via video/conference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

As part of the government reorganization, the Board realigned under the administrative authority of the Department of Inspections, Appeals, and Licensing (DIAL). More information can be found in Iowa Code section 10A.502. The Board maintained its own set of Uniform Rules on Agency Procedure, as well as other chapters that are duplicative of chapters maintained by DIAL and other licensing boards that also realigned under the administrative authority of DIAL. Accordingly, the Board proposes to rescind the following chapters and repromulgate a single rule under agency [481] (rules currently promulgated by the Board under agency [650] will be rescinded and repromulgated as necessary under agency [481]) adopting pertinent uniform and model chapters by reference. All substantive analysis related to the adoption of pertinent uniform and model chapters by reference is contained within the Regulatory Analysis for proposed 481—Chapter 570.

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 associated with this proposed rulemaking.

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

Interested stakeholders (board licensees, associations, and the public) will benefit from the removal of the identified chapters to streamline pertinent 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:

There is no impact identified for the rescission of these chapters.

- Qualitative description of impact:

There is no impact identified for the rescission of these chapters.

3. Costs to the State:

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

There are no implementation and enforcement costs anticipated by the agency or any other 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:

The benefit of the proposed rulemaking compared to inaction is to streamline pertinent Iowa Administrative Code.

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

No alternative methods exist to achieve the same purpose.

6. Alternative methods considered by the agency:

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

No alternative methods were identified or considered.

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

No alternative method was identified that would be any more efficient than this method of rulemaking.

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 has no different impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **650—Chapter 6**.

ITEM 2. Rescind and reserve **650—Chapter 7**.

ITEM 3. Rescind and reserve **650—Chapter 8**.

ITEM 4. Rescind and reserve **650—Chapter 9**.

ITEM 5. Rescind and reserve **650—Chapter 33**.

ITEM 6. Rescind and reserve **650—Chapter 35**.

ITEM 7. Rescind and reserve **650—Chapter 36**.

ITEM 8. Rescind and reserve **650—Chapter 50**.

ITEM 9. Rescind and reserve **650—Chapter 51**.

ITEM 10. Rescind and reserve **650—Chapter 52**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 650—Chapter 32
"Mediation of Disputes"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 153.33

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 153 and Executive Order 10 (January 10, 2023)

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via video/conference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This rulemaking proposes to rescind Chapter 32 implementing Iowa Code section 153.33 in accordance with the goals and directives of Executive Order 10. Iowa Code section 153.33(1) provides that the Board shall exercise the following powers:

> To initiate investigations of and conduct hearings on all matters or complaints relating to the practice of dentistry, dental hygiene, or dental assisting or pertaining to the enforcement of any provision of this chapter, to provide for mediation of disputes between licensees or registrants and their patients when specifically recommended by the board, to revoke or suspend licenses or registrations, or the renewal thereof, issued under this or any prior chapter, to provide for restitution to patients, and to otherwise discipline licensees and registrants.

More information can be found in Iowa Code section 153.33(1). Iowa Code section 153.33(1) also provides that subsequent to an investigation by the Board, "the board may appoint a disinterested third party to mediate disputes between licensees or registrants and patients. Referral of a matter to mediation shall not preclude the board from taking disciplinary action against the affected licensee or

registrant." Iowa Code section 153.33(1) also directs the Board to "promulgate rules as may be necessary to implement" Iowa Code chapter 153.

Chapter 32 was originally promulgated to implement the above-referenced law, as well as Iowa Code chapter 679. Iowa Code chapter 679 is cited throughout Chapter 32, but was repealed in 2012. Chapter 32 is outdated in light of the repeal of Iowa Code chapter 679 and is not necessary to the effective implementation of the Board's duties pursuant to Iowa Code chapter 153. Accordingly, the Board proposes rescinding Chapter 32.

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 associated with the proposed rulemaking.

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

Interested stakeholders (Board licensees, associations, the public) will benefit by the removal of an unnecessary and outdated chapter.

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 impact identified for the rescission of these chapters.

- Qualitative description of impact:

There is no impact identified for the rescission of these chapters, with the exception of the benefit of removing an unnecessary and outdated chapter.

3. Costs to the State:

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

There are no implementation and enforcement costs by the agency or any other 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:

The benefit of the proposed rulemaking compared to inaction is to avoid confusion among the classes of persons identified as benefiting from the proposed rulemaking.

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

No less costly methods exist to achieve the same purpose.

6. Alternative methods considered by the agency:

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

The Board could promulgate new rules related to the provision of mediation of disputes between licensees or registrants and their patients when specifically recommended by the Board, but such rules are unnecessary in light of Board operations and pertinent statutory and Iowa Administrative Code text.

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

The promulgation of new rules is unnecessary and thus rescinding Chapter 32 better effectuates the intent of Executive Order 10.

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 has no different impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **650—Chapter 32**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 195
"Public Records and Fair Information Practices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.106A
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 22, 2024	1963 Bell Avenue
9 to 9:15 a.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 Economic Development Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 195 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 261—Chapter 195 and adopt the following **new** chapter in lieu thereof:

UNIFORM PROCEDURES: RECORDS, RULE MAKING, DECLARATORY ORDERS, RULE WAIVERS

PART IX

CHAPTER 195

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

261—195.1(15,22) Definitions. As used in this chapter:

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

"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 that identifies the individual and that 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 261—195.4(15,22), for the authority to treat a record as a confidential record and withhold such record from public inspection.

261—195.2(15,22) Requests for access to authority records.

195.2(1) *Location of record.* A request for access to an authority record should be directed to the authority at 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50309, or an email address indicated on the authority's website for the purpose of requesting records. If a request for access to a record is misdirected, authority staff will promptly forward the request to the appropriate person within the authority.

195.2(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.

195.2(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.

195.2(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.

195.2(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.

195.2(6) *Copying.* The authority will permit the copying of records as described in Iowa Code section 22.3.

195.2(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.

261—195.3(15,22) Access to confidential records. The following procedures for access to confidential records are in addition to those specified for all authority records in rule 261—195.2(15,22).

195.3(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.

195.3(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.

195.3(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.

195.3(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.

261—195.4(15,22) Requests for confidential treatment.

195.4(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.

195.4(2) The authority may request additional factual information from the person requesting confidential treatment.

195.4(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 the authority's 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 the record as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

195.4(4) Failure of a person to request confidential treatment for a record does not preclude the authority from treating the record as a confidential record.

261—195.5(15,22) 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.

261—195.6(15,22) 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.

261—195.7(15,22) Disclosure of records—consent.

195.7(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 the contractor 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.

195.7(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.

195.7(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.

261—195.8(15,22) Availability of records.

195.8(1) Authority open records are open for public inspection and copying unless otherwise prohibited by current rule or law.

195.8(2) Certain records identified in rules 261—195.9(15,22) and 261—195.10(15,22), 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 sections 15.118, 22.7, or 22A.2 or other applicable law.

261—195.9(15,22) Personally identifiable information.

195.9(1) The authority collects personally identifiable information pursuant to Iowa Code provisions relating to the responsibilities of the authority, including but not limited to chapters 15, 15E, 15J, 73, 404A, 473; sections 403.19A and 476.46A; and other applicable laws relating to the responsibilities of the authority. 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.

195.9(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.

195.9(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.

195.9(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.

195.9(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).

261—195.10(15,22) 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.

195.10(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.

195.10(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.

195.10(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.

195.10(4) *Statistical reports.* Periodic reports for various authority programs are available from the authority. Statistical reports do not contain personally identifiable information.

195.10(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.

195.10(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.

195.10(7) *Other records.* All other records that are not exempt from disclosure by law are available from the authority.

261—195.11(15,22) Applicability. This chapter does not:

195.11(1) Require the authority to index or retrieve records that contain information about an individual by that person's name or other personal identifier.

195.11(2) Make available to the general public records that would otherwise not be available pursuant to Iowa Code chapter 22.

195.11(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.

195.11(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 15 and 22.

ECONOMIC DEVELOPMENT AUTHORITY[261]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 197
"Petition for Rulemaking"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.106A
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 22, 2024	1963 Bell Avenue
9:15 to 9:30 a.m.	Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 197 and adopt a new chapter in lieu thereof. The new chapter will incorporate Iowa Code chapter 17A by reference and remove language that repeats statute or is otherwise unnecessary.

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 petition the Authority for a rulemaking may incur the costs described below.

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

The proposed rulemaking will benefit persons interested in participating in the petition for rulemaking procedures of the Authority.

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 who want to petition the Authority for a rulemaking may incur costs to draft and submit petitions.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the form for petitions for rulemaking required by the Authority and the procedures for submission, consideration, and disposition of petitions.

3. Costs to the State:

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

Authority staff time is required to review, evaluate, and respond to petitions for rulemaking. No additional costs are imposed by the proposed rulemaking compared to the current chapter.

- 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 participate in the petition for rulemaking process are minimal and incurred only by those who choose to participate. The proposed rulemaking will provide clarity about the Authority's procedures related to petitions for rulemaking.

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 describing the form and procedures for petitions for rulemaking.

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.

- 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 261—Chapter 197 and adopt the following **new** chapter in lieu thereof:

CHAPTER 197
PETITION FOR RULEMAKING

261—197.1(17A) Incorporation by reference. The authority incorporates by this reference all such matters in Iowa Code chapter 17A that relate to petitions for rulemaking.

261—197.2(17A) Petition for rulemaking. Petitions for rulemaking or inquiries about such petitions may be directed to Director, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200,

Des Moines, Iowa 50315 or director@iowaeda.com. A petition for rulemaking that substantially conforms to the following form will be considered by the authority:

BEFORE THE IOWA ECONOMIC DEVELOPMENT AUTHORITY		
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULEMAKING

The petition should 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.
2. The name, mailing address, and telephone number of the petitioner and any other person to whom communications concerning the petition should be directed.
3. An explanation of petitioner's arguments in support of the action urged in the petition, including but not limited to a citation to any law deemed relevant to the petition and any data supporting the action requested.
4. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action that is the subject of the petition.

261—197.3(17A) Consideration and disposition of petition. Prior to granting or denying a petition for rulemaking, the authority may request additional information from the petitioner. The authority may schedule a meeting between the petitioner and the authority. The final decision on whether the circumstances justify the granting of a petition is in the sole discretion of the authority. A decision will be issued in accordance with Iowa Code section 17A.7(1).

These rules are intended to implement Iowa Code section 17A.7.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 198
"Petition for Declaratory Order"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.106A
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 22, 2024	1963 Bell Avenue
9:30 to 9:45 a.m.	Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 198 and adopt a new chapter in lieu thereof. The new chapter will remove language that repeats statute or is otherwise unnecessary.

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 petition the Authority for a declaratory order may incur the costs described below.

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

The proposed rulemaking will benefit persons interested in participating in the petition for declaratory order procedures of the Authority.

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 who want to petition the Authority for a declaratory order may incur costs to draft and submit petitions.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the form, contents, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of

the petitions, as well as the classes of circumstances in which the Authority will not issue a declaratory order.

3. Costs to the State:

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

Authority staff time is required to review, evaluate, and respond to petitions for declaratory orders. No additional costs are imposed by the proposed rulemaking compared to the current chapter.

- 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 participate in the petition for declaratory order process are minimal and incurred only by those who choose to participate. The proposed rulemaking will provide clarity about the Authority's procedures.

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 describing the form and procedures for petitions for declaratory orders.

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.

- 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 methods.

Small Business Impact

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

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

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

The proposed rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 198 and adopt the following **new** chapter in lieu thereof:

CHAPTER 198
PETITION FOR DECLARATORY ORDER

261—198.1(17A) Petition for declaratory order. Any person may file a petition with the authority for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the authority at Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, Attn: Legal Counsel. Petitions may also be delivered by email to an email address supplied by the authority's legal counsel. A petition is deemed filed when it is received by the authority. The authority will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the authority an extra copy for this purpose. The authority will accept only typewritten petitions that substantially conform to the following form:

BEFORE THE ECONOMIC DEVELOPMENT AUTHORITY

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions 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 rule 261—198.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

261—198.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the authority shall give notice of the petition to all persons not served by the petitioner pursuant to rule 261—198.6(17A) to whom notice is required by any provision of law. The authority may give notice to any other persons.

261—198.3(17A) Intervention.

198.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order may intervene in a proceeding for a declaratory order.

198.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the authority.

198.3(3) A petition for intervention shall be filed at the address or email address indicated in rule 261—198.1(17A). A petition is deemed filed when it is received by the authority. The authority will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. The authority will accept only typewritten petitions that substantially conform to the following form:

BEFORE THE ECONOMIC DEVELOPMENT AUTHORITY

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
5. The names 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 consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

261—198.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The authority may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

261—198.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the address or email address indicated in rule 261—198.1(17A).

261—198.6(17A) Service and filing of petitions and other documents.

198.6(1) 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 their filing with the authority. The party filing a document is responsible for service on all parties and other affected or interested persons.

198.6(2) All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed at the address or email address indicated in rule 261—198.1(17A). All documents are considered filed upon receipt.

261—198.7(17A) Consideration. The authority may schedule a brief and informal meeting between the original petitioner, all intervenors, and authority staff to discuss the questions raised. The authority may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the authority by any person.

261—198.8(17A) Action on petition.

198.8(1) The authority shall take action on the petition in the time frame established by Iowa Code section 17A.9(5).

198.8(2) 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 unless another date is specified in the order.

261—198.9(17A) Refusal to issue order.

198.9(1) The authority shall not issue a declaratory order if prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the form indicated in rule 261—198.1(17A).

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the authority to issue an order.

c. The authority does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rulemaking, contested case, or other authority or judicial proceeding, that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct to establish the effect of that conduct or to challenge a decision the authority has already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the authority to determine whether a statute is unconstitutional on its face.

198.9(2) If the authority refuses to issue a declaratory order, the authority must indicate the specific grounds for the refusal. Refusal to issue a declaratory order constitutes final agency action on the petition.

198.9(3) The authority's refusal to issue a declaratory order pursuant to this provision does not preclude a petitioner from filing a new petition that seeks to eliminate the grounds for the authority's refusal to issue an order.

261—198.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of 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. A declaratory order is effective on the date of issuance.

261—198.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be provided promptly to the original petitioner and all intervenors.

261—198.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the authority, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the authority. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9.

ECONOMIC DEVELOPMENT AUTHORITY[261]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 199
"Waivers from Administrative Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.106A and 17A.9A
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.9A

Public Hearing

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

October 22, 2024	1963 Bell Avenue
9:45 to 10 a.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 Economic Development Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind 261—Chapter 199 and adopt a new chapter in lieu thereof. The new chapter eliminates language that is duplicative of statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated and unclear language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons requesting a waiver of administrative rules will bear the costs of the proposed rulemaking.

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

Persons requesting a waiver of administrative rules may benefit from the improved clarity of the chapter.

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:

Petitioners requesting a waiver of administrative rules may incur costs to draft the petition for a waiver. The amount of the costs will vary depending on the complexity of the issues and the compensation of staff or service providers who draft the waiver.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the Authority's processes for consideration of waiver requests.

3. Costs to the State:

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

The Authority incurs staff time to implement the waiver process, including time to review petitions for waiver. If the petition for waiver is filed within a contested case hearing, staff time is required to hold a hearing in accordance with contested case hearing procedures.

- Anticipated effect on state revenues:

The proposed 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:

The proposed rulemaking does not impose any additional costs on petitioners requesting waiver of an administrative rule compared to the existing Chapter 199. There is minimal change to the costs and benefits.

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 that exist for addressing petitions for waivers.

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.

- 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 a 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 261—Chapter 199 and adopt the following **new** chapter in lieu thereof:

CHAPTER 199
WAIVERS FROM ADMINISTRATIVE RULES

261—199.1(17A,15) Definitions.

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

"Director" means the same as defined in Iowa Code section 15.102(8).

"Person" means the same as defined in Iowa Code section 17A.2(9).

"Waiver" means the same as defined in Iowa Code section 17A.9A(5).

261—199.2(17A,15) Applicability of chapter. The authority may grant a waiver of a rule as permitted by Iowa Code section 17A.9A.

261—199.3(17A,15) Criteria for waiver. In response to a petition filed pursuant to this chapter, the authority may grant a waiver if the authority finds, based on clear and convincing evidence, all of the factors listed in Iowa Code section 17A.9A(2).

261—199.4(17A,15) Filing of petition. Petitions for waiver should be submitted in writing to the Director, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315. If the petition relates to a pending contested case, the petition is filed in the contested case proceeding, using the caption of the contested case. Petitions may be delivered by email to an email address supplied by the authority's legal counsel.

261—199.5(17A,15) Content of petition. A completed petition for waiver includes the following information where applicable and known to the petitioner:

199.5(1) The name, address, and telephone number of the person for whom a waiver is being requested and the case number of any related contested case.

199.5(2) A description and citation of the specific rule from which a waiver is requested.

199.5(3) The specific waiver requested, including the precise scope and duration.

199.5(4) The relevant facts that the petitioner believes would justify a waiver under criteria described in Iowa Code section 17A.9A(2). 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.

199.5(5) A history of any prior contacts between the authority and the petitioner relating to the regulated activity, license, financial assistance, or incentives affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

199.5(6) Any information known to the petitioner regarding the authority's treatment of similar cases.

199.5(7) The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.

199.5(8) The name, address, and telephone number of any person who would be adversely affected by the granting of a waiver.

199.5(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

199.5(10) Signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver.

261—199.6(17A,15) Notice. The authority will acknowledge a petition within five business days of its receipt. Within 30 days of the receipt of the petition, the authority will provide notice of the pendency of the petition and a copy of the petition or a concise summary of the petition to all persons to whom notice is required by any provision of law. In addition, the authority may give notice to other persons. To accomplish this provision, the authority may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the authority attesting that notice has been provided.

261—199.7(17A,15) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply to the following:

199.7(1) When any petition for a waiver is filed within a contested case;

199.7(2) When the authority so provides by rule or order; or

199.7(3) When required to do so by statute.

261—199.8(17A,15) Authority responsibilities regarding petition for waiver.

199.8(1) *Additional information.* Prior to issuing an order granting or denying a waiver, the authority may request additional information from the petitioner relative to the petition and surrounding circumstances. The authority may schedule a meeting between the petitioner and the authority or, if the petition was filed in a contested case, between the petitioner and all parties to the contested case.

199.8(2) *Compliance with Iowa Code standards.* The authority applies the standards and burdens in Iowa Code section 17A.9A(3).

199.8(3) *Final discretion.* The final decision on whether the circumstances justify the granting of a waiver is in the sole discretion of the authority.

199.8(4) *Ruling.* An order granting or denying a waiver will be in writing and will contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is granted.

199.8(5) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the authority will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

199.8(6) *Time for ruling.* The authority will grant or deny a petition for a waiver as soon as practicable but, in any event, will do so within 90 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a pending contested case, the authority will grant or deny the petition no later than the time at which the final decision in that matter is issued. Failure of the authority to grant or deny a petition within the required time period is deemed a denial of that petition by the authority. However, the authority remains responsible for issuing an order denying a waiver.

199.8(7) *Service of order.* Within seven days of its issuance, the authority will transmit an order issued under this chapter to the petitioner or any other person entitled to such notice.

261—199.9(17A,15) Public availability. The authority will comply with the public availability and filing procedures of Iowa Code section 17A.9A(4).

261—199.10(17A,15) After issuance of a waiver.

199.10(1) *Voiding or cancellation.* A waiver is void if the material facts upon which the petition is based are not true or if material facts have been withheld. The authority may withdraw, cancel or modify a waiver if, after appropriate notice and hearing, the authority issues an order finding any of the following: facts as stated in the request are not true; material facts have been withheld; the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute or substantially equal protection of public health, safety, and welfare; or the requester has failed to comply with the conditions of the order.

199.10(2) *Violations.* Violation of a condition in a waiver order is the equivalent of a violation of the particular rule for which the waiver is granted. The recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

199.10(3) *Defense.* After the authority issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

199.10(4) *Judicial review.* Judicial review of the authority's decision to grant or deny a waiver petition may be undertaken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 15.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 570 "Dental Board Administration"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.76, 153, 272C and 17A

State or federal law(s) implemented by the rulemaking: Iowa Code sections 17A.3, 147.14(1)"c," 147.22 and 153.33A(1)

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking promulgates Chapter 570 and implements Iowa Code chapters 147 and 153 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code sections 147.76 and 153.33 provide that rulemaking authority.

This rulemaking implements the aforementioned Iowa Code sections by publicly outlining administrative processes of the Dental Board within the Department's Licensing Division. This includes providing an explanation regarding the purpose of the Board, the organization of the Board and Dental Hygiene Committee, requests for information, and public meetings. All Board definitions have also been combined in this one chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Costs are not typically incurred by the public. Staff salaries to support the work of the Board are covered by the Licensing and Regulation fund established in 2023 Iowa Acts, Senate File 557. The Board has 6.0 full-time equivalent (FTE) positions to fully support the work of the Board. This Board licenses and regulates over 8,700 individuals. Licensing fees go to the Fund to cover the operations of

the regulated boards. This Board has been moved to the Department and is housed with other licensing boards.

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

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of the public who receive services and/or care from licensed professionals. Through the state government realignment, boards are evaluating ways to streamline and simplify processes and 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:

Costs are not typically incurred by the public. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. The Board has 6.0 FTE positions to fully support the work of the Board.

- Qualitative description of impact:

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of the public who receive services and/or care from licensed professionals. Through the state government realignment, boards are evaluating ways to streamline and simplify processes and procedures.

3. Costs to the State:

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

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. The Board has 6.0 FTE positions to fully support the work of the Board. This Board licenses and regulates over 8,700 individuals. Licensing fees go to the fund to cover the operations of the regulated boards. This Board has been moved to the Department and is housed with other licensing boards.

- Anticipated effect on state revenues:

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. The Board has 6.0 FTE positions to fully support the work of the Board. This Board licenses and regulates over 8,700 individuals. Licensing fees go to the fund to cover the operations of the regulated boards. This Board has been moved to the Department and is housed with other licensing boards.

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

The Board has not identified a more cost-effective alternative to the licensure of dentists, dental hygienists, and dental assistants. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of these professions in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government realignment, this Board is now part of the Department. The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The changes to

this chapter support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

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

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all licensing boards. Through the realignment, 31 boards were moved under the Department's Licensing Division. This provides a greater opportunity to assess the manner in which each board operates and to identify best practices. Through this process, the Department has identified that there are differences in the way boards operate. Discrepancies are being discussed, with a focus on consistency and best practice, which may lend itself to identifying less restrictive alternatives in the future.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the licensure of dentists, dental hygienists, and dental assistants. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of these professions in other states, which makes obtaining licensure in multiple states simpler for applicants.

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

The Board has not identified a more cost-effective alternative to the licensure of dentists, dental hygienists, and dental assistants. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of these professions in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government realignment, this Board is now part of the Department. The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The changes to this chapter support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

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 relate to public safety concerns that are present whether the business is a small business or a large corporation. While some dental assistants may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 570:

CHAPTER 570
DENTAL BOARD ADMINISTRATION

481—570.1(153) Definitions. As used in these rules:

"ACC" means the anesthesia credentials committee of the board.

"Accredited school" means a dental, dental hygiene, or dental assisting education program accredited by the American Dental Association Commission on Dental Accreditation.

"Active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the previous two years.

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

"Authorized delegate" means a licensed or registered health care professional who has obtained prescription monitoring program (PMP) log-in credentials. A dental assistant trainee cannot serve as an authorized delegate.

"Board" means the dental board.

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

"Chapter" means Iowa Code chapter 153.

"Clinical training" means training that includes patient experiences.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Continuing dental education" consists of education activities designed to review and update concepts, techniques, and knowledge on advances in dental and medical sciences. The objective of continuing dental education is to improve the knowledge, skills, and ability of the individual to deliver the highest quality of service to the public and professions. Continuing dental education programs should make it possible for practitioners to adapt dental practice to new knowledge as it becomes available. All continuing dental education should strengthen judgment and professional technique.

"Controlled substance" means a drug, substance, or immediate precursor in schedules I through V listed in subchapter II of Iowa Code chapter 124.

"Coronal polish" means an adjunctive procedure that must also include removal of any calculus, if present, by a dentist or dental hygienist. Coronal polishing of teeth using only a rotary instrument and a rubber cup or brush for such purpose, when performed at the direction of and under the supervision of a licensed dentist, is deemed not to be the giving of prophylactic treatment.

"DAANCE" means the dental anesthesia assistant national certification examination as offered by the American Association of Oral and Maxillofacial Surgeons (AAOMS).

"Deep sedation" means drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in

maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"Dental assistant" means any person who, under the supervision of a dentist, performs any extraoral services including infection control or the use of hazardous materials or performs any intraoral services on patients. The term "dental assistant" does not include persons otherwise actively licensed in Iowa to practice dental hygiene or nursing who are engaged in the practice of said profession.

"Dental assistant trainee" means any person who is engaging in on-the-job training to meet the requirements for registration in accordance with Iowa Code section 153.39 and who is practicing in accordance with 481—Chapter 575.

"Dental hygiene committee" means the same as described in Iowa Code section 153.33A.

"Dental laboratory technician" as used in these rules includes a person other than a licensed dentist, dental hygienist or registered dental assistant who fabricates, constructs, makes, or repairs oral prosthetic appliances solely and exclusively for a licensed dentist and under a dentist's supervision or direction. A dental laboratory technician who performs any of the duties of a dental assistant, as defined in this chapter, must be registered with the board as a dental assistant.

"Dental public health" is the science and system of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice in which the community serves as the patient rather than the individual. It is concerned with the dental health education of the public, applied dental research, the administration of group dental care programs, and the prevention and control of dental diseases.

"Dental radiography" means the application of X-radiation to human teeth and supporting structures for diagnostic purposes only.

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

"Deposition" means the testimony of a person pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

"Didactic training" means educational instruction.

"Direct supervision" means that the dentist is present in the treatment facility, but it is not required that the dentist be physically present in the treatment room, or the dentist is not present in the treatment facility but is able to appear using live video upon request with a response time similar to what would be expected if the dentist were present in the treatment facility.

"Expenses" means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding. Mileage shall be reimbursed in accordance with Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

"Fabrication" means the construction or creation of an impression, occlusal registration, provisional restoration or denture, as defined in this chapter.

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

"Fee" means the amount charged for the services described in this chapter.

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

"General supervision" means that a dentist has examined the patient, prior-prescribed in the patient record, and delegated the services to be provided because the dentist will be neither present in the facility nor available by live video. Patients or their legal guardians must be informed prior to the appointment that no dentist will be present and therefore no examination will be conducted at that

appointment. The dental assistant or dental hygienist must consent to the arrangement and be capable of implementing basic emergency procedures, which have been established.

"Hour of continuing education" means one unit of credit granted for each hour of instruction.

"Issuance" means, for the purposes of contested cases, 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.

"Knowledge" means any information or evidence acquired from personal observation, from a reliable or authoritative source, or under circumstances that cause the licensee or registrant to believe that there exists a substantial likelihood that an act or omission may have occurred.

"Laboratory training" means training that is hands-on, that may include simulation, and that prepares a dental hygienist or dental assistant for patient experiences. Laboratory training can be done with an approved training provider or with a supervising dentist as part of an approved course.

"Lapsed license," "lapsed permit," or *"lapsed registration"* means a license, permit, or registration that a person has failed to renew as required or the license, permit, or registration of a person who failed to meet stated obligations for renewal within a stated time. A person whose license, permit, or registration has lapsed continues to hold the privilege of licensure or registration in Iowa but may not practice dentistry, dental hygiene, or dental assisting until the license, permit, or registration is reinstated.

"License" means a certificate issued to a person to practice as a dentist or dental hygienist under the laws of this state.

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

"Licensee" means a person who has been issued a certificate to practice as a dentist or dental hygienist under the laws of this state.

"Medical examination fees" means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

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

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

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

"MRD" means the manufacturer's maximum recommended dose of a drug as printed in FDA-approved labeling.

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

"Observational supervision" is intended for expanded function training purposes only and means that the dentist is physically present in the treatment room to oversee and direct all services being provided as part of clinical training.

"Opioid" means a drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

"Overpayment" means payment in excess of the required fee. Overpayment shall result in the return of the original request and payment, prior to processing, with a clarification of the total amount due.

"Party" means the state or the respondent for the purposes of contested cases.

"Patient experiences" are procedures that are performed on a patient during the course of clinical training. For the purposes of expanded function training, patient experiences will be completed under the observational supervision of a dentist.

"Patient monitor" means a dental assistant, dental hygienist, nurse or dentist whose primary responsibility is to continuously monitor a patient receiving moderate sedation, deep sedation or general anesthesia until the patient meets the criteria to be discharged to the recovery area.

"Pediatric" means patients aged 12 or under.

"Peer review" is defined in Iowa Code section 272C.1(7).

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

"Personal supervision" means a licensee or registrant is physically present in the room to oversee and instruct all services of the dental assistant trainee as delegated by a licensed dentist.

"Practice of dentistry," as defined in Iowa Code section 153.13, includes persons who publicly claim to be dentists, dental surgeons, or skilled in the science of dentistry and are deemed to be practicing dentistry. Performance of, or assistance with, any of the following also constitutes the practice of dentistry: examination, diagnosis, treatment, or attempted correction of any disease, condition, disorder, lesion, injury, deformity, or defect of the oral cavity and maxillofacial area, or any phase of any operation incident to tooth whitening, including the instruction or application of tooth whitening materials or procedures. "Tooth whitening" is any process to whiten or lighten the appearance of human teeth by the application of chemicals, whether or not in conjunction with a light source.

"Prescription drug" means a drug, as classified by the United States Food and Drug Administration, that is required to be prescribed or administered to a patient by a practitioner prior to dispensation.

"Prescription monitoring program" or *"PMP"* means the program administered by the board of pharmacy for the collection and provision of information related to drug prescribing and dispensing.

"Presiding officer" means the dental board or a panel of the board. In a contested case proceeding, the board may request that an administrative law judge make initial rulings on prehearing matters and assist and advise the board in presiding at the disciplinary contested case hearing. Pursuant to Iowa Code section 272.6, the board may delegate the hearing of contested cases to an administrative law judge.

"Proposed decision" means recommended findings of fact, conclusions of law, decision, and order in a contested case issued by an administrative law judge or hearing panel and for which the full board did not preside.

"Prosthetic" means, for the purposes of expanded function training, any provisional or permanent restoration intended to replace a tooth or teeth.

"Provisional restoration" means, for the purposes of expanded function training, a restoration or appliance that is formed or preformed for temporary purposes, used over a limited period of time.

"Public health settings" means schools; Head Start programs; programs affiliated with the early childhood Iowa (ECI) initiative authorized by Iowa Code chapter 256I; child care centers (excluding home-based child care centers); federally qualified health centers; public health dental vans; free clinics; nonprofit community health centers; nursing facilities; the armed forces; and federal, state, or local public health programs.

"Public health supervision" means that a licensed dentist has entered into a written supervision agreement with a licensed dental hygienist or registered dental assistant and authorized and delegated

the services to be provided in a public health setting. Services provided under public health supervision may be rendered without the patient's first being examined by a licensed dentist. Additionally, the supervising dentist is not required to provide future dental treatment to patients served under public health supervision.

"Radiography qualification" means authorization to engage in dental radiography issued by the board.

"Registered dental assistant" means any person who has met the requirements for registration and has been issued a certificate of registration.

"Registrant" means a person who has been issued a certificate to practice as a dental assistant under the laws of this state.

"Registration" means a certificate issued to a person to practice as a dental assistant under the laws of this state.

"Reportable act or omission" means any conduct that may constitute a basis for disciplinary action under the rules or statutory provisions governing the practice of dentistry, dental hygiene, or dental assisting in Iowa.

"Self-study activities" means, for the purposes of continuing education, the study of something by oneself, without direct supervision or attendance in a class. Self-study activities include Internet-based coursework, video programs, correspondence work, research, or programs that are interactive and require participation and decision making on the part of the viewer. Webinars that include instruction in real time and allow for real-time communication with the instructor are not construed to be self-study activities.

"Service charge" means the amount charged for making a service available online and is in addition to the actual fee for a service itself.

"Sponsor" means a person, educational institution, or organization sponsoring continuing education activities. All continuing education activities of such person or organization are deemed approved provided the content complies with the requirements of 481—Chapter 573.

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

"Trainee status expiration date" means 12 months from the date of employment as a dental assistant trainee.

"Transcript" means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

"Witness fees" means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72, as the case may be.

This rule is intended to implement Iowa Code chapters 147, 153, and 272C.

481—570.2(17A,147,153,272C) Purpose of the board. The purpose of the board is to protect public health, safety, and welfare by administering, interpreting, and enforcing the provisions of law that relate to the practice of dentistry, dental hygiene, and dental assisting. In pursuit of this mission, the board performs these primary functions:

570.2(1) Administers examinations for the testing of dentists, dental hygienists, and dental assistants;

570.2(2) Issues licenses, registrations, certificates, and permits to qualified practitioners;

570.2(3) Sets standards for license, registration, and permit renewal and continuing education;

570.2(4) Enforces Iowa laws regulating the practice of dentistry, dental hygiene, and dental assisting;

570.2(5) Investigates complaints concerning violations of the dental practice Act and rules;

570.2(6) Conducts disciplinary hearings and monitors the compliance of licensees or registrants with board orders; and

570.2(7) Adopts rules and establishes standards for practitioners pursuant to its authority under the Iowa Code and administrative rules.

481—570.3(17A,147,153) Organization of the board.

570.3(1) The board shall be composed in accordance with Iowa Code sections 147.14(1)*"c"* and 147.19.

570.3(2) A simple majority of the members of the board shall constitute a quorum for the purpose of conducting business.

570.3(3) The board and dental hygiene committee shall elect chairpersons. The board shall also elect officers and should consist of a chairperson, vice chairperson, and other officers as deemed appropriate. Officers will assume their duties immediately following their election.

481—570.4(153) Organization of the dental hygiene committee.

570.4(1) The dental hygiene committee is composed in accordance with Iowa Code sections 147.14(1)*"c"* and 153.33A. A simple majority of the members of the committee constitutes a quorum for the purpose of conducting business.

570.4(2) Pursuant to Iowa Code section 153.33A, the committee:

a. Has authority to and may adopt recommendations in regard to matters pertaining to the practice, discipline, education, examination, and licensure of dental hygienists and shall carry out other duties as assigned by the board. Recommendations by the committee will be reported to the board. The board shall review and ratify all committee recommendations unless the board makes a specific finding that the recommendation exceeds the jurisdiction of the committee, expands the scope of the committee beyond the authority granted in subrule 1.4(4), creates an undue financial impact, or is not supported by the record. The board may not amend a committee recommendation without the concurrence of the majority of the members of the committee; and

b. Does not have regulatory or disciplinary authority with regard to dentists, dental assistants, dental lab technicians, or other auxiliary dental personnel.

570.4(3) Pursuant to Iowa Code section 153.33A, this rule will not be construed as impacting or changing the scope of practice of the profession of dental hygiene or authorizing the independent practice of dental hygiene.

This rule is intended to implement Iowa Code sections 147.14, 153.33 and 153.33A.

481—570.5(153) Committees of the board.

570.5(1) Pursuant to Iowa Code chapter 272C and section 153.33, the board may establish and utilize ad hoc advisory committees to conduct business. The board chairperson may appoint committee members and chairpersons.

a. The board should annually review its committees to determine ongoing needs and compliance with the following:

(1) The committees may not constitute a quorum of the board; and

(2) Appointments to a standing committee of the board specified in subrule 1.5(2) are subject to board approval.

b. Committee appointments will be for 12 months unless specified otherwise at the time of appointment. Pursuant to Iowa Code section 153.33(1)*"f,"* committee members may be reimbursed for actual expenses.

c. Committees may hold meetings as needed to conduct the duties authorized by the board.

570.5(2) The standing committees of the board may include the executive committee, anesthesia credentials committee, and licensure and registration committee.

a. The executive committee may include up to four members of the board. The committee should be composed of the chairperson, vice-chairperson and other members as elected by the board.

b. The anesthesia credentials committee should include but not be limited to a dentist member of the board, two members who hold a moderate sedation permit, and two members who hold a

general anesthesia permit issued in accordance with 481—Chapter 579. The committee may perform the following duties:

(1) Review and take action on all applications for moderate sedation or general anesthesia permits;

(2) Review and take action on requests for approval of courses that provide training in the administration of moderate sedation, deep sedation, general anesthesia, or a combination thereof for the purposes of qualifying a licensee for a sedation permit in accordance with 481—Chapter 579;

(3) Perform peer reviews or evaluations as deemed necessary and report to the board; and

(4) Other duties authorized by the board.

c. The license registration committee should include three members of the board, two of which are dentists.

(1) The license registration committee may review applications for licensure, registration and permit and take action as authorized by the board; and

(2) Perform other duties authorized by the board.

481—570.6(17A,21,147,153) Meetings.

570.6(1) The board and dental hygiene committee may hold meetings as needed or as requested by the chairperson, the vice chairperson, or a majority of the board or committee.

570.6(2) Written notices stating the time and place of the meetings shall be provided consistent with Iowa Code chapter 21. Except as otherwise provided by statute, all board meetings shall be open and the public shall be permitted to attend.

570.6(3) Dates and locations of board and committee meetings may be obtained from the department's website.

481—570.7(17A,272C) Adoption of uniform and model rules. The board hereby adopts by reference the following:

570.7(1) Uniform Rules on Agency Procedure, 481—Chapter 2, 481—Chapter 3, 481—Chapter 4, 481—Chapter 5, 481—Chapter 6.

570.7(2) Military Service, Veteran Reciprocity, and Spouses of Active-Duty Service Members, 481—Chapter 7.

570.7(3) Licensing and Child Support Noncompliance, Student Loan Repayment Noncompliance, and Nonpayment of State Debt, 481—Chapter 8.

570.7(4) Model Rules for Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions, 481—Chapter 502.

570.7(5) Model Rules for Contested Cases Before Licensing Boards, 481—Chapter 506.

570.7(6) Model Rules for Licensee Review Committee, 481—Chapter 505.

These rules are intended to implement Iowa Code chapter 21 and sections 17A.3, 147.14(1) *"c,"* 147.22, and 153.33A(1).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 571
"Dental Board Fees"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.76, 153, 272C and 17A

State or federal law(s) implemented by the rulemaking: Iowa Code sections 147.10, 147.80 and 153.22

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking promulgates Chapter 571 and implements Iowa Code chapters 147 and 153 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code sections 147.76 and 153.33 provide that rulemaking authority.

This rulemaking implements the aforementioned Iowa Code sections by establishing fees for dentists, dental hygienists and dental assistants. This chapter also establishes fees for public record requests and data or mailing lists.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Costs are not generally incurred by the public due to this chapter. Licensees incur costs through the licensing fees as established in this chapter, which include fees related to applications for initial licensing, renewal of licenses, late fees for renewing licenses, special licenses, resident licenses, temporary licenses, reactivation of a license, reinstatement of a license, purchasing a duplicate certificate, returned check fees, monitoring fees, letter of good standing or verification of status fees,

fingerprint packet evaluation fees, disciplinary hearing fees, examination fees (if applicable) and verification of license fee.

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

The licensing fees go to the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557 to support the work of the Dental Board. Fees provide support for all functions that are within the authority of the Board, including licensing investigations and continuing education, and administrative support to the Board, including rulemaking and rule waivers, Board discipline, and outreach to professional associations and other members of the public. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from the licensees.

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:

Costs are not generally incurred by the public due to this chapter. Licensees incur costs through the licensing fees as established in this chapter, which include fees related to applications for initial licensing, renewal of licenses, late fees for renewing licenses, special licenses, resident licenses, temporary licenses, reactivation of a license, reinstatement of a license, purchasing a duplicate certificate, returned check fees, monitoring fees, letter of good standing or verification of status fees, fingerprint packet evaluation fees, disciplinary hearing fees, examination fees (if applicable) and verification of license fee.

- Qualitative description of impact:

In order to regulate the profession as directed in the Iowa Code, staff play a critical role in issuing licenses, conducting investigations, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from the licensees.

3. Costs to the State:

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

Staff process licenses, provide administrative support to the Board and for the decisions the Board is authorized to make pursuant to the Iowa Code, investigate complaints, assist with disciplinary action when needed, and monitor licensees under Board order or in confidential health monitoring programs. Staff salaries to support the work of the Board are covered by the fund established in 2023 Iowa Acts, Senate File 557. There are approximately 6.0 full-time equivalent (FTE) positions that support the work of the Board. The Board licenses and regulates over 8,700 licensees. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

A less restrictive alternative would be to lower licensing fees or eliminate licensure for specific professions. Less restrictive forms of regulation include a registration, certification, or registry. There are typically fewer requirements for a registration, certification or registry, which means that operational costs, and therefore fees, can be lowered. While these are options that exist for consideration, the Board believes that Iowa's regulatory scheme, as it exists today, is important and necessary because it provides safeguards to the public. Fiscal Year 2024 was the first fiscal year where professional licensing board fees were collectively pooled in the fund to support the cost of regulating the professions. This new model may allow for additional assessment of licensing board budgets and

operational needs. The Board is participating in the licensing fee study pursuant to 2024 Iowa Acts, Senate File 2385.

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards.

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

A less restrictive alternative would be to lower licensing fees or eliminate licensure for specific professions. Less restrictive forms of regulation include a registration, certification, or registry. There are typically fewer requirements to a registration, certification or registry, which means that operational costs, and therefore fees, can be lowered. While these are options that exist for consideration, the Board believes that Iowa's regulatory scheme, as it exists today, is important and necessary because it provides safeguards to the public. Fiscal Year 2024 was the first fiscal year where professional licensing board fees were collectively pooled in the fund to support the cost of regulating the professions. This new model may allow for additional assessment of licensing board budgets and operational needs.

6. Alternative methods considered by the agency:

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

The Board looked at the fees for similar licenses in other states. Iowa dental license fees are within the range of the fees in surrounding states.

Initial Licensure	Dental License (DDS) by Exam	DDS by Cred./ Verif.	Dental Hygiene License (RDH) by Exam	Dental Hygiene License by Cred./ Verif.	Reg. Dental Asst. (RDA), no Radiography (RAD)	RDA w/ RAD	Temp. DDS/ RDH	Faculty Permit	Resident License	Sedation Application
Iowa	$200	$550	$100	$200	$40	$60	$100	$200	$120	$500
Minnesota	$341	$926	$148	$268	$104, $124	N/A	$83	$308	$55	$325
Wisconsin	$60	$60	$60	$60	N/A	N/A	N/A	N/A	N/A	$75
Illinois	$250	$750	$100	$300	N/A	N/A	$100	$250	N/A	$300
Missouri	$150	$150	$100	$100	N/A	N/A	N/A	$100	N/A	$100
Kansas	$200	$300	$100	$300	N/A	N/A	N/A	N/A	N/A	$150
Nebraska	$210	$210	$110	$110	N/A	$95	N/A	$165	N/A	$200

Initial Licensure	DDS	RDH by Exam	RDA	RDA with RAD	Faculty Permit	Resident License	Sedation Application
Iowa	$315	$150	$75	$115	$315	$40	$125
Minnesota	$475	$200	$150	$24	$475	$85	$400
Wisconsin	$60	$60	N/A	N/A	N/A	N/A	$100
Illinois	$300	$150	N/A	N/A	N/A	N/A	$300
Missouri	$150	$100	N/A	N/A	$100	N/A	$100
Kansas	$287	$131	N/A	N/A	N/A	N/A	$150
Nebraska	$165	$110	N/A	$95	$165	N/A	$200

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

A less restrictive alternative would be to lower licensing fees or eliminate licensure for specific professions. Less restrictive forms of regulation include a registration, certification, or registry. There are typically fewer requirements to a registration, certification or registry, which means that

operational costs, and therefore fees, can be lowered. While these are options that exist for consideration, the Board believes that Iowa's regulatory scheme, as it exists today, is important and necessary because it provides safeguards to the public. Fiscal Year 2024 was the first fiscal year where professional licensing board fees were collectively pooled in the Licensing and Regulation Fund to support the cost of regulating the professions. This new model may allow for additional assessment of licensing board budgets and operational needs.

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 relate to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. While some dental professionals may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 571:

CHAPTER 571
DENTAL BOARD FEES

481—571.1(147,153) Establishment of fees. The board is self-supporting through the collection of fees and does not receive an appropriation from the general fund. Pursuant to Iowa Code section 147.80, the department is required to annually prepare an estimate of projected revenues and expenses to ensure that there are sufficient funds to cover projected expenses. The department shall establish fees by rule in accordance with Iowa Code section 147.80.

571.1(1) In addition to the fees specified in this rule, an applicant shall incur a service charge for submitting payments online.

571.1(2) All fees are nonrefundable.

481—571.2(153) Application fees.

571.2(1) *Dental licensure.* The fees for a dental license are as follows:

a. The application fee for a dental license on the basis of examination is $200.

b. The application fee for a dental license on the basis of credentials is $550.

c. The application fee for a dental license on the basis of verification is $550.

571.2(2) *Dental hygiene licensure.* The fees for a dental hygiene license are as follows:

a. The application fee for a dental hygiene license on the basis of examination is $100.

b. The application fee for a dental hygiene license on the basis of credentials is $200.

c. The application fee for a dental hygiene license on the basis of verification is $200.

571.2(3) *Resident license.* The application fee for a resident license is $120.

571.2(4) *Faculty permit.* The application fee for a faculty permit is $200.

571.2(5) *Fingerprint packet and criminal history check.* The fee for evaluation of a fingerprint packet and criminal history background check is $46.

571.2(6) *Dental assistant registration and radiography qualification.* The fees for registration and qualification are as follows:

a. The application fee for a registered dental assistant is $40.

b. The fee for a combined application as a registered dental assistant with a radiography qualification is $60.

c. The application fee for a radiography qualification is $40.

571.2(7) *Anesthesia and sedation permits.* The fees for an anesthesia or sedation permit are as follows:

a. The application fee for a local anesthesia permit is $70.

b. The application fee for a moderate sedation permit is $500.

c. The application fee for a general anesthesia permit is $500.

571.2(8) *Temporary permit—urgent need or educational services.* The fee for an application for a temporary permit to serve an urgent need or provide educational services is $100.

481—571.3(153) Renewal fees. Biennial renewal fees are as follows:

571.3(1) *Dental license.* The renewal fee for a dental license is $315.

571.3(2) *Dental hygiene license.* The renewal fee for a dental hygiene license is $150.

571.3(3) *General anesthesia permit.* The renewal fee for a general anesthesia permit is $125.

571.3(4) *Moderate sedation permit.* The renewal fee for a moderate sedation permit is $125.

571.3(5) *Local anesthesia permit.* The renewal fee for a local anesthesia permit is $25.

571.3(6) *Dental assistant registration.* The renewal fee for registration as a registered dental assistant is $75.

571.3(7) *Combined dental assistant registration and qualification in radiography.* The renewal fee for both a registration as a registered dental assistant and a radiography qualification is $115.

571.3(8) *Dental assistant qualification in radiography.* The renewal fee for a qualification in dental radiography is $40.

571.3(9) *Faculty permit.* The renewal fees for a faculty permit are as follows:

a. The renewal fee for a dental faculty permit is $315.

b. The renewal fee for a dental hygiene faculty permit is $150.

571.3(10) *Resident license extension.* The fee for extension of a resident license is $40.

481—571.4(153) Late renewal fees. A licensee, registrant or permit holder who fails to renew a license, registration or permit by the expiration date is subject to late renewal fees as described in this rule.

571.4(1) *Dental or dental hygiene license or faculty permit.*

a. Renewals completed between September 1 and September 30 are subject to a late fee of $100, in addition to the renewal fee.

b. Renewals completed between October 1 and October 31 are subject to a late fee of $150, in addition to the renewal fee.

571.4(2) *Dental assistant registration or dental radiography qualification.*

a. Renewals completed between September 1 and September 30 are subject to a late fee of $20, in addition to the renewal fee.

b. Renewals completed between October 1 and October 31 are subject to a late fee of $40, in addition to the renewal fee.

481—571.5(147,153) Reinstatement fees. Licensees, registrants or permit holders who make an application for reinstatement are subject to fees as described in this rule.

571.5(1) *Reinstatement application fees.* The application fees for reinstatement are as follows:

a. The reinstatement application fee for a dental license is $150.

b. The reinstatement application fee for a dental hygiene license is $100.

c. The reinstatement application fee for a dental assistant registration is $50.

d. The reinstatement application fee for a qualification in dental radiography without registration is $40.

571.5(2) *Past due renewal fees.* In addition to the application fee for reinstatement specified in this rule, the applicant must pay the additional fees as follows:

a. The past due renewal fee for a dental license is $315.

b. The past due renewal fee for a dental hygiene license is $150.

c. The past due renewal fee for a dental assistant registration is $75.

d. The past due renewal fee for a dental assistant registration and qualification in dental radiography without registration is $115.

e. The past due renewal fee for a qualification in dental radiography without registration is $40.

481—571.6(153) Miscellaneous fees. Fees for additional requests are as follows:

571.6(1) *Duplicates.* The fee for issuance of a hard-copy duplicate license, permit or registration certificate or current renewal is $25. Electronic copies are provided at no cost.

571.6(2) *Certification or verification.* The fee for a written certification or written verification of an Iowa license, permit or registration is $25. Results of an online licensee search are available at no cost.

571.6(3) *Iowa practitioner review committee (IPRC) monitoring.* The monitoring fee for compliance with an IPRC agreement is $100 per quarter, unless otherwise stated in the health practitioner contract entered into pursuant to 481—Chapter 505.

571.6(4) *Monitoring for compliance with board orders.* The monitoring fee for compliance with a board order is $300 per quarter, unless otherwise stated in the board order.

481—571.7(153) Contested case hearings—fees and costs. The board may request reimbursement of certain costs associated with contested case hearings.

571.7(1) *Hearing fee.* The board may charge a fee not to exceed $75 for conducting a contested case hearing that results in action being taken against the licensee or registrant.

571.7(2) *Procedure and personnel costs.* The board may recover from the licensee or registrant costs for the following:

a. Court reporter and transcript.

b. Witness fees and expenses. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing and may also include witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa.

c. Depositions. Deposition costs, for the purposes of allocating costs against a licensee, include only those deposition costs incurred by the state of Iowa. The licensee or registrant is directly responsible for the payment of deposition costs incurred by the licensee or registrant.

d. Medical examination fees incurred relating to a person licensed under Iowa Code chapter 147. All costs of physical or mental examinations, substance abuse evaluations or drug screening, or clinical competency evaluations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation or pending complaint or as a sanction following a contested case shall be paid directly by the licensee or registrant.

571.7(3) *Certification of reimbursable costs.* The executive director or designee shall calculate and certify any reimbursable costs incurred by the board.

571.7(4) *Assessment of fees and costs.* A final decision of the board imposing action against a licensee or registrant shall include the amount of any contested case hearing fee assessed pursuant to 481—Chapter 11. If the board also assesses reimbursable costs against the licensee or registrant, the board shall file a certification of reimbursable costs that includes a statement of costs delineating each category of costs and the amount assessed. Fees and costs that cannot be calculated at the time of the issuance of the board's final order may be invoiced at a later time, provided the board's final order states that the fees and costs will be invoiced at a later date. The board order will specify the time period in which the fees and costs must be paid.

571.7(5) *Failure to pay assessed fees, costs.* Failure of a licensee or registrant to pay the fees and costs assessed herein within the time period specified in the board's final order shall constitute a violation of an order of the board and may be grounds for disciplinary action.

481—571.8(153) Facility inspection fee. The actual costs for an on-site evaluation of a dental facility at which moderate sedation, deep sedation, or general anesthesia is authorized pursuant to 481—Chapter 579 will not exceed $500 per facility per inspection.

481—571.9(22,147,153) Public records. Public records are available according to 481—Chapter 5. The department will release the records upon receipt of payment.

571.9(1) Copies of public records will be calculated at $0.25 per page plus labor.

571.9(2) A $16 per-hour fee may be charged for labor in excess of one-half hour for searching, retrieving, and copying documents.

571.9(3) No additional fee will be charged for delivery of the records.

571.9(4) The department will not require payment when the fees for the request would be less than $5 total.

481—571.10(22,147,153) Data or mailing lists.

571.10(1) The department will provide data and mailing lists in electronic format following receipt of payment.

a. The standard mailing list includes active licensees, registrants, and resident licensees and faculty permit holders when applicable.

b. The standard data list includes the mailing address, license, registration or permit number, status, original issue date, expiration date, specialty (if applicable), and whether disciplinary action has been taken. The standard data list includes active licensees, registrants, and resident licensees and faculty permit holders when applicable.

571.10(2) Data and mailing list fees.

a. The fee for a standard mailing list is $35 per profession requested.

b. The fee for a standard data list is $45 per profession requested.

c. Additional data elements, programming or sorting increases the fees by $25 per profession.

481—571.11(147,153) Returned checks. The department shall charge a fee of $39 for a check returned for any reason. The department will request payment by certified check or money order. If the fees are not paid within two weeks of notification of the returned check by certified mail, the licensee or registrant may be subject to disciplinary action for noncompliance with board rules.

481—571.12(147,153,272C) Copies of the laws and rules. Copies of laws and rules pertaining to the practice of dentistry, dental hygiene, or dental assisting are available as follows:

1. Iowa Code and Iowa Administrative Code access, no fee, available at www.legis.iowa.gov/law/administrativeRules/agencies.
2. Printed copies of the Iowa Code chapters that pertain to the practice of dentistry, $10.
3. Printed copies of dental board rules in the Iowa Administrative Code, $15.

481—571.13(17A,147,153,272C) Waiver prohibited. Rules in this chapter are not subject to waiver pursuant to 481—Chapter 6 or any other provision of law.

These rules are intended to implement Iowa Code sections 147.10, 147.80 and 153.22.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 572
"Dental Licensure, Registration, Renewal and Reinstatement"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147, 153, 272C and 17A

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 147, 153 and 252J and sections 136C.3, 147.2, 147.10, 147.11, 147.34, 153.19, 153.22, 153.23, 153.31, 153.37, 153.39, 272C.2, 272C.12 and 272C.12A

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules set minimum standards for entry into the dental profession for dentists, dental hygienists, dental assistants and those who are applying for a local anesthesia permit. These rules also articulate minimum standards for those applying for a resident license, faculty permit, retired volunteer license or temporary permit. The process for initial licensure by exam, credentials, or verification and for those who are foreign trained is articulated in these rules. Requirements for licensure include the application process, minimum educational qualifications, a passing score on all required examinations and remediation as necessary. These rules also include information relevant to renewal and reinstatement for these licensees. Iowa residents, licensees and employers benefit from the chapter as it articulates the processes and pathways by which individuals apply for licensure in the state of Iowa, as directed in statute. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency.

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 direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession are at the expense of the licensee. Licensing fees for Iowa and surrounding states are as follows:

Initial Licensure	Dental License (DDS) by Exam	DDS by Cred./ Verif.	Dental Hygiene License (RDH) by Exam	Dental Hygiene License by Cred./ Verif.	Reg. Dental Asst. (RDA), no Radiography (RAD)	RDA w/ RAD	Temp. DDS/ RDH	Faculty Permit	Resident License	Sedation Application
Iowa	$200	$550	$100	$200	$40	$60	$100	$200	$120	$500
Minnesota	$341	$926	$148	$268	$104, $124	N/A	$83	$308	$55	$325
Wisconsin	$60	$60	$60	$60	N/A	N/A	N/A	N/A	N/A	$75
Illinois	$250	$750	$100	$300	N/A	N/A	$100	$250	N/A	$300
Missouri	$150	$150	$100	$100	N/A	N/A	N/A	$100	N/A	$100
Kansas	$200	$300	$100	$300	N/A	N/A	N/A	N/A	N/A	$150
Nebraska	$210	$210	$110	$110	N/A	$95	N/A	$165	N/A	$200

Initial Licensure	DDS	RDH by Exam	RDA	RDA with RAD	Faculty Permit	Resident License	Sedation Application
Iowa	$315	$150	$75	$115	$315	$40	$125
Minnesota	$475	$200	$150	$24	$475	$85	$400
Wisconsin	$60	$60	N/A	N/A	N/A	N/A	$100
Illinois	$300	$150	N/A	N/A	N/A	N/A	$300
Missouri	$150	$100	N/A	N/A	$100	N/A	$100
Kansas	$287	$131	N/A	N/A	N/A	N/A	$150
Nebraska	$165	$110	N/A	$95	$165	N/A	$200

Dental Board staff review applications for initial and renewal licenses and for licensure reinstatement. Board staff also answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 6.0 full-time equivalent (FTE) positions to review application materials. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from licensed professionals. Due to the state government realignment, boards are evaluating ways to streamline and simplify processes and 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:

There is no direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession are at the expense of the licensee. There are approximately 8,700 licensed individuals who provide dental services to Iowans.

- Qualitative description of impact:

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. Establishing minimum licensing requirements ensures that practitioners are competent to practice. The Board believes the cost to license this profession justifies the benefits achieved because it ensures that Iowans are treated by competent and qualified practitioners. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from licensed professionals. Due to the state government realignment, boards are evaluating ways to streamline and simplify processes and procedures.

3. Costs to the State:

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

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund. It takes roughly 6.0 FTE positions, including the board executive, licensing staff and executive director, to review application materials. Reviews are completed at the time of initial application and during reinstatement. If a licensee was disciplined in another state, the application may be forwarded to the full Board for additional review prior to initial licensure or licensure reinstatement. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

This rule has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of these professions in other states, which makes obtaining licensure in multiple states simpler for applicants.

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

The Board has not identified a more cost-effective alternative to the licensure of dentists, dental hygienists and dental assistants. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of these professions in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government realignment, this Board is now part of the Department. The Department’s Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The changes to this chapter support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the licensure of dentists, dental hygienists, dental assistants and other specialty licenses. The Board believes all current requirements

ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of these professions in other states, which makes obtaining licensure in multiple states simpler for applicants. The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The changes to this chapter support this effort.

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

The Board has not identified a more cost-effective alternative to the licensure of dentists, dental hygienists and dental assistants. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of these professions in other states, which makes obtaining licensure in multiple states simpler for applicants.

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 relate to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. While some dental professionals may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 572:

CHAPTER 572
DENTAL LICENSURE, REGISTRATION,
RENEWAL AND REINSTATEMENT

481—572.1(147,153) Applicant responsibilities. Applicants for licensure, permit, registration or qualification, including applicants for renewal and reinstatement, bear full responsibility for complying with the provisions of this rule.

572.1(1) Applicants will make application on forms provided by the department and submit the required information and documentation, which includes the following:

a. Paying all applicable fees required by this chapter pursuant to 481—Chapter 571, which may also include fees charged by other agencies, organizations, or institutions to provide the information required to complete an application;

b. Providing evidence of current certification in cardiopulmonary resuscitation (CPR) that included a hands-on component unless exempted by rule;

c. Providing a detailed statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges;

d. Providing accurate, up-to-date, and truthful information, including but not limited to prior professional experience, education, training, examination scores, and disciplinary history; and

e. Signing and verifying the application as to the truth of the statements contained therein.

572.1(2) An application for a dental or dental hygiene license or faculty permit, including reinstatement of a license, may be considered complete prior to completion of the criminal history background check on the applicant conducted by the division of criminal investigation (DCI) or Federal Bureau of Investigation (FBI) for purposes of review and consideration by the executive director, the committee, or the board. However, an applicant is required to submit an additional completed fingerprint packet and fee within 30 days of a request by the department if an earlier fingerprint submission has been determined to be unacceptable by the DCI or FBI.

572.1(3) If an applicant for license, permit, registration, or qualification applies within four months of the date of expiration, the applicant may pay the renewal fee in addition to the applicable application fees specified in 481—Chapter 571. Payment of the renewal fee at the time of application will result in the renewal of the license, permit, registration or qualification upon issuance.

572.1(4) Applicants must ensure that an application for initial license, permit, registration or qualification, or for reinstatement of the same, is completed within 180 days from the date the application is received.

a. For purposes of establishing timely filing, the postmark on a paper submittal will be used, and for applications submitted online, the electronic timestamp of the date of payment will be deemed the date of filing. If the applicant does not submit all required materials within this time period, or if the applicant does not meet the requirements for the license, permit, registration, or reinstatement, the application will be considered incomplete.

b. If an application is considered incomplete, the applicant will need to submit a new application and pay all applicable fees for further consideration.

This rule is intended to implement Iowa Code sections 147.2, 147.11, 272C.12 and 272C.12A and chapter 153.

481—572.2(147,153) Review of applications.

572.2(1) Upon receipt of a completed application, the executive director as authorized by the board has discretion to:

a. Require additional information relating to the character, education, and experience of the applicant.

b. Authorize the issuance of the license, permit, or registration.

c. Refer the application to the committee for review and consideration for matters including but not limited to prior criminal history pursuant to Iowa Code section 272C.15, chemical dependence, competency, physical or psychological illness, malpractice claims or settlements, or professional disciplinary history that are relevant in determining the applicant's qualifications.

572.2(2) Following review and consideration of an application referred by the executive director, the committee may:

a. Authorize the executive director to issue the license, permit, registration, or qualification.

b. Forward the application to the board for further review and consideration.

572.2(3) Following board review and consideration of an application, the board will:

a. Authorize the issuance of the license, permit, registration or qualification; or

b. Initiate other action in accordance with rule 481—572.22(147,153,272C).

572.2(4) The committee or board may require an applicant to appear for an interview as part of the application process.

572.2(5) The committee or board may defer final decision making on an application if there is a pending investigation or disciplinary action against an applicant who may otherwise meet the requirements for license, permit, registration or qualification, until such time as the matter has been resolved.

This rule is intended to implement Iowa Code chapters 147, 153, and 272C.

481—572.3(147,153) Licensure.

572.3(1) Applicants for licensure to practice dentistry or dental hygiene in this state who meet the requirements of this rule may be eligible for a license on the basis of examination or credentials.

a. Applicants who have held a license issued in another state, district or territory for one year or longer must apply for licensure by credentials.

b. Applicants who are licensed in another jurisdiction and who are unable to satisfy the requirements for licensure by examination or credentials may be eligible for licensure by verification pursuant to rule 481—572.7(272C).

572.3(2) Applications for licensure on the basis of examination or credentials must include the following:

a. Satisfactory evidence of graduation from an accredited dental or dental hygiene school.

(1) Applicants for dental license must have been issued a doctor of dental surgery (DDS) or doctor of medicine in dentistry (DMD) degree.

(2) Graduates of foreign dental schools who have not obtained a DDS or DMD degree from an accredited dental school shall also satisfy the requirements of rule 481—572.4(153).

b. Certification by an authorized representative of the school that the applicant was a student in good standing while attending that school.

c. Evidence of successful passage of the examination administered by the Joint Commission on National Dental Examinations (JCNDE). Applicants who have lawfully practiced dentistry or dental hygiene in another state, district or territory for five or more years are exempt from presenting this evidence.

d. Evidence of successful passage of a board-approved clinical examination pursuant to rule 481—572.14(147,153) and a statement of all other clinical examinations taken by the applicant with an indication of pass/fail for each.

(1) Applicants on the basis of examination must have successfully completed the clinical examination within five years of the date of application.

(2) Applicants who have lawfully practiced dentistry or dental hygiene in another state, district or territory for five or more years may be exempt from presenting this evidence.

e. Certification of all licenses issued to the applicant. The certification should include, at a minimum, the name, license number, status, expiration date, and an indication of whether the applicant has been subject to disciplinary action.

f. The applicable application fees, including the background check fee, as specified in 481—Chapter 571.

g. A completed packet to facilitate a criminal history background check by the DCI and FBI.

h. Evidence of successful completion of a jurisprudence examination pursuant to rule 481—572.15(147,153).

572.3(3) Applicants on the basis of credentials must also submit the following:

a. Pursuant to Iowa Code section 153.21, evidence that the applicant has met at least one of the following:

(1) Holds a license in another state, district, or territory under requirements substantially similar to those of this state, and has three consecutive years of lawful practice immediately prior to the date of application; or

(2) Has less than three consecutive years of practice immediately prior to the filing of the application and evidence of successful passage within the previous five-year period of a board-approved clinical examination pursuant to rule 481—572.14(147,153).

b. Results of a self-query of the National Practitioner Data Bank (NPDB).

572.3(4) The board or committee may also require such examinations as may be necessary to evaluate the applicant for licensure by credentials.

This rule is intended to implement Iowa Code section 272C.12 and chapters 147 and 153.

481—572.4(153) Graduates of foreign dental schools. If a graduate of a foreign dental school does not meet the educational requirements for a license by examination or credentials, and does not qualify for licensure by verification pursuant to Iowa Code section 272C.12, the applicant must meet the requirements of this rule in addition to meeting the other requirements for licensure specified in rule 481—572.3(147,153).

572.4(1) Applications for licensure of graduates of foreign dental schools shall include the following:

a. Evidence of successful completion of dental education that is substantially equivalent to a DDS or DMD degree issued by an accredited school. The applicant may demonstrate this by meeting one of the following requirements:

(1) Successful completion of an undergraduate supplemental dental education program of at least two academic years at an accredited dental school and receipt of a dental diploma, degree or certificate substantially equivalent to a DDS or DMD degree;

(2) Successful completion of a postgraduate general practice residency program of at least one academic year at an accredited dental college; or

(3) Results of a formal evaluation of the applicant's foreign dental education by a board-approved professional credentialing organization. The results of the evaluation must indicate that the nonaccredited dental education completed was substantially equivalent to that of an accredited dental school.

b. A final, official transcript verifying graduation from the foreign dental school at which the applicant originally obtained a dental degree. If the transcript is written in a language other than English, an original, official translation will also be submitted.

c. Verification, when applicable, from the appropriate governmental authority that the applicant was licensed or otherwise authorized by law to practice dentistry in another country and that no adverse action was taken against the license.

d. The applicant will demonstrate to the satisfaction of the board an ability to read, write, speak, understand, and be understood in the English language. The applicant may demonstrate English proficiency by achieving a score sufficient to be rated in the highest level of ability on each section of the Test of English as a Foreign Language (TOEFL) as administered by the Educational Testing Service (ETS), or other evidence approved by the board.

572.4(2) An applicant for licensure who is a graduate of a foreign dental school shall comply with one of the following:

a. Has practiced dentistry in another state, district, territory or country within three years of the date of application; or

b. Has successfully completed a clinical examination or assessment within three years of the date of application to demonstrate ongoing clinical competency.

This rule is intended to implement Iowa Code section 272C.12 and chapters 147 and 153.

481—572.5(153) Dental assistant registration.

572.5(1) Applications for dental assistant registration must include the following:

a. Evidence of board-approved education and training. Education and clinical training may be satisfied by meeting one of the following:

(1) Clinical experience as a dental assistant trainee until competency is achieved as determined by the supervising dentist;

(2) Clinical experience as a dental assistant in another state, district or territory within five years prior to the date of application and competency is verified by the supervising dentist; or

(3) Graduation from an accredited dental assisting program.

b. The application fee as specified in 481—Chapter 571.

c. Evidence of successful completion of board-approved examination in the areas of infection control, hazardous materials, and jurisprudence as specified in rules 481—572.15(147,153) and 481—572.16(147,153), and dental radiography, if the applicant is also applying for a qualification in dental radiography.

d. Evidence of meeting the requirements of rule 481—572.6(136C,153) if the applicant intends to engage in dental radiography.

572.5(2) A dental assistant who is licensed or registered in another jurisdiction but who is unable to satisfy the requirements for registration in this rule may be eligible to apply for registration by verification pursuant to rule 481—572.7(272C).

This rule is intended to implement Iowa Code sections 147.34, 153.39 and 272C.12.

481—572.6(136C,153) Dental radiography qualification.

572.6(1) Applicants for a radiography qualification must also be registered as a dental assistant or hold an active license issued by the board of nursing.

572.6(2) Applications for dental radiography qualification must include the following:

a. Evidence of successful completion, within the previous five years, of education and clinical training in the area of dental radiography. The education and clinical training may be satisfied by meeting one of the following:

(1) Completion of on-the-job training in dental radiography until competency is achieved as determined by the supervising dentist;

(2) Practice as a dental assistant in another state that included clinical experience taking dental radiographs within the previous five years;

(3) Graduation from an accredited dental assisting program; or

(4) Certification from the Dental Assisting National Board (DANB) that includes dental radiography and was issued within five years of the date of application.

b. The application fee as specified in 481—Chapter 571.

c. Evidence of successful completion a board-approved examination in the area of dental radiography in accordance with rule 481—572.16(147,153).

This rule is intended to implement Iowa Code sections 136C.3 and 153.39.

481—572.7(272C) Licensure or registration by verification. Applicants may be eligible for licensure or registration by verification pursuant to Iowa Code section 272C.12. Applicants are required to hold a current license or registration in the same profession in at least one other jurisdiction that has a scope or practice that is substantially similar to that of Iowa.

572.7(1) Applications must include the following:

a. The applicable application fees, including the background check fee for applicants of a dental or dental hygiene license, as specified in 481—Chapter 571.

b. For dental or dental hygiene applicants, a completed packet to facilitate a criminal history background check.

c. A verification form, completed by the licensing authority in the jurisdiction that issued the applicant's license or registration, verifying that the applicant's license or registration in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the licensing authority to the board.

d. Evidence of successful completion of a board-approved jurisprudence examination, pursuant to rule 481—572.15(147,153).

e. Copies of a complete criminal record, if the applicant has a criminal history.

f. A copy of the relevant disciplinary documents, if another jurisdiction has taken disciplinary action against the applicant.

g. A written statement from the applicant detailing the scope of practice in the other state.

h. Copies of relevant laws setting forth the scope of practice in the other state.

572.7(2) If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue nor deny a license or registration until the matter is resolved. A person who has had a license or registration revoked, or voluntarily surrendered a license or registration, in another jurisdiction is ineligible for licensure or registration by verification.

572.7(3) If an applicant is currently the subject of a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will neither issue nor deny a license or registration until the complaint, allegation, or investigation is resolved.

572.7(4) Applicants who satisfy all requirements for a license or registration under this rule except for passing the jurisprudence examination may be issued a temporary license or registration in accordance with the following:

a. A temporary license or registration is valid for a period of three months.

b. A temporary license or registration may be renewed once for an additional period of three months if the applicant has not failed the jurisprudence examination.

c. A temporary licensee or registrant shall display the board-issued license or registration renewal card that indicates the license or registration is temporary, which will satisfy the requirements in rule 481—574.2(147,153).

d. The temporary licensee or registrant must submit proof of passing the jurisprudence examination before the temporary license or registration expires. When the temporary licensee or registrant submits proof of passing the jurisprudence examination, the temporary license or registration will convert to a standard license or registration and be assigned an expiration date consistent with standard licenses or registrations.

e. If the temporary licensee or registrant does not submit proof of passing the jurisprudence examination prior to the expiration of the temporary license or registration, the temporary licensee or registrant must cease practice until a standard license or registration is issued.

This rule is intended to implement Iowa Code section 272C.12.

481—572.8(153) Resident license.

572.8(1) A dentist or dental hygienist seeking permission to practice as a resident, intern or graduate student at an accredited teaching or educational institution offering advanced education courses may apply for a resident license in lieu of a permanent license.

572.8(2) Applicants for a resident license are exempt from providing evidence of current CPR certification. Applications for resident license must include the following:

a. Evidence from the dean or designated administrative officer of the accredited school confirming enrollment as a resident, intern or graduate student.

b. A signed written statement that includes the anticipated date of completion of the program from a dentist who holds an active Iowa license or faculty permit, who proposes to exercise supervision and direction over said applicant.

c. Satisfactory evidence of graduation from an accredited school of dentistry, dental hygiene, or other school approved by the board or license registration committee as authorized by the board.

d. The appropriate fee as specified in 481—Chapter 571.

e. Clinical experience or assessment as evidenced by one of the following:

(1) The applicant has practiced clinically in another state, district, territory or country within three years of the date of application; or

(2) The applicant has successfully completed a clinical examination or assessment within three years of the date of application to demonstrate ongoing clinical competency.

572.8(3) If approved, a resident license shall allow the licensee to serve as a resident, intern, or graduate student under the supervision of a licensed or permitted faculty member at an accredited school or program approved by the board.

a. A resident license will expire on the expected date of completion of the resident training program as reported on the application.

b. If a licensee leaves the institution during the anticipated term of the resident license, the license shall be considered null and void. The director of the resident training program should notify the board within 30 days of the licensee's terminating from the program.

c. A resident license may be extended past the original expected completion date of the training program at the discretion of the board or the license and registration committee as authorized by the board. A licensee who wishes to extend the expiration date of the license shall submit an extension application that includes the following:

(1) A statement explaining the need for an extension;

(2) The fee in the amount specified in 481—Chapter 571; and

(3) A statement from the director of the resident training program attesting to the progress of the resident; the new expected date of completion; and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

d. The director of the resident training program should report any warnings that have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

e. A resident licensee who changes resident training programs, including the pursuit of another postgraduate degree, shall apply for a new resident license and include a statement from the program director documenting the applicant's progress.

572.8(4) No examination or continuing education will be required for this license.

This rule is intended to implement Iowa Code section 153.22.

481—572.9(153) Dental college and dental hygiene program faculty permits.

572.9(1) The board may issue a faculty permit entitling the holder to practice dentistry or dental hygiene as a faculty member within an accredited school or program and affiliated teaching facilities in lieu of a permanent license.

572.9(2) Applications for a faculty permit shall include the following:

a. Evidence from the dean or designated administrative officer of the accredited school confirming the employment of the applicant as faculty member who is not licensed to practice dentistry or dental hygiene in Iowa.

b. The nonrefundable application fees, including the fingerprint packet and background check fee as specified in 481—Chapter 571.

c. Information regarding the professional qualifications and background of the applicant, including evidence of having graduated from an accredited school or other program approved by the board or the license and registration committee as authorized by the board.

d. A completed packet to facilitate the criminal history background check by the DCI and FBI.

e. If the applicant is licensed by another jurisdiction, the applicant shall furnish evidence from the licensing board of that jurisdiction that the applicant is licensed in good standing and has not been the subject of final or pending disciplinary action.

f. The results of a self-query of the NPDB.

g. Evidence of successful completion of a jurisprudence examination pursuant to rule 481—572.15(147,153).

h. Clinical experience or assessment as evidenced by one of the following:

(1) The applicant has practiced clinically in another state, district, territory or country within three years of the date of application; or

(2) The applicant has successfully completed a clinical examination or assessment within three years of the date of application to demonstrate ongoing clinical competency.

572.9(3) A faculty permit shall expire on August 31 of every even-numbered year and may be renewed on a biennial basis. The faculty permit will be valid so long as the holder remains a faculty member at an accredited school in Iowa.

572.9(4) A faculty permit may be renewed in accordance with rule 481—572.20(147,153,272C) and 481—Chapter 573.

This rule is intended to implement Iowa Code section 153.37.

481—572.10(147,153) Requirements for issuance and renewal of a local anesthesia permit. To administer local anesthesia, a dental hygienist shall hold a current permit pursuant to 481—Chapter 576.

572.10(1) Applicants for local anesthesia permits are exempt from providing evidence of current CPR certification. Applications for a local anesthesia permit must include the following:

a. The fee for a local anesthesia permit as specified in 481—Chapter 571; and

b. Evidence that the applicant meets one of the following requirements:

(1) Successful completion, within the previous 36 months, of formal training in the administration of local anesthesia that includes training in block and infiltration anesthesia at an accredited school or other training program approved by the dental hygiene committee;

(2) Successful completion, within the previous 36 months, of a clinical examination in the administration of local anesthesia by a testing center approved by the board in accordance with rule 481—572.14(147,153); or

(3) For applicants who completed training or examination more than 36 months prior to application, evidence of formal training in the administration of local anesthesia and a statement attesting to ongoing practice within the previous 36 months in the administration of local anesthesia in another state or jurisdiction that authorizes a dental hygienist to administer local anesthesia.

572.10(2) The permit shall expire on August 31 of every odd-numbered year. To renew the permit, the dental hygienist must submit a timely application for renewal with evidence of holding an active Iowa dental hygiene license and submit the renewal fee as specified in 481—Chapter 571.

572.10(3) Failure to meet the requirements for renewal prior to November 1 following the permit's expiration will cause the permit to lapse and become invalid.

572.10(4) A permit that has lapsed may be reinstated upon the permit holder's application for reinstatement, payment of the reinstatement fee as specified in 481—Chapter 571, and evidence of a current Iowa dental hygiene license. A permit that has been lapsed for more than 36 months may be reinstated if the applicant also submits evidence of satisfying the requirements of paragraph 572.12(1) *"b."*

This rule is intended to implement Iowa Code sections 147.10 and 147.80 and chapter 153.

481—572.11(153) Requirements for issuance or renewal of a moderate sedation or general anesthesia permit. Pursuant to 481—Chapter 579, dentists who wish to utilize moderate sedation, deep sedation, or general anesthesia in Iowa must possess a current permit issued by the board.

572.11(1) Applications for moderate sedation or general anesthesia permits must include the following:

a. The fee specified in 481—Chapter 571.

b. To qualify for a moderate sedation permit, evidence of having successfully completed approved education and training, which includes the following:

(1) A minimum of 60 hours of instruction and management of at least 20 patients, or an accredited residency program that includes formal training and clinical experience in moderate sedation;

(2) Rescuing patients from a deeper level of sedation than intended, including managing the airway, intravascular or intraosseous access, and reversal medications;

(3) For a dentist who intends to administer moderate sedation to pediatric or American Society of Anesthesiologists (ASA) III or IV patients, an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA III or IV patients; and

(4) Current Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS) certification.

c. To qualify for a general anesthesia permit, evidence of having successfully completed the following education and training:

(1) An accredited advanced education program that provides training in moderate sedation, deep sedation and general anesthesia;

(2) A minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level at an accredited advanced education program;

(3) Formal training in airway management; and

(4) Current ACLS certification.

572.11(2) Prior to issuance of a new permit, all facilities where the applicant intends to provide sedation services must have passed inspection by the board or designated agent pursuant to 481—Chapter 579.

572.11(3) The applicant may be required to complete a peer review evaluation or comply with any additional requirements deemed necessary to determine competency in the administration of moderate sedation, deep sedation, or general anesthesia, if requested by the board or the Anesthesia Credentials Committee (ACC), prior to issuance of a permit.

572.11(4) Applications for a moderate sedation or general anesthesia permit will be reviewed by the ACC or the board as deemed necessary to ensure compliance with this rule and 481—Chapter 579. Following review of an application, the ACC or the board may take action, in accordance with rule 481—572.22(147,153,272C).

572.11(5) Moderate sedation and general anesthesia permits will expire on August 31 of every even-numbered year. A permit may be renewed by submitting an application for renewal, maintaining an active Iowa dental license or faculty permit, and complying with the following:

a. Payment of the renewal fee as specified in 481—Chapter 571;

b. Evidence of current ACLS or PALS certification; and

c. Evidence of a minimum of six hours of continuing education in the area of sedation. These hours may also be applied toward the renewal of a dental license or faculty permit.

572.11(6) Failure to renew the permit prior to November 1 following its expiration will cause the permit to lapse and become invalid for practice. Permits that have lapsed may be reinstated upon submission of a new application in compliance with this rule.

This rule is intended to implement Iowa Code sections 147.10, 147.11 and 272C.3 and chapter 153.

481—572.12(153) Temporary permit.

572.12(1) The board may issue a temporary permit authorizing the permit holder to practice dentistry or dental hygiene on a short-term basis in Iowa at a specific location or locations to fulfill an urgent need, serve an educational purpose, or provide volunteer services. A temporary permit is not meant as a way to practice before a permanent license is granted or as a means to practice because the applicant does not fulfill the requirements for permanent licensure. A temporary permit may be granted on a case-by-case basis.

a. The board may issue a temporary permit for a specified period up to six months.

b. A person may be issued no more than two temporary permits to fulfill an urgent need or serve an educational purpose unless the request is prior-approved by the board.

c. If the permit expires, the need changes or the permit holder wishes to continue in short-term assignments in other Iowa locations, the permit holder will be required to apply for a new temporary permit or seek permanent licensure, except when volunteering dental services in accordance with this rule.

d. A temporary permit to provide volunteer services is restricted to free clinics or dental clinics for nonprofit organizations as described under Section 501(c)(3) of the Internal Revenue Code. Temporary permit holders may not receive compensation for dental services provided.

572.12(2) Applications for a temporary permit to fulfill an urgent need or serve an educational purpose must include the following:

a. Satisfactory evidence of graduation with a DDS or DMD degree for applicants seeking a temporary permit to practice dentistry, or satisfactory evidence of graduation from an accredited dental hygiene school for applicants seeking a temporary permit to practice dental hygiene.

b. The fee for a temporary permit to fulfill an urgent need or serve an educational purpose as specified in 481—Chapter 571.

c. Certification from the state board of dentistry, or equivalent authority, from a state in which the applicant has been licensed and practicing for at least three years immediately preceding the date of application. Applicants who have been the subject of final or pending disciplinary action may not be eligible for a temporary permit.

d. Evidence that at least one license was issued on the basis of clinical examination.

e. A request from those individuals or organizations seeking the applicant's services that establishes, to the board's satisfaction, justification for the temporary permit, the dates the applicant's services are needed, and the location or locations where those services will be delivered.

572.12(3) Applications for temporary permits to provide volunteer services must include the following:

a. The name, address, and contact information of the applicant; the location of the free clinic or dental clinic for a nonprofit organization; and the dates on which the volunteer services will be provided.

b. A certification of license (or substantially similar document) from the appropriate licensing board of the applicant's primary jurisdiction.

c. A detailed statement disclosing any pending disciplinary actions or criminal charges against the applicant.

d. A statement from the applicant seeking the temporary permit that the applicant will practice only in a free dental clinic or dental clinic for a nonprofit organization and that the applicant will not receive compensation directly or indirectly for providing dental services.

This rule is intended to implement Iowa Code section 153.19.

481—572.13(153) Retired volunteer license. Upon application and qualification, the board may issue a retired volunteer license to a dentist or dental hygienist who has retired from the practice of dentistry or dental hygiene to enable the dentist or dental hygienist to provide volunteer dental or dental hygiene services without remuneration.

572.13(1) Applicants for a retired volunteer license are exempted from providing evidence of current CPR certification. Applications for retired volunteer licenses must include the following:

a. Satisfactory evidence that the applicant has retired from practice; and

b. Satisfactory evidence demonstrating that:

(1) The applicant has held an active dental or dental hygiene license within the previous five years; or

(2) The applicant possesses sufficient knowledge and skill to practice safely and competently if the applicant has not held an active dental or dental hygiene license within the previous five years.

572.13(2) The board will not charge an application or licensing fee for issuance of a retired volunteer license.

572.13(3) An applicant who has surrendered, resigned, converted, or allowed a license to lapse or expire as the result of or in lieu of disciplinary action is not eligible for a retired volunteer license.

572.13(4) A retired volunteer license is valid for 12 months from the date of issuance, at which time it expires and becomes invalid. A retired volunteer license holder whose license has become invalid is prohibited from the practice of dentistry or dental hygiene until a new retired volunteer license is issued.

572.13(5) A retired volunteer license is not considered to be an active license to practice dentistry or dental hygiene and cannot be converted to any regular license type.

572.13(6) A person holding an inactive Iowa dental or dental hygiene license may also hold a retired volunteer license.

572.13(7) A person holding a retired volunteer license will notify the board of any change in name or home address within seven days of the change. A copy of a certified marriage license or copy of certified court documents is required for proof of a name change.

This rule is intended to implement Iowa Code section 153.23.

481—572.14(147,153) Clinical examination required for licensure.

572.14(1) Pursuant to Iowa Code section 147.34, the board and dental hygiene committee will approve examinations for the purposes of licensure. Applicants shall comply with the following:

a. Examinees must meet the requirements for testing and follow procedures established by each respective testing agency. Examinees must take all parts offered by the respective testing agency, including the periodontal scaling component for dental examinees if offered by the testing agency.

b. The examinee must attain a passing score on each clinical and written portion of the examination.

c. Applicants for licensure pursuant to rule 481—572.3(147,153) must provide evidence of successful completion of a board-approved clinical examination unless exempted by rule.

572.14(2) For the purposes of licensure, the board accepts patient-based and simulated clinical examinations administered by the testing agencies as follows:

a. Central Regional Dental Testing Service, Inc. (CRDTS);

b. CDCA-WREB-CITA, which was previously the Commission on Dental Competency Assessments (CDCA), the Western Regional Examining Board (WREB), and the Council of Interstate Testing Agencies, Inc. (CITA); and

c. The States Resources for Testing and Assessments (SRTA), previously known as the Southern Regional Testing Agency, Inc.

572.14(3) The board on its own motion may monitor or review any clinical examinations already approved by the board. Upon evidence that a clinical examination fails to satisfactorily demonstrate clinical competency to practice dentistry or dental hygiene, the board may revoke the approval of a clinical examination.

572.14(4) For the purposes of counting examination failures, the board and dental hygiene committee may utilize policies adopted by each respective testing agency. An examinee will only need to retake those parts of the examination that the examinee failed. However, an examinee who has not passed all parts of the examination within the time frame specified by the testing agency may be required to retake the entire examination at the discretion of the testing agency. The examinee should refer to the policies of the testing agency to determine applicable standards and time frames.

572.14(5) Following a second or subsequent failure, an examinee must complete additional formal education or clinical experience at an accredited school or other program approved by the board. Ongoing education and training completed by the examinee prior to graduation from an accredited school will be accepted for the purposes of remediation. The applicant will provide evidence of remediation upon request.

a. Prior to the third examination attempt, an examinee must complete additional formal education or clinical experience.

b. Prior to the fourth examination attempt, an examinee must successfully complete a minimum of 40 hours of formal education or clinical experience.

c. For subsequent examination attempts, an examinee must successfully complete a minimum of 40 hours of formal education or clinical experience following each failure.

572.14(6) If an examinee applies for an examination after having failed any other state or regional examination, the failure shall be counted for the purposes of retakes.

This rule is intended to implement Iowa Code sections 147.34, 147.36, 272C.3, 272C.9, and 272C.13 and chapter 153.

481—572.15(147,153) Jurisprudence examination.

572.15(1) An applicant for a dental or dental hygiene license, faculty permit, or registration as a dental assistant must successfully complete a board-approved examination in the area of Iowa jurisprudence with a minimum score of 75 percent. An examinee may be required to meet such other requirements as may be imposed by the board's approved testing locations.

572.15(2) The following examinations are approved for the purposes of this chapter:

a. Board-approved examinations;

b. Examinations administered by accredited schools or programs located in Iowa; and

c. Board-approved continuing education courses that include a posttest examination and that have been approved by the board.

This rule is intended to implement Iowa Code sections 147.34, 147.36, 272C.3, 272C.9 and 272C.13 and chapter 153.

481—572.16(147,153) Examinations for registration or qualification.

572.16(1) An applicant for dental assistant registration must successfully complete examinations as required pursuant to rule 481—572.5(153).

572.16(2) An application for radiography qualification must successfully complete the examination as required pursuant to rule 481—572.6(136C,153).

572.16(3) An applicant may complete a single comprehensive examination or complete separate board-approved examinations in the required areas.

a. The following examinations are approved for the purposes of this subrule:

(1) Board-approved examinations;

(2) The DANB's Infection Control Examination (ICE);

(3) The DANB's Radiation Health and Safety (RHS) Examination;

(4) Examinations administered by accredited schools' dental assisting programs; or

(5) Board-approved continuing education courses that include posttest examination.

b. A score of 75 percent or better on the board-approved examinations will be considered successful completion of the examination. The board also accepts the passing standard established by the DANB for applicants who take the ICE or RHS examination.

c. An examinee may be required to meet such other requirements as may be imposed by the board's approved testing locations.

This rule is intended to implement Iowa Code sections 147.34, 147.36, 272C.3, 272C.9 and 272C.13 and chapter 153.

481—572.17(147,153,272C) Renewal of a license, permit, registration, or qualification.

572.17(1) To continue practicing in Iowa, a license, permit, registration, or qualification must be renewed prior to its expiration date.

a. Dental hygiene licenses, local anesthesia permits, dental assistant registrations, and dental radiography qualifications expire on August 31 of every odd-numbered year.

b. Dental licenses, faculty permits, moderate sedation permits, and general anesthesia permits expire August 31 of every even-numbered year.

572.17(2) The department will email a renewal notice to each licensee, registrant and permit holder at the most recent email address of record.

a. The licensee, registrant, or permit holder is responsible for successfully completing renewal prior to the license's, registration's or permit's expiration. Failure to receive the renewal notice does not eliminate the responsibility for submitting a timely-filed renewal in order to continue practicing in the state of Iowa.

b. Renewal applications are not considered timely and complete until received by the department and accompanied by all material required for renewal and all applicable fees. Incomplete applications will not be issued renewal.

572.17(3) Applications for renewal must include the following:

a. The appropriate fee, including a penalty for late renewal when applicable, as specified in 481—Chapter 571 must accompany the application for renewal.

b. Licensees, registrants, and permit holders are required to complete continuing education in accordance with 481—Chapter 573 unless claiming a permissible exemption.

572.17(4) Iowa-licensed nurses applying for renewal of a radiography qualification are exempt from providing evidence of current CPR certification.

This rule is intended to implement Iowa Code sections 147.10, 147.25 and 147.80 and chapters 136C, 153 and 272C.

481—572.18(147,153,272C) Grounds for nonrenewal. The board may refuse to renew a license, registration, permit or qualification on the following grounds:

572.18(1) After proper notice and hearing for a violation of these rules or Iowa Code chapter 147, 153, or 272C.

572.18(2) Failure to pay required fees.

572.18(3) Failure to obtain required continuing education.

572.18(4) Failure to maintain current certification in CPR that includes a hands-on component, or ACLS or PALS certification when required by rule.

572.18(5) Receipt of a certificate of noncompliance from the child support recovery unit of the department of health and human services in accordance with 481—Chapter 8.

This rule is intended to implement Iowa Code section 153.31 and chapters 147, 252J and 272C.

481—572.19(147,153,272C) Late renewal. Failure to renew a license, permit, registration or qualification prior to the expiration date will result in the assessment of a late fee in the amount specified in 481—Chapter 571 in addition to the renewal fee.

a. Failure to renew prior to September 1 following expiration will result in the assessment of a late fee in the amount specified in 481—Chapter 571 in addition to the renewal fee.

b. Failure to renew prior to October 1 following expiration will result in the assessment of a late fee in the amount specified in 481—Chapter 571 in addition to the renewal fee.

c. Failure to renew prior to November 1 following expiration will cause the license, permit, registration, or qualification to lapse and become invalid. A licensee, permit holder, or registrant whose license, permit, registration, or qualification has lapsed is prohibited from the practice of dentistry, dental hygiene, dental assisting or dental radiography until the license, permit, registration or qualification is reinstated in accordance with rule 481—571.20(147,153,272C).

This rule is intended to implement Iowa Code sections 147.10, 147.11 and 272C.2.

481—572.20(147,153,272C) Reinstatement of a lapsed license, permit, registration or qualification.

572.20(1) A lapsed license, permit, registration or qualification may be reinstated at the discretion of the board. Reinstatement applications must include the following:

a. Payment of a reinstatement application fee plus one past-due renewal fee as specified in 481—Chapter 571;

b. For reinstatement of a lapsed dental or dental hygiene license, a completed criminal history background packet, including the fee as specified in 481—Chapter 571, to facilitate a criminal history background check by the DCI and the FBI;

c. Evidence of completion of continuing education required for renewal in accordance with 481—Chapter 573 that has not been previously reported to the board, or evidence of the full- or part-time practice of the profession in another state, district or territory for a minimum of two years within the previous five-year period;

d. If licensed or registered in another state, district or territory, certification by the licensing authority of the license or registration status and that the licensee or registrant has not been the subject of final or pending disciplinary action;

e. A detailed statement disclosing any disciplinary actions, investigations, claims, complaints, judgments, settlements or criminal charges.

572.20(2) The board or dental hygiene committee may require a licensee or registrant who is applying for reinstatement, and who has not actively practiced clinically within five years immediately preceding the date of application, to successfully complete a board-approved examination or assessment for the purpose of ensuring that the applicant possesses sufficient knowledge and skill to practice safely.

This rule is intended to implement Iowa Code sections 147.10, 147.11 and 272C.2.

481—572.21(136C,153) Reinstatement of lapsed radiography qualification.

572.21(1) A registered dental assistant or licensed nurse whose radiography qualification has lapsed may have the radiography qualification reinstated at the discretion of the board. In addition to the application requirements specified in rule 481—572.20(147,153,272C), applicants for reinstatement must also submit evidence of the following:

a. Evidence of current registration as a dental assistant or an Iowa nursing license; and

b. Evidence of one of the following:

(1) If the radiography qualification has been lapsed for less than five years, a minimum of two hours of continuing education in the subject area of dental radiography, taken within the previous two-year period;

(2) If the radiography qualification has been lapsed for more than five years, the applicant has retaken and successfully completed a board-approved examination in dental radiography; or

(3) Current radiography qualification issued by another state, district or territory, and a statement detailing the clinical practice in dental radiography in that jurisdiction for a minimum of two years in the previous five-year period.

572.21(2) Iowa-licensed nurses applying for reinstatement of a radiography qualification are exempt from providing evidence of current CPR certification.

This rule is intended to implement Iowa Code sections 147.10, 147.25 and 147.80 and chapters 136C, 153 and 272C.

481—572.22(147,153,272C) Grounds for action against a license, permit, registration or qualification.

572.22(1) Following review of an application, including applications for reinstatement, the board may take action against a license, permit, registration or qualification if the board finds that any of the following apply to the applicant:

a. Has been the subject of disciplinary action taken against a license or registration in another state, district, or territory, and the violations that resulted in such action would also be grounds for discipline in Iowa in accordance with 481—Chapter 581;

b. Failed to justify the need for a temporary permit;

c. Practiced outside the scope of practice as permitted by Iowa law; or

d. Found probable cause for any of the grounds for which licensure or registration may be subject to disciplinary action, including revocation or suspension, as specified in Iowa Code chapters 147, 153 and 272C and 481—Chapter 581.

572.22(2) The board may take action against an applicant for license, permit, registration or qualification as follows:

a. Impose applicable restrictions or sanctions pursuant to rule 481—581.1(147,153,272C) as a condition of licensure, permit, registration, qualification or reinstatement;

b. Issue a notice of intent to cancel a temporary permit or retired volunteer license;

c. Issue a notice of intent to deny issuance or reinstatement of a license, permit, registration or qualification;

d. Initiate disciplinary action against the license, permit, registration or qualification; or

e. Initiate other confidential action as permitted by Iowa law.

572.22(3) If the board pursues formal action against an applicant pursuant to this rule, the board will promptly notify the applicant by certified mail at the applicant's last-known address or by personal service.

572.22(4) The provisions of 481—Chapter 506 shall govern a contested case proceeding.

572.22(5) The procedure for appealing a decision of the board in a contested case is set forth in 481—Chapter 506.

This rule is intended to implement Iowa Code chapters 147, 153 and 272C.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 573
"Dental Continuing Education"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 153.33

State or federal law(s) implemented by the rulemaking: Iowa Code sections 147.10, 147.11, 153.15A, 153.39 and 272C

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via video/conference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking promulgates Chapter 573 and implements Iowa Code chapter 153 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 153.33 provides that rulemaking authority.

This rulemaking implements Iowa Code sections 147.10, 147.11, 153.15A, and 153.39 and chapter 272C by providing Iowans, licensees and their employers with information relevant to continuing education. This chapter provides general requirements such as the minimum number of hours of education overall, biennium renewal period, documentation, acceptable programs and activities, and extensions and exemptions. This chapter also provides requirements for mandatory reporter, cardiopulmonary resuscitation (CPR), infection control, jurisprudence and opioid training. The intended benefit of continuing education is to ensure that licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

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 direct costs to the public. There is a direct cost to the licensee, who must pay for the continuing education required. Private industry offers these courses, so the Dental Board is not privy to exact costs, but it is estimated that a dentist may pay $2,000 to $3,000 per year. Estimates for hygienists were $31 to $36 per continuing education unit (CEU). There are multiple entities that provide continuing education courses to licensees. One entity offers one year of unlimited access to dental assistants for $299.

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

The Board believes the benefit is being achieved because it requires that licensees meet specific continuing education requirements and continually update their knowledge base regarding their practice. This ensures that licensees understand best practice in an evolving field, which allows them to provide the best care to Iowans and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

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 direct costs to the public. There is a direct cost to the licensee, who must pay for the continuing education required. Private industry offers these courses, so the Board is not privy to exact costs, but it is estimated that a dentist may pay $2,000 to $3,000 per year. Estimates for hygienists were $31 to $36 per CEU. There are multiple entities that provide continuing education courses to licensees. One entity offers one year of unlimited access to dental assistants for $299.

- Qualitative description of impact:

The Board believes that the benefits achieved justify the cost. The purpose of continuing education is to ensure ongoing competency for providers. The Board believes that eliminating continuing education requirements may increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation, so it is unable to submit evidence of this belief.

3. Costs to the State:

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

Costs to the agency are for the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer and three licensing staff support the full scope of work of this Board at approximately 4.0 full-time equivalent (FTE) positions, which includes answering questions from the public and licensees related to practice standards, continuing education, Board meeting administration, etc. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is not an anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. A couple of surrounding states do require less continuing education for hygienists or assistants, but Iowa's requirements are equal to or lower than those of the other states for dentists. Without continuing education, there is question as to whether licensees are achieving the

desired benefit of updated practice knowledge and increased safety for Iowans. The Board believes continuing education is necessary and the number of hours currently required ensures public safety and competent practice by physicians in Iowa.

- Iowa
  - Dentist: 30 hours of continuing education, mandatory reporter training, CPR, infection control and jurisprudence.
  - Dental hygienist: 30 hours of continuing education, mandatory reporter training, CPR, infection control and jurisprudence.
  - Dental assistant: 20 hours of continuing education, mandatory reporter training, CPR, infection control and jurisprudence.
  - Sedation permits: 6 hours of continuing education.
- Kansas
  - Dentist: 60 hours of continuing education, including 2 hours of ethics (for specialists, 40 of the 60 hours must be in their specialty field) and certification of basic cardiac life support.
  - Dental hygienist: 30 hours of continuing education, including 1 hour of ethics and certification of basic life support (BLS).
- Minnesota
  - Dentist: 50 hours of continuing education (30 fundamental and 20 elective); opioid and infection control are mandatory with others listed as well.
  - Dental hygienists and assistants: 25 hours of continuing education (15 fundamental and 10 elective); infection control is mandatory with others listed as well.
- Nebraska
  - Dentist: 30 hours of continuing education.
  - Dental assistants: 30 hours of continuing education.
  - Dental hygienists: 30 hours of continuing education.
- South Dakota
  - Dentist: 100 hours of continuing education in a five-year renewal cycle; sedation permits require an additional 25 hours every five years.
  - Dental hygienist: 75 hours every five years; 5 hours must be in dental radiography.
  - Dental assistant: 60 hours of continuing education in a five-year renewal cycle.
- Missouri
  - Dentist: 50 hours of continuing education; 40 must be technical.
  - Dental hygienists: 30 hours of continuing education.
  - Dental assistants: 16 hours of continuing education over five years; must be related to treatment, health and safety and include BLS and CPR.
- Illinois
  - Dentist: 48 hours of continuing education every three years.
  - Dental hygienists: 36 hours every three years.

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

As noted above, a couple of surrounding states do require less continuing education for hygienists or assistants, but Iowa is equal to or lower than the other states for dentists. Without continuing education, there is a question as to whether licensees are achieving the desired benefit of updated practice knowledge and increased safety for Iowans. The Board believes continuing education is necessary and the number of hours currently required ensures public safety and competent practice by dentists in Iowa.

6. Alternative methods considered by the agency:

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

The Board considered lowering the continuing education requirements; however, Iowa is not discrepant from the neighboring states. The Board considered a change of the total continuing

education hours, the frequency, and the safety of the public. While the Board is not inclined at this time to make changes to the number of hours required, it will consider evidence-based practice and data for future review. The Board did add other continuing education opportunities that will encourage licensees to help teach/train other potential licensees.

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

The purpose of continuing education is to ensure ongoing competency for providers. The Board believes that eliminating continuing education requirements may increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation, so it is unable to submit evidence of this belief.

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 cost of continuing education could cost $2,000 to $3,000 per year for dentists and $930 to $1,080 per renewal period for dental hygienists. One continuing education entity provides a year of unlimited CEUs to dental assistants for $299. There are some free online options; for example, the Board has provided a free option for the jurisprudence requirement since it was placed into rule. There are also free courses at www.dentalcare.com/en-us/ce-courses, www.colgateoralhealthnetwork.com and vivalearning.com. While some dental professionals may be running a small business of their own, some also work for large corporations, hospitals, and other medical facilities. The cost of continuing education could be greater for small business owners since they would be responsible for the entire cost.

Conversely, there may be a negative impact on the revenue of entities that provide continuing education due to less demand for the entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 573:

CHAPTER 573
DENTAL CONTINUING EDUCATION

481—573.1(153) Continuing education requirements.

573.1(1) Prior to renewal, licensees and registrants are responsible for completing continuing education as follows unless claiming a permissible extension or exemption:

a. Each person who holds a license or faculty permit to practice dentistry: a minimum of 30 hours.

b. Each person who holds a license or faculty permit to practice dental hygiene: a minimum of 30 hours.

c. Each person registered to practice dental assisting: a minimum of 20 hours.

d. Each registrant or licensed nurse who holds a radiography qualification: a minimum of two hours in the area of dental radiography. These hours may also be applied toward the requirements as stipulated in paragraph 573.1(1)*"c."*

e. Pursuant to Iowa Code chapters 232 and 235B, mandatory reporter training for child abuse and dependent adult abuse. Licensees and registrants who regularly provide or assist with dental services to patients in Iowa are responsible for completing mandatory reporter training within six months of employment or prior to the expiration of a current certificate.

(1) Licensees and registrants who regularly provide dental services to children shall complete training pertaining to identifying and reporting abuse in children. Completion of this component of the mandatory reporter training results in two hours of continuing education credit.

(2) Licensees and registrants who regularly provide dental services to adults shall complete training pertaining to identifying and reporting abuse in dependent adults. Completion of this component of the mandatory reporter training results in two hours of continuing education credit.

f. Pursuant to 481—Chapter 572, cardiopulmonary certification, which results in a maximum of three hours of continuing education credit. Certification in pediatric advanced life support (PALS) or advanced cardiac life support (ACLS) results in hour-for-hour credit.

g. A minimum of one hour of continuing education in the area of infection control. The course content should focus on infection control standards, as required by the U.S. Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

h. A minimum of one hour of continuing education in the area of Iowa jurisprudence related to the practice of dentistry, dental hygiene and dental assisting.

i. As a condition of license renewal, for a licensed dentist who has prescribed opioids to a patient during the biennium renewal period, a minimum of one hour of continuing education on opioids.

(1) This training shall include guidelines for prescribing opioids, including recommendations on limitations of dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacological therapy options. If the continuing education did not cover the U.S. Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, the licensee shall read the guideline prior to license renewal.

(2) A licensed dentist who did not prescribe opioids during the biennium renewal period may attest that the dentist is not subject to this requirement due to the fact that the dentist did not prescribe opioids during the time period.

573.1(2) Licensees and registrants may apply completed continuing education hours that meet the requirements of paragraphs 573.1(2)*"d"* through *"h"* toward the requirements for renewal of the license or registration.

573.1(3) The continuing education compliance period shall be the 24-month period commencing September 1 and ending on August 31 of the renewal cycle, except when applying continuing education hours from the previous renewal period in accordance with this rule.

573.1(4) Licensees and registrants may obtain continuing education credit by attending and participating in continuing education activities that meet the requirements of this chapter.

573.1(5) Pursuant to Iowa Code section 272C.2(2)*"h,"* licensees and registrants who complete continuing education hours in excess of the requirements for renewal may apply up to 50 percent of the required hours to the following renewal period. Hours may be carried forward as follows:

a. Licensees and faculty permit holders may apply a maximum of 15 hours from the previous renewal period.

b. Registered dental assistants may apply a maximum of ten hours from the previous renewal period.

c. Licensees and registrants may not carry forward hours for courses in the areas of cardiopulmonary resuscitation (CPR), infection control, jurisprudence, dental radiography, or opioids completed during the previous renewal period.

481—573.2(153) Documentation of continuing education hours.

573.2(1) Licensees and registrants are responsible for obtaining evidence of successful completion for courses attended. The course sponsor should verify credit hours on the proof of attendance.

573.2(2) When applying for renewal, licensees and registrants will report the number of continuing education credit hours completed unless claiming an exemption pursuant to rule 481—573.5(153).

573.2(3) Every licensee and registrant should maintain a record of all courses attended by keeping evidence of continuing education for four years following renewal. The board reserves the right to audit the continuing education hours reported by any licensee or registrant. If selected for audit, the licensee or registrant is responsible for submitting copies of the certificates or other evidence.

481—573.3(153) Acceptable programs and activities.

573.3(1) A continuing education activity is deemed to be acceptable if it meets the following criteria:

a. It constitutes an organized program of learning that contributes directly to the professional competency of the licensee or registrant and is of value to dentistry, is applicable to oral health care, or otherwise pertains to patient care;

b. It pertains to common subjects or other subject matters that relate to the practice of dentistry, dental hygiene, or dental assisting and that are intended to review or update knowledge of new or existing concepts and techniques and enhance the dental health of the public; and

c. It is developed or conducted by individuals who have sufficient education, training and experience to be knowledgeable in the subject matter. Continuing education activities that are developed or approved for continuing education credit by a nationally recognized organization, such as the American Dental Association, the Academy of General Dentistry or another dental specialty organization, would meet these criteria.

573.3(2) Types of activities acceptable for continuing dental education credit include:

a. A dental science course that includes topics that address the clinical practice of dentistry, dental hygiene, dental assisting and dental public health.

b. Courses pertaining to the practice of dentistry that include areas such as recordkeeping, medical conditions that may have an effect on oral health, ergonomics related to clinical practice, the Health Insurance Portability and Accountability Act (HIPAA), risk management, sexual boundaries, communication with patients, Occupational Safety and Health Administration (OSHA) regulations, and the discontinuation of practice related to the transition of patient care and patient records.

c. Sessions attended at a convention-type meeting that includes a variety of concurrent educational experiences directly related to the practice of dentistry. Attendees at a multiday convention may receive a maximum of 1.5 hours of credit per day with the maximum of 6 hours of credit allowed per biennium.

(1) Attendance of table clinic sessions will result in two hours of credit as verified by the sponsor, provided the subject matter conforms to this chapter.

(2) Presentation of an original table clinic session will result in four hours of continuing education credit as verified by the sponsor, provided the subject matter conforms to this chapter.

d. Postgraduate study relating to health sciences, which will result in 15 hours of continuing education per semester.

e. Successful completion of a recognized specialty examination or the Dental Assisting National Board (DANB) examination, which will result in 15 hours of continuing education credit.

f. Self-study activities, which are permitted with a maximum of 12 hours of continuing credit per renewal period.

g. Original presentation of continuing dental education courses, which will result in credit double that which is awarded to participants. Additional credit will not be granted for the repeating of presentations within the renewal period.

h. Teaching. Licensees and registrants who serve as adjunct faculty at an accredited school may claim continuing education credit for teaching that is part of the normal academic duties. Licensees and registrants may apply a maximum of six hours of credit per renewal period.

i. Publication of scientific articles in professional journals related to dentistry, dental hygiene, or dental assisting, which will result in 5 hours of continuing education credit per article with a maximum of 20 hours allowed per renewal period.

j. Delivery of volunteer dental services without compensation through a free clinic, the purpose of which is the delivery of health care services to low-income or underserved individuals. Licensees and registrants may claim one hour of continuing education credit for every three hours of volunteer dental services.

(1) The volunteer hours must be verified by the free clinic or the organization sponsoring the event where the volunteer services are provided.

(2) Licensees and faculty permit holders may apply a maximum of six hours of credit per renewal period.

(3) Registrants may apply a maximum of four hours of credit per renewal period.

573.3(3) Credit may be given for other continuing education activities upon approval by the board.

573.3(4) Continuing education courses in the areas of expanded functions or sedation must receive prior approval from the board, or committee approval as authorized, pursuant to 481—Chapter 577 and 481—subrule 572.11(1).

481—573.4(153) Unacceptable programs and activities. Unacceptable subject matter and activity types for the purposes of renewal include but are not limited to personal development, business aspects of practice, business strategy, financial management, marketing, sales, practice growth, personnel management, insurance, and collective bargaining. While desirable, those subjects and activities are not applicable to dental skills, knowledge, and competence. Therefore, such courses will receive no credit toward renewal.

481—573.5(153) Extensions and exemptions.

573.5(1) The board may, in individual cases involving physical disability or illness, grant an extension of the time to meet, or an exemption from, the continuing education requirements. Requests for extension or exemption should include a statement from a licensed health care professional confirming the disability or illness that resulted in the need for such a request. The board may, as a condition of the exemption, require the applicant to make up a certain portion or all of the continuing education requirements.

573.5(2) Extensions of or exemptions for continuing education requirements will be considered by the board on an individual basis. Licensees or registrants are exempt from the continuing education requirements for:

a. Periods that the person serves honorably on active duty in the military services;

b. Periods that the person practices the person's profession in another state, district, or territory that has a continuing education requirement for which the licensee or registrant meets all requirements;

c. Periods that the person is a government employee working in the person's licensed or registered specialty and assigned to duty outside the United States;

d. Other periods of active practice and absence from the state approved by the board; or

e. The first renewal period, or portion thereof, following original issuance of the license, permit or registration.

481—573.6(153) Continuing education sponsors.

573.6(1) An organization or person that desires to offer continuing education courses or programs or other continuing education activities may do so provided that the sponsor complies with the requirements of this chapter. The board may request a sponsor to provide information about continuing education activities it offers, including names and qualifications of instructors.

573.6(2) The person or organization sponsoring continuing education activities is responsible for keeping a written record of the Iowa licensees or registrants in attendance, maintain the written record for a minimum of five years, and submit the record to the board upon the request. The sponsor of the continuing education activity will also provide proof of attendance and the number of credit hours awarded to the licensee or registrant who participates in the continuing education activity.

573.6(3) Programs sponsored by individuals or institutions for commercial or proprietary purposes, especially programs in which the speaker advertises or urges the use of any particular dental product or appliance should notify attendees of such. Sponsors may offer noncredit courses provided the participants are informed that no credit will be awarded.

481—573.7(153) Review of programs or sponsors. The board reserves the right to monitor or review any continuing education program offered to Iowa licensees and registrants. Upon evidence of a failure to meet the requirements of this chapter, the board may deny credit for the purposes of renewal. The board may deny all or any part of the hours granted by the program. A provider that wishes to appeal the board's decision regarding continuing education credit may file an appeal within 30 days of the board's decision. A timely appeal initiates a contested case proceeding. The contested case will be conducted pursuant to Iowa Code chapter 17A and 481—Chapter 506. The written decision issued at the conclusion of a contested case hearing shall be considered final agency action.

481—573.8(153) Noncompliance with continuing dental education requirements. It is the licensee's or registrant's personal responsibility to comply with these rules. Failure to comply may result in disciplinary action by the board, including nonrenewal of the license or registration.

481—573.9(153) Dental hygiene continuing education. The dental hygiene committee, in its discretion, may make recommendations to the board for approval or denial of requests pertaining to dental hygiene education. The following items will be forwarded to the dental hygiene committee for review.

1. Requests by dental hygienists for waivers, extensions and exemptions of the continuing education requirements.
2. Appeals of denial of dental hygiene continuing education and conduct of hearings as necessary.

These rules are intended to implement Iowa Code sections 147.10, 147.11, 153.15A and 153.39 and chapter 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 574
"General Requirements and Standards of Practice"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 153 and 272C

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 147, 153 and 272C and sections 232.69 and 235B.16

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These rules provide requirements for licensees with regard to displaying a license, information regarding name or address changes, mandatory reporter training and reporting, and requirements for advertising. These rules set the standard for ethical practice around patient acceptance, consultation and referrals, discontinuation of practice, personnel use, recordkeeping, teledentistry, and representation of care and fees. Requirements for public health supervision including minimum clinical experience, supervision agreements and reporting and those duties that can be delegated to a dental hygienist in this setting are also included in this chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are often costs associated with practice standards, because there is often time, effort and money associated with compliance, as is true for any service-oriented industry. Members of the public would have costs associated with the services they are seeking to receive, which may include an office visit payment or copayment. Each licensee's practice has different variables, including factors such as number of clients seen, nature of services provided, how services are delivered (i.e., telehealth or in

person), and administrative support. Dental Board staff review applications for initial and renewal licenses and for licensure reinstatement. Board staff also answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 6.0 full-time equivalent (FTE) positions to review application materials. Licensing fees go to the f to cover the operations of the regulated professional licensing boards.

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

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, monitoring compliance, providing administrative support to the Board, responding to questions related to standard of practice, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from licensed professionals. Due to the state government realignment, boards are evaluating ways to streamline and simplify processes and 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:

There are approximately 8,700 licensed individuals in this field who provide dental services to Iowans. The Board believes that the costs are justified by the benefits achieved because the rules provide required guardrails for providing these important services to Iowans. If these professions were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Dentists and dental hygienists are regulated in all 50 states.

- Qualitative description of impact:

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, monitoring compliance, providing administrative support to the Board, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from licensed professionals. Due to the state government realignment, boards are evaluating ways to streamline and simplify processes and procedures.

3. Costs to the State:

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

Costs to the State are for the staff time needed to manage Board activities, which includes oversight of practice standards. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, responding to questions related to practice standards and supporting the board monitoring programs. Staff salaries to support the work of the Board are covered by the fund.

- Anticipated effect on state revenues:

There is no anticipated impact on this rule to state revenues.

Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

There are approximately 8,700 licensed individuals who provide dental services to Iowans. The Board believes that the costs are justified by the benefits achieved because the rules provide required guardrails for providing these important services to Iowans. If these professions were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Dentists and dental hygienists are regulated in all 50 states.

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

The Board has not identified a more cost-effective alternative to the current process. Dentistry is a health-related field that requires licensees to meet practice standards and conduct themselves in an ethical manner. Dental hygienists provide services under the supervision of dentists and require ongoing monitoring for compliance and meeting practice standards. Dentists and dental hygienists are regulated in all 50 states.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the current process. Dentistry is a health-related field that requires licensees to meet practice standards and conduct themselves in an ethical manner. Dental hygienists provide services under the supervision of dentists and require ongoing monitoring for compliance and meeting practice standards. Dentists and dental hygienists are regulated in all 50 states.

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The changes to this chapter support this effort.

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

The Board has not identified a more cost-effective alternative to the current process. Dentistry is a health-related field that requires licensees to meet practice standards and conduct themselves in an ethical manner. Dental hygienists provide services under the supervision of dentists and require ongoing monitoring for compliance and meeting practice standards. Dentists and dental hygienists are regulated in all 50 states.

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 relate to public safety concerns that are present whether the business is a small business or a large corporation. While some dental assistants may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 574:

CHAPTER 574
GENERAL REQUIREMENTS AND STANDARDS OF PRACTICE

481—574.1(153) Licensed or registered personnel. In accordance with Iowa Code chapters 147 and 153, persons engaged in the practice of dentistry, dental hygiene or dental assisting in Iowa must be licensed by the board as a dentist or dental hygienist or registered as a dental assistant.

This rule is intended to implement Iowa Code chapters 147 and 153.

481—574.2(147,153) Display of current license, registration, permit or qualification. In accordance with Iowa Code section 147.7, the certificate of every license, permit, registration or qualification and evidence of current renewal must be prominently displayed at each permanent practice location.

574.2(1) Additional certificates may be obtained from the board. Evidence of renewal may be obtained from the board's online licensing database at no cost or by request to the board. The board may assess a fee for a replacement certificate or evidence of renewal pursuant to 481—Chapter 571.

574.2(2) Practice locations may display evidence of license, permit, registration or qualification by electronic means in conjunction with primary source verification.

This rule is intended to implement Iowa Code chapter 147.

481—574.3(147,153,272C) Change of name or address.

574.3(1) *Change of name.* Each person licensed or registered by the board must notify the board and submit evidence of a legal name change within 60 days of such change.

574.3(2) *Change of address.* Pursuant to Iowa Code section 147.9, each person licensed or registered by the board must notify the board within 60 days of changes in email for the purpose of electronic communications from the board, primary mailing address, and all full- and part-time practice locations.

481—574.4(147,153,272C) Other requirements.

574.4(1) *Child and dependent adult abuse training.* Licensees or registrants who regularly examine, attend, counsel or treat children or adults in Iowa must obtain mandatory training in child and dependent adult abuse identification and reporting in accordance with Iowa Code sections 232.69 and 235B.16 and 481—Chapter 573.

574.4(2) *Cardiopulmonary resuscitation.* Licensees and registrants may practice in Iowa if they obtain and maintain current certification in a cardiopulmonary resuscitation (CPR) course that included a hands-on component. The board reserves the right to request that licensees and registrants provide evidence of current certification.

This rule is intended to implement Iowa Code sections 232.69 and 235B.16 and chapter 153.

481—574.5(153) Use of personnel. Dentists are obligated to protect the health of their patients by assigning to qualified personnel only those duties that can be legally delegated. Dentists will supervise the work of all personnel working under their direction and control.

481—574.6(153,272C) Patient acceptance. Dentists, in serving the public, may exercise reasonable discretion in accepting patients; however, pursuant to state and federal law, dentists may not discriminate against legally protected classes by refusing to accept patients into their practice or denying dental service to patients for reasons such as race, creed, sex or national origin.

481—574.7(153) Emergency service. Emergency services in dentistry are deemed to be those services necessary for the relief of pain or to thwart infection and prevent its spread. When consulted in an emergency by patients, dentists shall make reasonable arrangements for emergency care.

481—574.8(153) Consultation and referral.

574.8(1) Dentists are responsible for meeting the minimum standard of care and should seek consultation or referral, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those practitioners who have special skills, knowledge and experience.

574.8(2) The specialist or consulting dentist shall comply with the following:

a. Upon completion of the consultation or specialty treatment, return the patient, unless the patient expressly states a different preference, to the referring dentist or, if none, to the dentist of record for future care.

b. When there is no referring dentist, upon completion of the treatment, inform the patient when there is a need for further dental care.

574.8(3) A dentist who has a patient referred for a second opinion regarding a diagnosis or treatment plan should render the requested second opinion in accordance with these rules. In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a vested interest in the ensuing recommendation.

481—574.9(153,272C) Patient records.

574.9(1) Patient records may be entered or retained electronically or by other means. Dentists must maintain patient records in a manner consistent with the protection of the welfare of the patient and comply with the following:

a. Preserve and maintain the confidentiality of patient records as required by state and federal law.

b. Ensure that all entries into patient records are permanent, timely, accurate, legible, and easily understandable.

c. Update and correct errors in the patient record electronically, or legibly in ink, with no erasures or white-outs. If incorrect information is placed in the record, cross out the error with a single nondeleting line and include the initials or other means of identification for the licensee or registrant who updated the record.

d. Safeguard the records from destructive elements.

e. Maintain a duplicate hard copy or use an unalterable record when electronic records are kept.

574.9(2) Dentists will create and maintain dental records for each patient that contain all of the following:

a. Patient information that includes the following:

(1) Name, date of birth, address, and, if a minor, name of parent or guardian.

(2) Name and telephone number of person to contact in case of emergency.

b. Dental and medical history information sufficient to support the recommended treatment plan from the patient or the patient's parent or guardian.

c. Patient's stated reasons related to oral health when a patient presents with a chief complaint.

d. Dental records shall include chronological entries, including dates and descriptions of the following:

(1) Clinical examination findings, tests conducted, and a summary of all pertinent diagnoses;

(2) Plan of intended treatment and treatment sequence;

(3) Services rendered and any treatment complications;

(4) All radiographs, study models, and periodontal charting, if applicable;

(5) Name, quantity, and strength of all drugs dispensed, administered, or prescribed; and

(6) Name of dentist, dental hygienist, or any other auxiliary, who performs any treatment or service or who may have contact with a patient regarding the patient's dental health.

e. Documentation, at a minimum, of informed consent that includes an overview of the discussion of proposed procedure(s), treatment options, potential complications and known risks, and patient's consent to proceed with treatment.

574.9(3) Transfer of records. Upon request of the patient or patient's legal guardian, the dentist shall furnish copies of the complete dental records, including copies of the radiographs that are of diagnostic quality.

a. The dentist may not refuse to transfer records for any reason, including but not limited to nonpayment of any fees.

b. The dentist may charge a nominal fee for duplication of records.

481—574.10(153) Teledentistry. Only dentists, dental hygienists, or dental assistants currently licensed or registered by the board may use teledentistry to provide dental care to patients located in Iowa. This rule establishes the standards of practice for teledentistry.

574.10(1) "Teledentistry" means a dentist is providing or supervising dental services using technology when the patient is in another location.

574.10(2) A dentist may not provide teledentistry services to a patient based solely on the responses to an electronic questionnaire consisting of a static set of questions.

574.10(3) The standard of dental care is the same whether a patient is seen in person or through a teledentistry encounter.

a. The use of teledentistry is not an expansion of the scope of practice for dental hygienists or dental assistants.

b. A dentist may only use teledentistry if utilizing evidence-based standards of practice and practice guidelines to ensure patient safety, quality of care, and positive outcomes.

574.10(4) When teledentistry will be utilized, a dentist, in addition to the requirements of rule 481—574.8(153), is responsible for ensuring informed consent covers the following:

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

b. The identity, contact information, practice location, licensure, credentials, and qualifications of all licensees and registrants involved in the patient's dental care, which should be publicly displayed on a website or provided in writing to the patient; and

c. Precautions for technological failures or emergency situations.

574.10(5) A dentist may only use teledentistry to conduct an examination for a new patient or for a new diagnosis if the examination is conducted in accordance with evidence-based standards of practice to sufficiently establish an informed diagnosis.

a. A dentist shall not conduct a dental examination using teledentistry if the standard of care necessitates an in-person dental examination.

b. Once an examination has been conducted, a dentist may delegate the services to be provided by a licensed dental hygienist or registered dental assistant. A dentist shall not delegate expanded functions when teledentistry is being utilized.

c. A dentist may only delegate services to licensees and registrants employing the levels of supervision as permitted in this chapter and 481—Chapters 570, 575, 576 and 577.

d. A supervising dentist may authorize the use of teledentistry in conjunction with public health supervision.

574.10(6) A dentist may only use teledentistry if the dentist has adequate knowledge of the nature and availability of local dental resources to provide appropriate follow-up care as needed. A dentist shall refer a patient to an acute care facility or an emergency department when necessary for the safety of the patient or in the case of emergency.

574.10(7) A teledentistry encounter shall be clearly characterized as such in a patient record.

574.10(8) All dentists, dental hygienists, and dental assistants shall ensure that the use of teledentistry complies with the privacy, breach and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Part 160, Part 162, and Part 164, and any amendments of as of August 30, 2024.

481—574.11(153) Public health supervision allowed. A dentist who meets the requirements of this rule may provide public health supervision to a dental hygienist or registered dental assistant if the dentist has an active Iowa license and the services are provided in public health settings as defined in rule 481—570.1(153).

574.11(1) *Minimum clinical practice required.* A licensed dental hygienist or registered dental assistant is eligible to practice under public health supervision and provide services if the hygienist or assistant has an active license or registration and a minimum of one year of clinical practice experience.

574.11(2) *Public health supervision agreements.* When working under a public health supervision relationship, a dental hygienist or dental assistant shall enter into a written agreement with a dentist that addresses and complies with the following items:

a. Specify the location or locations where the public health services will be provided.

b. Include the preferred method of contact for ongoing communication and consultation between the dental hygienist or dental assistant.

c. Have age- and procedure-specific standing orders for the performance of services. The standing orders should include consideration for medically compromised patients and medical conditions for which the standard of care would dictate that a dental evaluation occur prior to the provision of services.

d. Specify a period of time in which an examination by a dentist must occur prior to providing further services. This examination requirement does not apply to educational services, assessments, screenings, and fluoride if specified in the supervision agreement.

e. Specify whether the agreement permits the dental hygienists to apply silver diamine fluoride. The supervision agreement may include provisions for use of silver diamine fluoride if the dentist and the dental hygienist complete board-approved training and the provisions comply with board-approved protocols.

f. Specify a procedure for creating and maintaining dental records for the patients that are treated by the dental hygienist or dental assistant, including where these records are to be located.

g. Review the written agreement a minimum of once every two years, and maintain a copy of the agreement for reference.

h. File a copy of the agreement with dental and oral health program of the department of health and human services within 30 days of entering into or updating an agreement and provide a copy of the agreement to the board upon request.

574.11(3) *Dental hygiene and dental assistant services.* A dental hygienist or dental assistant may provide the services specified in the public health supervision agreement pursuant to the following:

a. A dental hygienist may provide services that fall within the scope of practice pursuant to 481—Chapter 576, except for the administration of local anesthesia or nitrous oxide inhalation analgesia.

b. A registered dental assistant providing services under public health supervision may perform all extraoral duties, take dental radiographs, assist with intraoral suctioning, use a curing light and take images using an intraoral camera.

c. Each patient shall sign a consent form that clarifies that dental public health services do not take the place of regular dental checkups at a dental office and are meant for people who otherwise would not have access to dental services.

d. After receiving dental public health services, the dental hygienist or dental assistant will provide to the patient, parent or guardian a written plan for referral to a dentist and assessment of further dental treatment needs.

574.11(4) *Reporting requirements.* Each dental hygienist or dental assistant who rendered services under public health supervision at any time during the calendar year is obligated to complete a summary report at least annually or at the completion of a program. The dental hygienist or dental

assistant will file the report with the dental and oral health program of the department of health and human services to assess the impact of the program.

a. The report filed by each dental hygienist should include, at a minimum, information related to the number of patients seen and services provided.

b. The report filed by each dental assistant should include, at a minimum, information related to the number of patients seen, the services provided to patients and the infection control protocols followed at each public health location. The department will provide summary reports to the board on an annual basis.

c. The dental and oral health program should provide summary reports to the board annually or upon request.

This rule is intended to implement Iowa Code chapter 153.

481—574.12(153) Representation of treatment and fees. Licensees and registrants shall not represent the care being rendered to their patients or the fees being charged for providing the care in a false or misleading manner.

574.12(1) The following billing practices are deemed to constitute deception, misrepresentation, overbilling, fraud or a combination thereof:

a. Accepting a third-party payment under a copayment plan as payment in full and not collecting the patient's portion without disclosing that to the third-party payer.

b. Increasing a fee to a patient merely because the patient has insurance.

c. Submitting a claim form to a third party and knowingly reporting incorrect treatment dates.

d. Describing a dental procedure incorrectly on a third-party claim form in order to receive a greater payment or intentionally making a noncovered procedure appear to be a covered procedure.

e. Recommending or performing unnecessary dental services or procedures.

f. Billing for services not rendered. A dentist may bill for those services that have started or been rendered, for actual costs incurred in the treatment of the patient, or for missed appointments.

g. Billing or drawing on a patient's line of credit prior to services being started or rendered. A dentist may bill or draw on a patient's line of credit for those services that have been rendered or for actual costs incurred in the treatment of the patient.

574.12(2) A dentist may allow patients to prepay for services, in whole or in part, on a voluntary basis.

574.12(3) Payments accepted by a dentist under a government-funded program, a sponsored access program, or a participating agreement entered into under a program of a third party are not considered as evidence of overbilling when determining whether a charge to a patient or to another third party on behalf of a patient not covered under any of these programs constitutes overbilling under this rule.

481—574.13(153) Retention of patient records and discontinuance of practice.

574.13(1) *Retention of dental records.* A dentist shall maintain a patient's dental record for a minimum period of time as follows:

a. For adults, six years after the date of last examination, prescription, or treatment.

b. For minors, either until the patient reaches the age of nineteen, or six years, whichever is longer.

c. For study models and casts, six years after the date of completion of treatment. Alternatively, one year after completion of treatment, study models and casts may be provided to the patient for retention.

574.13(2) *Discontinuation of practice.* When a dentist intends to discontinue practice at a practice, or upon death or incapacitation, the following provisions apply to minimize disruptions in patients' access to dental care:

a. A licensee or appointed representative shall notify all active patients in writing, by making the same notification available on the website of the dental practice for no less than 30 days, or by

publication once a week for three consecutive weeks in a newspaper of general circulation that the licensee intends to discontinue the practice of dentistry and include guidance for the continuance of dental care, or how to make reasonable arrangements for the transfer of patient records or complete copies thereof to the patient, patient's guardian, or succeeding licensee.

b. A dentist should appoint another Iowa licensee, representative or entity who, upon the death or incapacitation of the dentist, is able to retain the patient records and assist patients with access to their records in compliance with state and federal law.

481—574.14(153) Unethical and unprofessional conduct.

574.14(1) Unethical or unprofessional conduct includes the following:

a. Taking actions that the board deems to be abusive, coercive, intimidating, harassing, untruthful or threatening in connection with the practice of dentistry.

b. Knowingly providing false or misleading information to the board or an agent of the board.

c. Knowingly interfering with a person filing a complaint with the board, or entering an agreement with a person that prohibits that person from filing a complaint with the board.

d. Failing to fully explain a treatment regimen and obtain patient authorization before treatment begins.

574.14(2) A licensee or registrant who has been diagnosed with a communicable or infectious disease shall comply with Iowa Code chapter 139A. Failure to do so constitutes unethical and unprofessional conduct and may be grounds for disciplinary action by the board.

481—574.15(153) Communications. Communications by inclusion or omission to the public must be accurate.

574.15(1) The following standards apply to the communications related to the practice of dentistry:

a. Statements, testimonials, photographs, graphics or other means of communication shall not convey false, untrue, deceptive, or misleading information.

b. Communications should not incite an individual's anxiety in an excessive or unfair way, and they should not create unjustified expectations of results.

c. Communications that refer to benefits or other attributes of dental procedures or products that involve significant risks must also include realistic assessments of the safety and efficacy of those procedures or products. Communications should also include information about alternatives where necessary to avoid deception.

d. Communications must neither misrepresent a dentist's credentials, training, experience or ability nor contain claims of superiority that cannot be substantiated.

574.15(2) Dentists are encouraged to engage in truthful, nondeceptive advertising. Dentists who engage in the types of advertising that do the following shall take care to ensure that ads are consistent with these rules:

a. Include claims that the service performed or the materials used are professionally superior to those which are deemed to be consistent with standard practice or that assert that one licensee is better than another when superiority of service or materials cannot be substantiated.

b. Reference an unearned or nonhealth degree.

c. Reference attainment of an honorary fellowship. An honorary fellowship does not include an award based on merit, study or research. The attainment of fellowship status may be indicated in scientific papers, curriculum vitae, third-party payment forms, and letterhead and stationery that is not used for the direct solicitation of patients.

d. Promote a professional service that the dentist knows or should know is beyond the dentist's ability to perform or that creates an unjustified expectation concerning the potential result of any dental treatment.

e. Include communication that is likely to intimidate or exert undue pressure or influence over a prospective patient.

f. Include a testimonial attesting to a quality of competence of a service or treatment offered by a licensee that is not reasonably verifiable.

g. Utilize statistical data or other information that creates an unjustified expectation about results that the dentist can achieve.

h. Include personally identifiable facts, data or other information about a patient without first obtaining patient consent.

i. Include any misrepresentation of a material fact.

j. Suppress, omit, or conceal any material fact or law without which the communication would be deceptive.

k. Include circumstances that indicate bait-and-switch advertising. The board may require the advertiser to furnish data or other evidence pertaining to those sales at the advertised price as well as other sales. Where the circumstances indicate deceptive advertising, the board may initiate an investigation or disciplinary action as warranted.

481—574.16(153) Advertising standards. The board may request a dentist to substantiate the truthfulness of any assertion or representation of material fact in an advertisement.

574.16(1) The dentist must possess and rely upon information that, when produced, would substantiate the truthfulness of any assertion, omission, or representation of material fact in the advertisement.

574.16(2) The failure or refusal to comply with the requirements of this rule may be deemed professional misconduct.

481—574.17(153) Fees. Advertising that states a fee must clearly define the professional service being offered in the advertisement. Advertised offers will be presumed to include everything ordinarily required for such a service.

481—574.18(153) Public representation. All advertisements and public representations should include the name and contact information of the practitioner who placed the ad.

574.18(1) If the advertisement refers to one's practice, the ad may state either "general/family practice" or "specialist," "specializes," or "specializing." A dentist may not advertise or represent oneself as a specialist unless the dentist complies with the other provisions of this rule.

574.18(2) A dentist may advertise as a specialist if the dentist is a diplomate of, or board-eligible for, a national certifying board of a specialty recognized by the American Dental Association (ADA) or the American Board of Dental Specialties (ABDS). A dentist should consult with the ADA or ABDS for a current list of recognized specialties.

574.18(3) A certifying board may apply for a new area of specialty by submitting information regarding the area of specialty, including an explanation of how the proposed specialty is within the scope of practice of dentistry in Iowa, and proof of the following:

a. The proposed specialty is separate and distinct from any preexisting specialty recognized by the ADA or ABDS;

b. The proposed specialty is a distinct and well-defined field that requires unique knowledge and skills beyond those commonly possessed by dental school graduates;

c. The certifying board is an independent entity that is comprised of licensed dentists, whose membership is reflective of the proposed specialty, and that is incorporated and governed solely by the licensed dentists/board members;

d. The certifying board has a permanent headquarters and staff;

e. The certifying board has issued diplomate certificates to licensed dentists for at least five years;

f. The certifying board requires passing an oral and written examination based on psychometric principles that tests the applicant's knowledge and skill in the proposed specialty;

g. The certifying board requires all dentists who seek certification in the proposed specialty to have successfully completed a specified, objectively verifiable amount of post-DDS or -DMD education and experience that is appropriate for the proposed specialty area, as determined by the certifying board; and

h. The certifying board's website includes online resources for the consumer to verify the certifying board's certification requirements and a list of the names and location of the dentists who have been awarded certification.

574.18(4) The use of the terms "specialist," "specializes," "orthodontist," "oral and maxillofacial surgeon," "oral and maxillofacial radiologist," "periodontist," "pediatric dentist," "prosthodontist," "endodontist," "oral pathologist," "public health dentist," "dental anesthesiologist," or other similar terms that imply that the dentist is a specialist may only be used by a licensed dentist who meets the requirements of this rule. A dentist who advertises as a specialist must avoid any implication that other dentists associated with the same practice are specialists unless the dentists also meet the requirements of this rule.

574.18(5) The term "diplomate" or "board-certified" may only be used by a dentist who has successfully completed the qualifying examination of the appropriate certifying board of one or more of the specialties recognized by the ADA or the ABDS, or as otherwise permitted pursuant to these rules.

574.18(6) A dentist may only advertise as a specialist pursuant to these rules if the advertisement includes the name of the national certifying board and the name of the entity that recognizes the board in the advertisement.

574.18(7) A dentist may advertise the areas in which the dentist practices, including but not limited to specialty services, using other descriptive terms such as "emphasis on _____" or other similar terms as long as all other provisions of these rules regarding advertising are met.

481—574.19(153) Responsibility for advertisements. Each professional who is a principal partner, officer, or licensed professional employee, acting as an agent of the firm or entity identified in the advertisement, is jointly and severally responsible for the form and content of any advertisement offering services or materials. The dentist should maintain a recording or copy of every advertisement for a period of two years that should be made available for review upon request by the board or its designee. The record should indicate the date and place of the advertisement.

481—574.20(147,153,272C) Mandatory reporting requirements. Pursuant to Iowa Code chapters 147, 153 and 272C, each licensee, registrant or committee of the board shall be responsible for reporting to the board the following matters:

574.20(1) *Standards of practice.* Within 30 days of acquiring knowledge, the following:

a. Instances of gross or continually faulty treatment.

b. Acts or omissions by other licensees or registrants that may constitute a basis for disciplinary action under the rules and statutory provisions governing the practice of dentistry, dental hygiene, or dental assisting in Iowa.

574.20(2) *Immediate threats to patient safety.* Within 24 hours of acquiring knowledge of a reportable act or omission that poses an immediate threat to patient safety, information regarding that act or omission.

574.20(3) *Adverse occurrences related to nitrous oxide or sedation.* Within seven days, any mortality related to sedation or nitrous oxide or any other incident related to sedation or nitrous oxide that results in the patient receiving inpatient treatment at a hospital or clinic. The licensee must submit a detailed report and include a complete copy of the patient record. The report should include, at a minimum, the following information:

a. Description of dental procedure.

b. Description of preoperative physical condition of patient.

c. List of drugs and dosage administered.

d. Description, in detail, of techniques utilized in administering the drugs utilized.

e. Description of adverse occurrence:

(1) Description, in detail, of symptoms of any complications, to include but not be limited to onset and type of symptoms in patient.

(2) Treatment instituted on the patient.

(3) Response of the patient to the treatment.

f. Description of the patient's condition on termination of any procedures undertaken.

574.20(4) *Judgments, settlements, or disciplinary action.* Within 30 days, any of the following:

a. Any instance of disciplinary action taken by a licensing authority of another state, territory or country or another licensing authority in this state. A stay by an appellate court does not negate this requirement; however, if the disciplinary action is overturned or reversed by a court of last resort, the report will be expunged from the records of the board upon such notification;

b. Any adverse judgment in a professional malpractice action to which the licensee or registrant was a party;

c. Any settlement of a claim against the licensee or registrant alleging malpractice;

d. Any restriction of practice imposed by a hospital, clinic or other practicing setting; or

e. Being party to, or assisting in the violation of, any provision of Iowa law or rule of the board.

574.20(5) *Criminal convictions.* Within 60 days, any misdemeanor or felony conviction, excluding traffic offenses. Conviction of driving under the influence or while intoxicated is a reportable offense.

574.20(6) *Mandatory reporter information.* Mandatory reports filed with the board should include the following information:

a. Name of any licensee or registrant who committed or was involved in the act or omission;

b. Date on which the reportable offense occurred;

c. Location where the reportable offense occurred;

d. Names of patients, licensees, registrants or other parties that may have been adversely impacted by the act or omission;

e. Disposition of the judgment, action or conviction; and

f. All other applicable details.

This rule is intended to implement Iowa Code chapters 147, 153 and 272C.

481—574.21(17A,147,153,272C) Waiver prohibited. Rules in this chapter, except for rules 481—574.3(147,153,272C), 481—574.4(147,153,272C), 481—574.11(153), 481—574.15(153), 481—574.16(153), 481—574.18(153), and 481—574.19(153), are not subject to waiver pursuant to 481—Chapter 6 or any other provision of law.

These rules are intended to implement Iowa Code sections 153.33 and 153.34.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 575
"Dental Assistants, Dental Radiography Qualifications, and Dental Laboratory Technicians"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 153 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 136C and 153

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules provide Iowans, licensees, and their employers with the requirements for registered dental assistants, dental radiography and dental laboratory technicians and, additionally, provides clarification regarding those who are exempt from these requirements. These rules articulate practice standards and provide a scope of practice for dental assistants in a dental office and public health setting and articulate the responsibilities of the supervising dentist. These rules also provide information regarding unlawful practice and the prohibition of advertising and soliciting dental services by these licensees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are often costs associated with practice standards because there is often time, effort and money associated with compliance, as is true for any service-oriented industry. Members of the public would have costs associated with the services they are seeking to receive, which may include an office visit payment or copayment. Each licensee's practice has different variables, including factors such as number of clients seen, nature of services provided, how services are delivered (i.e., telehealth or in person), and administrative support.

Costs to the agency include the staff time needed to manage Dental Board activities, which include oversight of practice standards. The time needed to manage this provision is generally in the form of responding to questions related to registration and scope of practice. Approximately 6.0 full-time equivalent (FTE) positions are required to complete the work of this Board. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

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

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from licensed professionals. Due to the state government realignment, boards are evaluating ways to streamline and simplify processes and 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:

There are often costs associated with practice standards because there is often time, effort and money associated with compliance, as is true for any service-oriented industry. Members of the public would have costs associated with the services they are seeking to receive, which may include an office visit payment or copayment. Each licensee's practice has different variables, including factors such as number of clients seen, nature of services provided, how services are delivered (i.e., telehealth or in person), and administrative support.

Costs to the agency include the staff time needed to manage Board activities, which include oversight of practice standards. The time needed to manage this provision is generally in the form of responding to questions related to registration and scope of practice. Approximately 6.0 FTE positions are required to complete the work of this Board. Staff salaries to support the work of the Board are covered by the fund.

- Qualitative description of impact:

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from licensed professionals. Due to the state government realignment, boards are evaluating ways to streamline and simplify processes and procedures.

3. Costs to the State:

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

Costs to the agency include the staff time needed to manage Board activities, which include oversight of practice standards. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, responding to questions related to practice standards, and supporting the board monitoring programs. Staff salaries to support the work of the Board are covered by the fund.

- Anticipated effect on state revenues:

This rule has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

Dental assistants are registered in the state of Iowa. The Board has not identified a more cost-effective alternative to the current process. Although dental assistants provide dental treatment to patients under the supervision of a dentist, they still require training and monitoring for compliance and meeting practice standards. Dental radiography requires qualification issued by the Board. If these professions were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Statute currently requires registration of dental assistants (Iowa Code chapter 153) and qualification to take X-rays (Iowa Code chapter 136C). Additionally, dental assistants are the primary staff members to handle infection control in dental offices. Lack of training and oversight could result in impacts on public health and safety.

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

The Board has not identified a more cost-effective alternative to the current process. Dental assistants provide services under the supervision of dentists, but still require ongoing monitoring for compliance and meeting practice standards. If these professions were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Dental assistant fees are the lowest established by the Board. Prior to Executive Order 10, the Board proactively took steps to ease requirements for dental assistants and increase access to joining the workforce in this profession. In December 2021, changes to the rules took effect that eliminated the need for formal application, including a fee, to work as a dental assistant trainee. Dental assistant trainees can now apply for registration as soon as the supervising dentist determines they are competent. Prior to the changes to the rules, trainees had to work on the job for a minimum of six months. Clinical practice requirements to train in expanded functions also changed from 12 months as a registered dental assistant (or practice in another state) to 3 months.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the current process. Dental assistants provide services under the supervision of dentists, but still require ongoing monitoring for compliance and meeting practice standards. If these professions were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board.

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The changes to this chapter support this effort.

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

The Board has not identified a more cost-effective alternative to the current process. If these professions were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board.

Small Business Impact

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

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

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

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

The proposed rules relate to public safety concerns that are present whether the business is a small business or a large corporation. While some dental assistants may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 575:

CHAPTER 575
DENTAL ASSISTANTS, DENTAL RADIOGRAPHY QUALIFICATIONS,
AND DENTAL LABORATORY TECHNICIANS

481—575.1(153) Registration required. A person shall not practice dental assisting without a current registration issued by the board pursuant to rule 481—571.5(147,153). The following individuals are exempt from the requirements of this rule:

575.1(1) Students enrolled in an accredited dental, dental hygiene, or dental assisting program;

575.1(2) Dental assistant trainees who are meeting the requirements for registration pursuant to Iowa Code section 153.39; and

575.1(3) Persons who are actively licensed in Iowa to practice dental hygiene or nursing and who are engaged in the practice of said profession.

481—575.2(136C,153) Qualification required.

575.2(1) A person who is not otherwise actively licensed by the board shall not participate in dental radiography unless the person holds an active registration or nursing license and holds an active radiography qualification issued by the board and a dentist provides general supervision.

a. A student enrolled in an accredited dental, dental hygiene, or dental assisting program who, as part of the student's course of study, applies ionizing radiation is exempt from the requirements of this rule; and

b. Dental assistants or Iowa-licensed nurses who are engaging in on-the-job training in dental radiography are exempt from the requirements of this rule.

575.2(2) Any individual except a licensed dentist or a licensed dental hygienist who participates in dental radiography in violation of this chapter or Iowa Code chapter 136C may be subject to the criminal and civil penalties set forth in Iowa Code chapter 136C.

575.2(3) Any licensee who permits a person to engage in dental radiography or a registrant who engages in dental radiography contrary to this chapter or Iowa Code chapter 136C may be subject to discipline by the board pursuant to 481—Chapter 580.

481—575.3(153) Dental assistants.

575.3(1) Dental assistant trainees are individuals who are engaging in on-the-job training to meet the requirements for registration pursuant to Iowa Code section 153.39 and rule 481—571.5(147,153). Trainees who are 18 years of age or older may also engage in on-the-job training in dental radiography pursuant to Iowa Code chapters 136C and 153 and this chapter.

a. Dental assistant trainees should successfully complete on-the-job training and examinations in the areas of infection control, hazardous materials, and jurisprudence.

b. A dental assistant trainee shall stop work as a dental assistant trainee if the trainee fails to become registered prior to the expiration date.

575.3(2) Registered dental assistants are individuals who have met the requirements for registration and have been issued registration. A registered dental assistant may, under direct supervision, assist a dentist in performing duties assigned by the dentist that are consistent with these rules. A registered dental assistant may take radiographs if qualified pursuant to this chapter.

481—575.4(153) Scope of practice.

575.4(1) In all instances, a dentist assumes responsibility for determining, on the basis of diagnosis, the specific treatment patients will receive and which aspects of treatment may be delegated to qualified personnel as authorized in these rules.

575.4(2) A licensed dentist may delegate to a dental assistant those procedures for which the dental assistant has received training. This delegation shall be based on the best interests of the patient and performed under the supervision of a licensed dentist and may include:

a. Placement and removal of dry socket medication;

b. Placement of periodontal dressings;

c. Testing pulp vitality;

d. Preliminary charting of existing dental restorations and teeth;

e. Glucose testing;

f. Phlebotomy;

g. Securing orthodontic wire with elastic chains, rubber bands, and ligature wire; and

h. Expanded function procedures in accordance with 481—Chapter 577.

575.4(3) The dentist will exercise supervision and is fully responsible for all acts performed by a dental assistant. A dentist may not delegate to a dental assistant any of the following, unless allowed pursuant to 481—Chapter 577:

a. Diagnosis, examination, treatment planning, or prescription, including prescription for drugs and medicaments or authorization for restorative, prosthodontic or orthodontic appliances.

b. Surgical procedures on hard and soft tissues within the oral cavity and any other intraoral procedure that contributes to or results in an irreversible alteration to the oral anatomy.

c. Administration of local anesthesia.

d. Placement of sealants.

e. Removal of any plaque, stain, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish, or removal of any calculus.

f. Dental radiography, unless the assistant is qualified pursuant to this chapter.

g. Those procedures that require the professional judgment and skill of a dentist.

481—575.5(153) Supervision required.

575.5(1) A licensed dentist may delegate the following services to a registered dental assistant under general supervision:

a. All extraoral duties.

b. Intraoral suctioning.

c. Use of a curing light.

d. Dental radiography in accordance with rule 481—575.2(136C,153).

e. Other intraoral imaging except for taking occlusal registrations or final impressions. Expanded functions may only be performed in accordance with 481—Chapter 577.

575.5(2) Dentists may delegate other services that are within the scope of practice of a dental assistant, including expanded functions pursuant to 481—Chapter 577, under direct supervision or as otherwise permitted by rule.

575.5(3) A registered dental assistant may practice under public health supervision in accordance with rule 481—574.11(153).

481—575.6(153) Continuing education. For the purposes of renewal, every registrant and licensed nurse who holds a dental radiography qualification will complete continuing education requirements as specified in 481—Chapter 573 unless exempted by rule.

481—575.7(153) Students enrolled in dental assisting programs. Students enrolled in an accredited dental assisting program are not considered to be engaged in the unlawful practice of dental assisting provided that such practice is in connection with their regular course of instruction and meets the following:

575.7(1) The practice of clinical skills on peers enrolled in the same program is performed under the direct supervision of a program instructor with an active Iowa dental assistant registration, dental hygiene license, faculty permit, or dental license;

575.7(2) The practice of clinical skills on members of the public is performed under the direct supervision of a dentist with an active Iowa dental license or faculty permit.

481—575.8(153) Unlawful practice.

575.8(1) A dental assistant who assists a dentist in practicing dentistry in any capacity other than as a person supervised by a dentist in a dental office; who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor or director of a dental office as a guise or subterfuge to enable such dental assistant to engage directly or indirectly in the practice of dentistry; or who performs dental service directly or indirectly on or for members of the public other than as a person working for a dentist shall be deemed to be practicing dentistry without a license.

575.8(2) Any dental laboratory technician who assists a dentist in practicing dentistry in any capacity other than as an employee or independent contractor; who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor or director of a dental office as a guise or subterfuge to enable such dental laboratory technician to engage directly or indirectly in the practice of dentistry; or who renders dental service directly or indirectly on or for members of the public other than as an employee or independent contractor for an employing dentist shall be deemed to be practicing dentistry without a license.

481—575.9(153) Advertising and soliciting of dental services prohibited. Dental assistants, dental laboratories or dental laboratory technicians shall not advertise, solicit, represent or hold themselves out in any manner to the general public that they will furnish, construct, repair or alter prosthetic, orthodontic or other appliances, with or without consideration, to be used as substitutes for or as part of natural teeth or associated structures or for the correction of malocclusions or deformities, or that they will perform or render any other dental service.

These rules are intended to implement Iowa Code chapters 136C and 153.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 576
"Dental Hygienists"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 153 and 272C

State or federal law(s) implemented by the rulemaking: Iowa Code sections 147.10, 153.14 and 153.15

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

These proposed rules provide Iowans, licensees, and their employers with information relevant to the scope of practice of a dental hygienist. These rules list the types of services that dental hygienists can perform when delegated by and performed under the supervision of an Iowa-licensed dentist. Requirements for the level of supervision necessary are also established in these rules.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are often costs associated with practice standards because there is often time, effort and money associated with compliance, as is true for any service-oriented industry. Members of the public would have costs associated with the services they are seeking to receive, which may include an office visit payment or copayment. Each licensee's practice has different variables, including factors such as number of clients seen, nature of services provided, how services are delivered (i.e., telehealth or in person), and administrative support. Dental Board staff review applications for initial and renewal licenses and for licensure reinstatement. Board staff also answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation

Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 6.0 full-time equivalent (FTE) positions to review application materials. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, monitoring compliance, providing administrative support to the Board, responding to questions related to standard of practice, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from licensed professionals. Due to the state government realignment, boards are evaluating ways to streamline and simplify processes and 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:

There are approximately 2,700 licensed individuals who provide dental hygiene services to Iowans. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing these important services to Iowans. If this profession was not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Dental hygienists are regulated in all 50 states.

- Qualitative description of impact:

In order to regulate the profession as directed in the Iowa Code, the infrastructure that has been created to license and regulate these professions is necessary to protect the public. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of members of the public who receive services and/or care from licensed professionals. Due to the state government realignment, boards are evaluating ways to streamline and simplify processes and procedures.

3. Costs to the State:

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

Costs to the state include the staff time needed to manage Board activities, which include oversight of practice standards. The 6.0 FTE positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Board, responding to questions related to practice standards, and supporting the board monitoring programs. Staff salaries to support the work of the Board are covered by the fund.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

There are approximately 2,700 licensed individuals who provide dental hygiene services to Iowans. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing these important services to Iowans. If this profession was not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board. Dental hygienists are regulated in all 50 states.

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

The Board has not identified a more cost-effective alternative to the current process. Dental hygienists provide services under the supervision of dentists and require ongoing monitoring for compliance and meeting practice standards. Iowa Code chapter 153 requires that dental hygienists complete two years of training at an accredited school. Dental hygienists are regulated in all 50 states.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the current process. Dental hygienists provide dental care to Iowans. Hygienists provide services under the supervision of dentists and require ongoing monitoring for compliance and meeting practice standards. Other dental professionals must also meet the ethical standards detailed in this chapter. Dentists and hygienists are regulated in all 50 states.

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The updates to this chapter support this effort.

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

The Board has not identified a more cost-effective alternative to the current process. Dental hygiene is a profession that provides dental care to Iowans. Hygienists provide services under the supervision of dentists and require ongoing monitoring for compliance and meeting practice standards. Hygienists are regulated in all 50 states.

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 relate to public safety concerns that are present whether the business is a small business or a large corporation. While some dental assistants may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 576:

CHAPTER 576
DENTAL HYGIENISTS

481—576.1(153) Authorized practice of a dental hygienist.

576.1(1) "Practice of dental hygiene" is defined in Iowa Code section 153.15 and includes the performance of educational, therapeutic, preventive and assessment services. Dental hygienists may perform such services, except educational services, when delegated by and performed under the supervision of an Iowa-licensed dentist.

a. Educational services include assessing the need for, planning, implementing, and evaluating oral health education programs for individual patients and community groups and conducting workshops and in-service training sessions on dental health for nurses, school personnel, institutional staff, community groups and other agencies providing consultation and technical assistance for promotional, preventive and educational services.

b. Therapeutic services include identifying and evaluating factors that indicate the need for and performing the following:

(1) Oral prophylaxis, which includes supragingival and subgingival debridement of plaque, and detection and removal of calculus with instruments or other devices;

(2) Periodontal scaling and root planing;

(3) Removal and polishing of hardened excess restorative material, which may include adhesives, using nonmotorized instruments;

(4) Administration of local anesthesia with the proper permit;

(5) Administration of nitrous oxide inhalation analgesia in accordance with rule 481—579.1(153);

(6) Application and administration of medicaments prescribed by a dentist, including chemotherapeutic agents, or therapies for the treatment of periodontal disease and caries;

(7) Phlebotomy; and

(8) Expanded function procedures in accordance with 481—Chapter 577.

c. Preventive services include applying pit and fissure sealants and medications, including silver diamine fluoride; using other methods for caries and periodontal disease control; and organizing and administering fluoride rinse or sealant programs.

d. Assessment services include reviewing medical and dental health histories, performing oral inspection, indexing dental and periodontal disease, preliminary charting of existing dental restorations and teeth, making occlusal registrations for mounting study casts, testing pulp vitality, testing glucose levels, and analyzing dietary surveys.

576.1(2) The following services may only be delegated by a dentist to a dental hygienist:

a. Administration of local anesthesia;

b. Placement of sealants except as permitted by 481—Chapter 577; and

c. Removal of any plaque, stain, calculus, or hard natural or synthetic material, except when removed by toothbrush, floss, or rubber cup coronal polish.

576.1(3) Subsequent examination and monitoring of the patient, including definitive diagnosis and treatment planning, is the responsibility of the dentist and shall be carried out in a reasonable period of time in accordance with the professional judgment of the dentist based upon the individual needs of the patient.

This rule is intended to implement Iowa Code section 153.15.

481—576.2(153) Scope of practice and supervision requirements.

576.2(1) In accordance with Iowa Code chapter 153, all authorized services provided by a dental hygienist, except educational services, shall be performed under the general, direct, or public health supervision of an Iowa-licensed dentist. Pursuant to 481—Chapter 577, clinical training in expanded functions requires those services to be performed under observational supervision.

576.2(2) Under the general supervision of a dentist, a dental hygienist may provide educational, therapeutic, preventive and assessment services, including screening, or data collection for the preparation of written records for evaluation by a licensed dentist. A dentist may only delegate patient services to be performed under general supervision for patients of record.

576.2(3) Under the public health supervision of a dentist, a dental hygienist may provide educational, therapeutic, preventive and assessment services, including screening, or data collection pursuant to rule 481—574.11(153).

576.2(4) Dental hygienists may only administer local anesthesia if they hold a current permit in accordance with rule 481—572.10(147,153), or nitrous oxide inhalation analgesia in accordance with rule 481—579.1(153), and perform expanded functions in accordance with 481—Chapter 577 under the direct supervision of a dentist.

576.2(5) Dental hygienists may perform all other authorized services on a new patient under the direct or public health supervision of a dentist pursuant to rule 481—574.11(153). An examination by the dentist must take place during an initial visit by a new patient, except when hygiene services are provided under public health supervision.

576.2(6) Dentists may authorize services to be performed under direct supervision in lieu of general supervision when the dentist determines such supervision is necessary to meet the individual needs of the patient.

This rule is intended to implement Iowa Code section 153.15.

481—576.3(153) Unauthorized practice of a dental hygienist.

576.3(1) A dental hygienist who renders hygiene services, except educational services, that have not been delegated by a licensed dentist or that are not performed under the supervision of a licensed dentist as provided by rule is deemed to be practicing illegally.

576.3(2) The unauthorized practice of dental hygiene means allowing a person not licensed in dentistry or dental hygiene to perform dental hygiene services or for a dental hygienist to perform services that exceed the scope of practice authorized in Iowa Code section 153.15 and this chapter.

This rule is intended to implement Iowa Code sections 147.10 and 153.15.

481—576.4(153) Students enrolled in dental hygiene programs. Students enrolled in an accredited dental hygiene program are not considered to be engaged in the unlawful practice of dental hygiene provided that such practice is in connection with their regular course of instruction and complies with the following:

576.4(1) The practice of clinical skills on peers enrolled in the same program may be performed under the direct supervision of a program instructor with an active Iowa dental hygiene license, faculty permit, or dental license.

576.4(2) The practice of clinical skills on members of the public may only be performed under the general supervision of a dentist with an active Iowa dental license or faculty permit.

576.4(3) The practice of clinical skills involving the administration or monitoring of nitrous oxide or the administration of local anesthesia may only be performed under the direct supervision of a dentist with an active Iowa dental license or faculty permit.

This rule is intended to implement Iowa Code sections 153.14 and 153.15.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 577
"Expanded Functions"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 153.33 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 153

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via video/conference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking promulgates Chapter 577 and implements Iowa Code chapter 153 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 153.33 provides that rulemaking authority.

This rulemaking implements Iowa Code chapter 153 by providing Iowans, licensees and their employers with information and definitions relevant to expanded functions. This chapter allows for and provides requirements for performing expanded functions after successful completion of Dental Board-approved training. This chapter establishes the standards by which the Board reviews and approves requests for training in expanded functions. This chapter also details eligibility requirements for expanded functions for dental assistants and hygienists, information on expanded function categories, procedures for dental hygienists and assistants, and training for expanded functions.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are often costs associated with practice standards because there is often time, effort and money associated with compliance, as is true for any service-oriented industry. Members of the public

would incur no costs other than payment/copayment for dental/orthodontic services provided. Licensees would be responsible for the training necessary to be certified for expanded functions.

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

The benefit is being achieved since the chapter provides eligibility requirements, expanded function categories and necessary training, providing protection for the licensee and 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:

Members of the public would incur no costs other than payment/copayment for dental/orthodontic services provided. Licensees would be responsible for the training necessary to be certified for expanded functions.

- Qualitative description of impact:

The Board believes that the costs are justified by the benefits achieved because the rules allow dental hygienists and assistants to perform services that would not otherwise be permitted. This allows the dentist to delegate those functions. This in turn allows the dentist to focus on the services that cannot be delegated. If these services were not regulated, it could mean that access to dental care is further restricted or that lower-skilled individuals would provide these services to Iowans, which would potentially increase the risk of inadequate services and complaints received.

3. Costs to the State:

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

Costs to the agency are for the staff time needed to manage Board activities, which include oversight of practice standards and requirements for review and approval of training in the area of expanded functions. The time needed to manage this provision is generally in the form of responding to questions related to practice standards and processing requests for review of expanded functions training. It takes roughly 6.0 full-time equivalent (FTE) positions to support the work of this Board. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Requirements could be reduced or eliminated for the purpose of lowering the bar to provide these services, but the Board would be concerned about the public safety of Iowans in that scenario.

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

The Board has not identified a more cost-effective alternative to certification for these services. Expanded functions require additional training and skill to ensure the safety of Iowans. The performance of these services requires monitoring for compliance and meeting practice standards due to the advanced nature of the services being provided.

The Department’s Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The changes to this chapter support this effort.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to these standards for dental hygienists and dental assistants. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Requirements could be reduced or eliminated, but the Board would be concerned about reduced access to dental care or the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of these professions in other states, which makes obtaining licensure in multiple states simpler for applicants.

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The changes to this chapter support this effort.

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

The Board did consider less restrictive alternatives, but reducing the level of training required for performing expanded functions would likely decrease access to dental services and increase the number of complaints and investigations due to the technical nature of these dental and orthodontic services.

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 relate to public safety concerns that are present whether the business is a small business or a large corporation. While some dental professionals may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 577:

CHAPTER 577
EXPANDED FUNCTIONS

481—577.1(153) Expanded function requirements and eligibility.

577.1(1) Dental hygienists or registered dental assistants may only perform expanded function procedures upon successful completion of a board-approved course of training. Dental assistant trainees are not eligible to receive training in or perform expanded function procedures.

a. This shall not preclude dental hygienists or dental assistants from practicing expanded function procedures for training purposes while enrolled in a board-approved course of training.

b. Expanded function procedures must be delegated by and performed under the direct supervision of a licensed dentist unless otherwise specified in this chapter.

577.1(2) To be eligible to train in expanded function procedures, dental hygienists must hold an active dental hygiene license in Iowa.

577.1(3) To be eligible to train in expanded function procedures, dental assistants must hold an active registration and comply with one of the following:

a. Be a graduate of an accredited school;

b. Be currently certified by the Dental Assisting National Board (DANB); or

c. Have at least three months of clinical practice as a registered dental assistant or clinical practice as a dental assistant in a state that does not require registration.

577.1(4) A dentist who delegates expanded function procedures to dental hygienists or dental assistants under direct supervision must examine the patient to review the quality of work prior to the conclusion of the dental appointment. The following expanded function procedures are exempt from this requirement and may be performed under general supervision:

a. Recementation of a provisional restoration.

b. Taking occlusal registrations for purposes other than mounting study casts by dental hygienists only.

481—577.2(153) Expanded function categories. Dental hygienists and dental assistants must be issued a certificate of completion for the corresponding function in which board-approved training has been completed before performing a specific expanded function procedure. A dentist may delegate to dental hygienists or dental assistants only those expanded function procedures in which training has been successfully completed.

577.2(1) Level 1 expanded functions may be taught by board-approved training providers using curriculum prior-approved by the board.

577.2(2) Training in Level 2 expanded functions must be completed at the University of Iowa College of Dentistry or another accredited school using curriculum approved by the board. Before beginning Level 2 training, dental hygienists and dental assistants must complete all prerequisites for the Level 2 training established by the accredited school.

481—577.3(153) Level 1 expanded function procedures.

577.3(1) Level 1 expanded function procedures include:

a. Taking occlusal registrations;

b. Placement and removal of gingival retraction material;

c. Fabrication, temporary cementation, and removal of provisional restorations following review of the fit and function by the supervising dentist, and temporary recementation of provisional restorations;

d. Applying cavity liners and bases and desensitizing agents;

e. Applying bonding systems, which may include the placement of the attachments used in clear aligner systems, following review of the fit and function by the supervising dentist;

f. Placement, bonding, and removal of provisional orthodontic restorations as follows:

(1) Placement or bonding of orthodontic brackets and bands or provisional orthodontic appliances following review of the fit and function by the supervising dentist; and

(2) Removal of adhesive, orthodontic brackets and bands, or provisional orthodontic appliances using nonmotorized hand instrumentation;

g. Taking final impressions for fixed restorations or dental prosthetics;

h. Placement of temporary restorative materials following preparation of the tooth by a dentist;

i. Extraoral adjustment to acrylic dentures without making any adjustments to the prosthetic teeth;

j. Tissue conditioning (soft reline only); and

k. Placement, management, and removal of an intravenous (IV) infusion line for moderate sedation, deep sedation, or general anesthesia. Placement of an IV may include the administration of saline. Placement of an IV does not include the administration of any drugs or medications.

577.3(2) The following procedures are Level 1 expanded functions only for dental assistants, and are within the scope of practice for dental hygienists:

a. Monitoring of patients receiving nitrous oxide inhalation analgesia, which may include increasing oxygen levels as needed, pursuant to the following:

(1) A dentist shall induce a patient and establish the maintenance level;

(2) A dental assistant may make adjustments that decrease the nitrous oxide concentration during the administration of nitrous oxide; and

(3) A dental assistant may turn off the oxygen delivery at the completion of the dental procedure.

b. Removal of adhesives using nonmotorized hand instrumentation.

481—577.4(153) Level 2 expanded function procedures for dental hygienists and dental assistants.

577.4(1) Level 2 expanded function procedures for dental hygienists and dental assistants include:

a. Placement and shaping of amalgam following preparation of a tooth by a dentist;

b. Placement and shaping of adhesive restorative materials following preparation of a tooth by a dentist;

c. Polishing of adhesive restorative material using a slow-speed handpiece; and

d. Fitting of stainless-steel crowns on primary posterior teeth, and cementation after fit verification by a dentist.

577.4(2) Level 2 expanded function procedures for dental assistants include the placement of sealants. The placement of sealants is included in the scope of practice for dental hygienists and is not considered an expanded function for dental hygienists.

577.4(3) These Level 2 expanded function procedures refer to both primary and permanent teeth except as otherwise noted. Training in Level 2 expanded functions may be separated between application of the services on primary or permanent teeth as determined by the accredited training provider.

481—577.5(153) Expanded function training.

577.5(1) *Approved expanded function training programs.* Training programs for Level 1 and Level 2 expanded function procedures must be board-approved. Training programs for Level 2 expanded function procedures are limited to the University of Iowa College of Dentistry or another accredited school.

577.5(2) *Certificates of completion.* All board-approved training programs are authorized and required to issue certificates to dental hygienists and dental assistants who successfully complete expanded function training. A certificate shall be issued for one or more of the expanded function procedures completed. Dental hygienists and dental assistants shall prominently display the expanded functions certificate in each dental facility where services are provided.

577.5(3) *Training.* Training may be completed in one or more of the listed expanded function procedures. Clinical training in expanded function procedures must be completed under observational supervision. Level 1 expanded function training includes the following:

a. An initial assessment to determine the base entry level of all participants;

b. Completion of the minimum standards for each function as specified in this rule; and

c. A postcourse written examination at the conclusion of the training program, with a minimum of ten questions per function. A score of 75 percent or higher is deemed to be a passing score.

577.5(4) *Minimum training standards.* Every expanded function procedure requires the completion of clinical training that includes a minimum of five patient experiences per procedure under observational supervision unless stated otherwise.

a. Taking occlusal registrations. In addition to the required clinical training, a minimum of one hour of didactic training.

b. Placement and removal of gingival retraction material. In addition to the required clinical training, a minimum of two hours of didactic training and the equivalent of one hour of laboratory training that includes three experiences.

c. Fabrication, temporary cementation, temporary recementation, and removal of provisional restorations. A minimum of four hours of didactic training, the equivalent of four hours of laboratory training that includes five experiences, and clinical training that includes a minimum of ten patient experiences under observational supervision.

d. Applying cavity liners and bases and desensitizing agents. In addition to the required clinical training, a minimum of one hour of didactic training and the equivalent of one hour of laboratory training that includes a minimum of two experiences.

e. Applying bonding systems, which may include the placement of the attachments used in clear aligner systems, following review of the fit and function by the supervising dentist. In addition to the required clinical training, a minimum of two hours of didactic training and the equivalent of one hour of laboratory training that includes a minimum of two experiences.

f. Placement, bonding, and removal of orthodontic brackets and bands or provisional orthodontic appliances pursuant to subrule 577.3(6). For each procedure, in addition to the required clinical training, a minimum of two hours of didactic training and the equivalent of one hour of laboratory training that includes a minimum of two experiences.

g. Monitoring of patients receiving nitrous oxide inhalation analgesia, pursuant to paragraph 577.3(13)*"a."* In addition to the required clinical training, a minimum of two hours of didactic training and one hour of laboratory training in the office where the dental hygienist or dental assistant is employed.

h. Taking final impressions. A minimum of three hours of didactic training, and the equivalent of clinical training that includes a minimum of six patient experiences under observational supervision.

i. Removal of adhesives using nonmotorized hand instrumentation. In addition to the required clinical training, a minimum of one hour of didactic training.

j. Placement of temporary restorative materials following preparation of the tooth by the dentist. In addition to the required clinical training, a minimum of two hours of didactic training and the equivalent of one hour of laboratory training that includes a minimum of two experiences.

k. Extraoral adjustment to acrylic dentures without making any adjustments to the prosthetic teeth. In addition to the required clinical training, a minimum of one hour of didactic training and the equivalent of one hour of laboratory training that includes a minimum of two experiences.

l. Tissue conditioning (soft reline only). In addition to the required clinical training, a minimum of one hour of didactic training and the equivalent of one hour of laboratory training that includes a minimum of two experiences.

m. Placement, management, and removal of an IV infusion line for moderate sedation, deep sedation, or general anesthesia. A minimum of 12 hours of didactic training or current Dental Anesthesia Assistant National Certification Examination (DAANCE) certification; and eight hours of laboratory and clinical training that includes a minimum of six venipunctures, two of which are completed on human subjects. Supervision for the clinical experiences shall be completed under the supervision of a dentist with a current sedation or anesthesia permit, or a licensed sedation provider.

577.5(5) *Acceptance of previously completed board-approved training.* Any dental hygienist or dental assistant who previously completed board-approved expanded function training can continue to perform expanded function procedures for which training has been completed and documentation is available. For any expanded function procedures that are new, in whole or in part, additional training to satisfy the minimum training requirement is required of the dental hygienist or dental assistant prior to performing the new expanded function procedure.

These rules are intended to implement Iowa Code chapter 153.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 578 "Prescribing, Administering, and Dispensing Drugs"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 124, 153A, 153.33 and 155A
State or federal law(s) implemented by the rulemaking: Iowa Code section 153.20

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking promulgates Chapter 578 and implements Iowa Code chapter 153 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 153.33 provides that rulemaking authority.

This rulemaking implements Iowa Code section 153.20 by providing Iowans, licensees and their employers with information relevant to the authority and requirements of licensed dentists who are prescribing, administering, or dispensing prescription drugs. This chapter also provides requirements for recordkeeping, labels and containers, and use of the Prescription Monitoring Program (PMP).

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 incurred by the public to comply with this rulemaking, other than a copay if one is required with a prescription. Licensees who prescribe may be required to pay for technology in order to comply with prescription rules. Licensees who are dispensing opioids are also responsible for the cost to register with the federal Drug Enforcement Administration (DEA) and the Iowa Board of Pharmacy.

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

The public will benefit from this rulemaking since it provides guidelines for prescribing, administering and dispensing prescription drugs, providing protection for the licensee and the public. It provides detail as to who licensees can prescribe for, what type of conditions they can prescribe for, and how to document these prescriptions.

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 costs incurred by the public to comply with this rulemaking, other than a copay if one is required with a prescription. Licensees who prescribe may be required to pay for technology in order to comply with prescription rules. Licensees who are dispensing opioids are also responsible for the cost to register with the DEA and the Iowa Board of Pharmacy.

- Qualitative description of impact:

In order to regulate the profession as directed in the Iowa Code, the requirements that have been created to regulate this profession are necessary to protect the public. The 6.0 full-time equivalent (FTE) positions dedicated to this function play a critical role in issuing licenses, conducting investigations, providing administrative support to the Dental Board (Board), monitoring compliance and supporting the board monitoring programs. This work is done with a focus on protecting the health and safety of the public who receive services and/or care from licensed professionals. Due to the state government realignment, boards are evaluating ways to streamline and simplify processes and procedures.

3. Costs to the State:

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

The only cost to the agency to implement and enforce this chapter is the cost to staff personnel to ensure compliance. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all licensing boards. Through the realignment, 31 boards were moved under the Licensing Division within the Department.

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

Professionals who prescribe, administer and dispense drugs are also regulated by the DEA and the Iowa Board of Pharmacy. They are also required to utilize the PMP. This is all in an attempt to provide protection to the public, and a less restrictive alternative is not available.

6. Alternative methods considered by the agency:

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

The Board has not been able to identify any less restrictive alternatives to these rules, which provide specific guidelines for prescribing and dispensing. The DEA and the Iowa Board of Pharmacy also articulate requirements for prescribers and monitor compliance.

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

Professionals who prescribe, administer and dispense drugs are also regulated by the DEA and the Iowa Board of Pharmacy. They are also required to utilize the PMP. This is all in an attempt to provide protection to the public, and a less restrictive alternative is not available.

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 relate to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. While some dental professionals may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 578:

CHAPTER 578
PRESCRIBING, ADMINISTERING, AND DISPENSING DRUGS

481—578.1(153) Scope of authority and prescribing requirements.

578.1(1) A license to practice dentistry issued by this board permits the licensee to prescribe, administer, or dispense prescription drugs if the use is directly within the scope of the dentist-patient relationship. Registration with the federal Drug Enforcement Administration and the board of pharmacy extends this privilege to controlled substances.

578.1(2) A licensed dentist may only prescribe, administer or dispense a prescription drug for a diagnosed dental condition that is included in the treatment plan and entered into the patient record. A dental examination and medical history must be completed and entered into the patient record before a dentist prescribes, administers, or dispenses a prescription drug to a patient. Fluoride may also be dispensed under protocols approved by the dental and oral health program of the department of health and human services.

578.1(3) On each occasion when a dentist prescribes, administers, or dispenses a prescription drug to a patient, the patient's dental record will be updated to include the following information:

a. Name, quantity, and strength of the prescription drug.
b. Directions for its use.
c. Date of issuance.
d. Conditions for which the prescription drug was used.

578.1(4) A dentist may only prescribe, administer, or dispense prescription drugs in accordance with all applicable state and federal laws.

578.1(5) A dentist may only purchase, administer, or dispense controlled substances if the dentist maintains records and accountability in accordance with 481—Chapter 553 and all other applicable state and federal laws.

578.1(6) A dentist cannot self-prescribe or self-administer controlled substances.

578.1(7) A dentist may only prescribe, administer, or dispense controlled substances to members of the licensee's immediate family in the case of an acute dental condition or on an emergency basis for a dental condition after the licensee conducts an examination, establishes a patient record, and maintains proper documentation.

481—578.2(153) Dispensing—requirements for containers and labeling.

578.2(1) *Containers.* A prescription drug shall be dispensed in a suitable container designed to protect its integrity in accordance with all applicable federal and state laws.

578.2(2) *Labeling.* A label shall be affixed to the container in which a prescription drug is dispensed bearing the following information:

a. Name and address of the dentist.

b. Name of the patient.

c. Date dispensed.

d. Directions for use.

e. Name, quantity, and strength of medication.

f. If the prescription drug is a Schedule II, III, or IV controlled substance, the federal transfer warning statement must appear on the label as follows: "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

g. Cautionary statements, if any.

481—578.3(153) Prescription requirements.

578.3(1) A dentist shall take adequate measures to prevent prescription forgery from occurring. Dentists may only transmit prescription drug orders, including prescriptions for controlled substances, electronically unless exempted. A dentist who fails to comply with the electronic prescription mandate may be subject to a nondisciplinary administrative penalty of $250 per violation, up to a maximum of $5,000 per calendar year.

578.3(2) A dentist may delegate to a licensed dental hygienist or registered dental assistant the preparation of a prescription for the review, authorization, and manual or electronic signature of the dentist, but the dentist is responsible for the accuracy, completeness, and validity of the prescription.

578.3(3) A dentist shall securely maintain the unique authentication credentials issued to the dentist for utilization of the electronic prescription application and authentication of the dentist's electronic signature. Unique authentication credentials issued to any individual may not be shared with or disclosed to any other individual.

481—578.4(153) Required use of the prescription monitoring program (PMP).

578.4(1) A dentist may only prescribe or dispense an opioid if the dentist or authorized delegate queries the PMP. The query for each patient may not be performed more than 48 hours prior to each instance of an opioid prescription being authorized, issued, or dispensed.

578.4(2) A dentist who dispenses a controlled substance is required to report the dispensing to the PMP within one business day in accordance with 481—Chapter 556.

These rules are intended to implement Iowa Code section 153.20.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 579
"Sedation and Nitrous Oxide"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 153.33

State or federal law(s) implemented by the rulemaking: Iowa Code sections 153.13, 153.33 and 153.33B

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
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Purpose and Summary

This proposed rulemaking promulgates Chapter 579 and implements Iowa Code chapter 153 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 153.33 provides that rulemaking authority.

This rulemaking implements Iowa Code sections 153.13, 153.33 and 153.33B by providing Iowans, licensees and their employers with information relevant to sedation permits. This chapter provides definitions relevant to the administration of deep sedation, general anesthesia, moderate sedation, minimal sedation, and nitrous oxide inhalation analgesia by licensed dentists or dental hygienists. This chapter provides information relevant to training, requirements for the facility, patient evaluations, supervision requirements, permittable levels of sedation, reporting adverse reactions and requirements for obtaining a permit.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are often costs associated with licensing and practice standards, since there is often time, effort and money associated with compliance, as is true for any service-oriented industry. Members of

the public would have costs associated with the services they are seeking to receive, which may include an office visit payment or copayment. Licensees would be responsible for the necessary training, the cost of the permit and the continuing education needed to renew this biennially. The licensees are also responsible for the cost of necessary staff and required equipment. The Dental Board does not have a mechanism for estimating what these total costs might be to the public and to the licensee.

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

The benefit to the public is being achieved since the chapter provides guidelines for the administration of sedation and anesthesia for licensees, therefore providing protection for the licensee and 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:

There are often costs associated with licensing and practice standards, since there is often time, effort and money associated with compliance, as is true for any service-oriented industry. Members of the public would have costs associated with the services they are seeking to receive, which may include an office visit payment or copayment. Licensees would be responsible for the necessary training, the cost of the permit and the continuing education needed to renew this biennially. The licensees are also responsible for the cost of necessary staff and required equipment.

- Qualitative description of impact:

There are approximately 2,500 licensees who administer sedation or anesthesia to Iowans. The Board believes that the costs are justified by the benefits achieved because the rules provide required guardrails for providing sedation safely to Iowans. If this was not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board because it could cause more adverse reactions or even deaths.

3. Costs to the State:

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

Costs to the agency are for the staff time needed to manage Board activities, which includes oversight of practice standards and requirements for permits. The time needed to manage this provision is generally in the form of responding to questions related to practice standards, processing permit applications and conducting meetings of the Anesthesia Credential Committee to approve these applications. It takes roughly 6.0 full-time equivalent (FTE) positions to support the work of this Board. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

This rule has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The Board has not identified a more cost-effective alternative to the current process. Sedation requires adequate training and skill and careful monitoring to ensure the safety of Iowans. Licensees with this permit require ongoing monitoring for compliance and meeting practice standards.

The Department’s Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rule edits support this effort.

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

The Board has not identified a more cost-effective alternative to the current process. Sedation requires adequate training and skill and careful monitoring to ensure the safety of Iowans. Licensees with this permit require ongoing monitoring for compliance and meeting practice standards. If this was not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board because it could cause more adverse reactions or even deaths.

6. Alternative methods considered by the agency:

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

The Board has not identified a less restrictive alternative to permitting those who provide sedation. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Requirements could be reduced or eliminated for the purpose of lowering the bar to be permitted, but the Board would be concerned about the public safety of Iowans in that scenario.

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

There are approximately 2,500 licensees who administer sedation or anesthesia to Iowans. The Board believes that the costs are justified by the benefits achieved because the rules provide required guardrails for providing sedation safely to Iowans. If this were not regulated, it could mean that lower-skilled individuals would provide this service to Iowans, which would be of concern to the Board because it could cause more adverse reactions or even deaths.

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 relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of licensing requirements for dentists and dental hygienists. While some dentists and dental hygienists likely are running a small business of their own, some also work for large corporations, hospitals, and other medical facilities. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to small businesses.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 579:

CHAPTER 579
SEDATION AND NITROUS OXIDE

481—579.1(153) Nitrous oxide inhalation analgesia.

579.1(1) A dentist may use nitrous oxide inhalation analgesia on an outpatient basis for dental patients provided the dentist has completed training and complies with the following:

a. Has adequate equipment with fail-safe features.

b. Has inspection and maintenance performed on equipment as needed to ensure its proper performance, maintains documentation of such, and provides the documentation to the board upon request.

c. Ensures the patient is continually monitored by a patient monitor while receiving nitrous oxide inhalation analgesia.

579.1(2) A dentist shall provide direct supervision of the administration and monitoring of nitrous oxide and establish a written office protocol for taking vital signs, adjusting anesthetic concentrations, and addressing emergency situations that may arise. The dentist is responsible for the dismissal of the patient following completion of the procedure.

579.1(3) A dental hygienist may administer and monitor nitrous oxide inhalation analgesia when the services have been prescribed by a dentist and the hygienist has completed board-approved training.

579.1(4) A dental assistant who has completed a board-approved expanded function course or holds a current Dental Anesthesia Assistant National Certification Examination (DAANCE) certification may monitor a patient who is receiving nitrous oxide after the dentist has induced the patient and established the maintenance level. A dental assistant may make adjustments to decrease the nitrous oxide concentration while monitoring the patient or may turn off oxygen delivery at the completion of the dental procedure.

481—579.2(153) Minimal sedation standards.

579.2(1) A dentist shall evaluate a patient prior to the start of any sedative procedure. In healthy or medically stable patients (ASA I, II), the dentist should review the patient's current medical history and medication use. For a patient with significant medical considerations (ASA III, IV), a dentist may need to consult with the patient's primary care provider or consulting medical specialist. A dentist may only provide minimal sedation after obtaining informed consent from the patient or the patient's parent or legal guardian.

579.2(2) Minimal sedation for ASA I or II nonpediatric patients.

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

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

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

579.2(3) Minimal sedation for ASA III, ASA IV or pediatric patients.

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

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

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

481—579.3(153) Shared standards for moderate sedation, deep sedation and general anesthesia.

579.3(1) A dentist may only administer moderate sedation, deep sedation or general anesthesia if the dentist holds a current moderate sedation permit or general anesthesia permit pursuant to rule 481—572.11(153).

579.3(2) A dentist administering sedation anesthesia must maintain current advanced cardiac life support (ACLS) certification. A dentist administering moderate sedation to pediatric patients may maintain current pediatric advanced life support (PALS) certification in lieu of current ACLS certification.

579.3(3) A dentist may only start a sedative procedure after evaluating a patient. A dentist should review a patient's medical history, medication(s) and NPO (nothing by mouth) status. For a patient with significant medical considerations (ASA III, IV), a dentist may need to consult with the patient's primary care provider or consulting medical specialist. The dentist should consult the body mass index as part of the preprocedural workup.

579.3(4) A dentist may only administer sedation or anesthesia if the following requirements are met:

a. Facilities are appropriately staffed to reasonably handle emergencies;

b. A patient monitor remains present in the treatment room to continually monitor the patient until the patient returns to a level of minimal sedation;

c. The dentist provides postoperative verbal and written instructions to the patient and caregiver prior to discharging the patient;

d. The dentist remains in the facility until the patient meets the criteria for discharge;

e. The dentist or another designated permit holder or licensed sedation provider is available for appropriate postoperative aftercare for a minimum of 48 hours following the administration of sedation; and

f. The dentist establishes emergency protocols that comply with the following:

(1) Establishment of a procedure for immediate access to backup emergency services;

(2) Employment of initial life-saving measures by a patient monitor in the event of an emergency, including activation of the emergency medical service (EMS) system for life-threatening complications;

(3) Avoidance of chest or airway obstruction when applying an immobilization device and allowance for the ongoing exposure of a hand or foot; and

(4) Availability of a functioning suction apparatus as well as the ability to provide >90% oxygen and positive-pressure ventilation, along with age- and size-appropriate rescue equipment in the recovery room for pediatric patients.

481—579.4(153) Moderate sedation standards.

579.4(1) Moderate sedation for ASA I or II nonpediatric patients.

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

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

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

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

e. A dentist may only administer drug(s) or techniques, or both, provided there is a margin of safety wide enough to render unintended loss of consciousness unlikely.

579.4(2) Moderate sedation for ASA III, ASA IV or pediatric patients. A dentist who does not meet the requirements of 481—subparagraph 573.11(1)*"b"*(3) may not administer moderate sedation, deep sedation or general anesthesia to pediatric or ASA III or IV patients. The following constitute moderate sedation:

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

b. The administration of any intravenous drug.

579.4(3) A dentist may administer moderate sedation in a facility provided the following requirements are met:

a. Have at least one patient monitor observe the patient while the patient is under moderate sedation; and

b. Utilize capnography or a pretracheal/precordial stethoscope as stipulated below:

(1) Use capnography to monitor end-tidal carbon dioxide unless the use of capnography is precluded or invalidated by the nature of the patient, procedure or equipment.

(2) In cases where the use of capnography is precluded or invalidated for the reasons listed previously, a pretracheal or precordial stethoscope must be used to continually monitor the auscultation of breath sounds.

481—579.5(153) Deep sedation or general anesthesia standards.

579.5(1) The administration of anesthetic sedative agents intended for deep sedation or general anesthesia, including but not limited to Propofol, Ketamine and Dilaudid, is deemed to constitute deep sedation or general anesthesia.

579.5(2) A dentist may administer deep sedation or general anesthesia provided the following requirements are met:

a. Have at least two patient monitors observe the patient while the patient is under deep sedation or general anesthesia;

b. Utilize capnography and a pretracheal/precordial stethoscope; and

c. If the dentist has a recovery area separate from the operatory, the recovery area has oxygen and suction equipment.

481—579.6(153) Training and certification requirements for patient monitors. Patient monitors must be capable of administering emergency support and complete training as required by this rule.

579.6(1) Patient monitors who will observe patients receiving deep sedation or general anesthesia must comply with one of the following:

a. Have a current certification in ACLS or PALS or have a current DAANCE certification.

b. Have successfully completed expanded function training in the placement, management and removal of an intravenous (IV) infusion line for moderate sedation, deep sedation or general anesthesia pursuant to 481—Chapter 577.

c. Have successfully completed training in the area of assistance in dental anesthesia in conjunction with a moderate sedation continuing education course approved by the anesthesia credentials committee (ACC).

579.6(2) A patient monitor who will only observe patients receiving moderate sedation may meet one of the requirements listed in subrule 579.6(1) or complete on-site training for a minimum of three hours in airway management that provides the knowledge and skills necessary to competently assist with emergencies, including but not limited to recognizing apnea and airway obstruction.

481—579.7(153) Recordkeeping requirements for nitrous oxide, sedation or anesthesia. In addition to the recordkeeping requirements specified in rule 481—574.9(153,272C), the patient record must include the following information as applicable when administering nitrous oxide, sedation or anesthesia.

579.7(1) The concentration of nitrous oxide administered; dosage of medication administered, including any prescription for at-home unmonitored use, if applicable; duration of administration; and vital signs taken.

579.7(2) When administering moderate sedation, deep sedation or general anesthesia, a time-oriented anesthesia record that contains preoperative and postoperative vital signs; the names of all drugs administered, including local anesthetics and nitrous oxide, dosages, anesthesia time in minutes, and monitors used; and monitored physiological parameters, including oxygenation, ventilation, and

circulation. When administering deep sedation or general anesthesia, pulse oximetry, heart rate, respiratory rate, and blood pressure must be recorded continually until the patient is fully ambulatory.

579.7(3) When administering moderate sedation, deep sedation or general anesthesia, the record should include the name of the person to whom the patient was discharged.

481—579.8(153) Facility and equipment requirements for moderate sedation, deep sedation or general anesthesia.

579.8(1) A permit holder shall notify the board office in writing within 60 days of a change in location or the addition of a sedation facility.

579.8(2) A dentist may only administer moderate sedation or anesthesia in a facility that is permanently and properly equipped. A dentist is required to be trained in and maintain, at a minimum, the following equipment:

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

579.8(3) The board or its designated agents may conduct facility inspections. A facility inspection may be required before a sedation permit is issued or before sedation services are provided at a new or updated facility. The actual costs associated with the on-site evaluation of the facility are the primary responsibility of the licensee. The cost to the licensee will not exceed the fee specified in 481—Chapter 571.

481—579.9(153) Use of another licensed sedation provider or permit holder.

579.9(1) A dentist may only use the services of a licensed sedation provider or another permit holder to administer moderate sedation, deep sedation or general anesthesia in a dental facility if the following requirements are met:

a. The dentist holds a current moderate sedation or general anesthesia permit. A permit holder who does not meet the training requirement to administer moderate sedation to pediatric or ASA III or IV patients as stipulated in 481—subparagraph 572.11(1)*"b"*(3) may use another licensed sedation provider or qualified permit holder to administer moderate sedation to pediatric or ASA III or IV patients.

b. The dentist remains present in the treatment room for the duration of any dental treatment.

c. The facility is a permanently and properly equipped facility pursuant to the provisions of this chapter.

d. The permit holder assesses the need and patient suitability for sedation services. A permit holder may not interfere with any independent assessment performed by a licensed sedation provider.

579.9(2) When a licensed sedation provider or another permit holder is used to administer moderate sedation, deep sedation or general anesthesia, that provider constitutes one patient monitor for the purpose of complying with rule 481—579.6(153).

579.9(3) A dentist who does not hold a sedation permit is prohibited from using a licensed sedation provider or permit holder to provide moderate sedation, deep sedation or general anesthesia.

481—579.10(153) Advertising. A dentist will ensure that any advertisements related to the availability of antianxiety premedication or minimal sedation clearly reflect the level of sedation provided and are not misleading.

481—579.11(153) Noncompliance. Violations of the provisions of this chapter may result in disciplinary measures as deemed appropriate by the board.

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

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 580
"Dental Board Complaints and Investigations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147.76, 153.33 and 272C

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A and sections 153.33, 272C.3 and 272C.4

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking promulgates Chapter 580 and implements Iowa Code chapters 147 and 153 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code sections 147.76 and 153.33 provide that rulemaking authority.

This rulemaking implements Iowa Code chapter 17A and sections 153.33, 272C.3 and 272C.4 by ensuring the public and licensees are aware of the complaint and investigation process and understand their rights and responsibilities during this process. This chapter sets forth information regarding complaints and investigations against licensees. The chapter also provides information regarding the process for submitting a complaint, reporting requirements for licensees, information on the investigative process, information regarding the issuance of investigatory subpoenas, peer review committees, and Dental Board appearances.

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 direct cost to the public. There is a cost to licensees in the form of licensing application and renewal fees (as described in other chapters), which in turn gives the Board the ability to hire staff that investigate cases.

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

These rules provide the public and licensees with information to ensure that they understand their responsibilities and rights around complaints and investigations. This chapter provides licensees with needed information about the process, enabling them to make reports if necessary and understand how to address the receipt of a subpoena for records. The investigative process permits the Board to gather needed information to determine whether a violation has occurred. This is the primary mechanism boards have to protect 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:

There is no direct cost to the public. There is a cost to licensees in the form of licensing application and renewal fees (as described in other chapters), which in turn gives the Board the ability to hire staff that investigate cases.

- Qualitative description of impact:

The Board believes that the costs are justified by the benefits achieved. The purpose of investigations and complaints is to address allegations against licensees, enabling the Board to make informed decisions regarding that licensee. Eliminating complaints and investigations would cause harm to the public by allowing licensees' negative actions to go unchecked.

3. Costs to the State:

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

Costs to the agency are for the staff time needed to manage Board activities, including complaints and investigations. The time needed to manage this provision is generally in the form of written and verbal correspondence with licensees, complainants and other pertinent parties; issuing subpoenas; gathering records; conducting interviews as needed; and authoring investigative reports. There is 1.0 full-time equivalent (FTE) position assigned to investigate complaints, with support from executive officers and administrative staff. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The purpose of investigations and complaints is to address allegations against licensees, enabling the Board to make informed decisions regarding that licensee. Eliminating complaints and investigations would cause harm to the public by allowing licensees' negative actions to go unchecked.

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

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all licensing boards. Through the state government realignment, 31 boards were moved under the Licensing Division within the Department. This provides a greater opportunity to assess the manner in which each board operates and to identify best practices. Through this process, the Department has identified that there are differences in the way the boards operate. Discrepancies are being discussed, with a focus on consistency and best practice, which may assist with identifying less restrictive alternatives in the future.

6. Alternative methods considered by the agency:

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

The Board has not identified a less restrictive alternative to the complaints and investigative process that Iowa follows. The process is similar in most states. The Board believes this process ensures public safety and ensures that a minimum competency of care is provided to Iowans.

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

The licensing boards' ultimate goal is ensuring public safety and welfare. The purpose of this rulemaking is to allow a method for the public to bring complaints against licensed professionals and allow the boards to investigate complaints. The boards need the ability to investigate complaints, gather information and make informed decisions on whether a rule has been violated. Without this process, acts detrimental to the public will go unchecked and ultimately harm the public.

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 relate to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. While some dental professionals may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 580:

CHAPTER 580
DENTAL BOARD COMPLAINTS AND INVESTIGATIONS

481—580.1(147,153,272C) Complaint review. Pursuant to Iowa Code sections 147.87, 153.33, 272C.3 and 272C.4, the board shall, upon receipt of a complaint or upon its own motion, review and investigate alleged acts or omissions that the board reasonably believes constitute cause under applicable law or administrative rule for licensee or registrant discipline. Pursuant to Iowa Code section 153.33A, all complaints regarding the practice of dental hygiene will be initially directed to the dental hygiene committee.

481—580.2(153) Form, content and submission of complaints.

580.2(1) Complaints should be filed with department staff associated with the board. Complaints may be filed via the board's online database or via complaint form by email, by fax, by mail, or in person. Contact information for the board is available on the department's website.

580.2(2) A written complaint should include the following facts:

a. The full name and contact information of the complainant.

b. The full name, address, or contact information of the licensee or registrant against whom the complaint is filed.

c. A statement of the facts concerning the alleged acts or omissions.

481—580.3(153) Investigation. Pursuant to Iowa Code sections 147.87, 147.88, 153.33, 272C.3 and 272C.4, the board may authorize department staff to investigate the allegations of a complaint to determine whether probable cause exists.

481—580.4(17A,153,272C) Investigatory subpoenas. Pursuant to Iowa Code sections 17A.13(1), 153.33(3)*"d"* and 272C.6(3), the board has the authority to issue an investigatory subpoena to compel the production of evidence deemed necessary in connection with the investigation of a complaint. A subpoena issued by the board in connection with such investigation may compel the production of evidence whether or not it is privileged or confidential under law. The board may not compel the types of evidence stipulated in Iowa Code section 272C.6(3)*"a"*(2).

580.4(1) The executive director or designee may, upon the written request of a board investigator or on the director's own initiative, issue a subpoena in accordance with Iowa Code sections 17A.13(1), 153.33(3)*"d"* and 272C.6(3). In the case of a subpoena, when seeking access to mental health records, all of the following conditions shall be satisfied prior to the issuance of the subpoena:

a. The nature of the complaint reasonably justifies the issuance of a subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

580.4(2) A written request for a subpoena or the director's written memorandum in support of the issuance of a subpoena shall contain all of the following:

a. The name and address of the person to whom the subpoena will be directed;

b. A specific description of the books, papers, records or other real evidence requested;

c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should initiate a contested case proceeding; and

d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 580.4(1) have been satisfied.

580.4(3) Each subpoena shall contain all of the following:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production or inspection and copying;

d. The time within which a motion to quash or modify the subpoena must be filed;

e. The signature, address and contact information of the executive director or designee who issued the subpoena;

f. The date of issuance; and

g. A return of service attached to the subpoena.

580.4(4) Any person who is aggrieved or adversely affected by compliance with 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.

580.4(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may conduct a hearing on the matter and issue a decision, or refer such hearing and decision to an administrative law judge to conduct a hearing and issue a decision.

a. Oral argument may be scheduled at the discretion of the board or the administrative law judge.

b. Following the conclusion of such hearing, the board or administrative law judge shall issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

580.4(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving a notice of appeal within ten days of the date of service of the decision of the administrative law judge on the executive director, either in person or by certified mail.

580.4(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either the person is notified the investigation has been concluded with no formal action, or there is a final decision in the contested case.

481—580.5(153) Board appearances. The board may request a licensee or registrant to appear before the board to discuss a pending investigation. By electing to participate in the board appearance, the licensee or registrant waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds of a personal investigation and a combination of investigative and adjudicative functions. If the executive director or designee participates in the appearance, the licensee or registrant further waives any objection to having the executive director or designee assist the board in the contested case proceeding.

481—580.6(153) Peer review. Pursuant to Iowa Code section 272C.3(1)*"i,"* the board may refer a complaint for peer review, investigation and report by another licensee, another registrant or a committee established by the board for such purpose.

580.6(1) The board shall determine which licensee, registrant, or peer review committee will review a case involving a dentist or dental assistant. The dental hygiene committee shall make such determinations in a case involving a dental hygienist. Peer reports and recommendations will be forwarded to the dental hygiene committee for further review and decision making.

580.6(2) The board or dental hygiene committee may request that the Iowa dental association, the Iowa dental hygienists' association and the Iowa dental assistants association assist in the composition of a peer review committee as needed.

580.6(3) Pursuant to Iowa Code sections 147.135, 272C.8 and 272C.9 and rule 481—580.11(147,272C), licensees or registrants who serve as peer reviewers shall not be liable for acts, omissions or decisions made in connection with such service.

481—580.7(272C) Duties of peer review committees.

580.7(1) A licensee or registrant who serves as a peer reviewer shall comply with the requirements imposed by Iowa Code sections 22.7 and 272C.6 and rule 481—580.9(272C).

580.7(2) The board may provide investigative and related services to designated peer reviewers.

580.7(3) Designated peer reviewers shall thoroughly investigate a complaint as assigned and provide a written report to the board in accordance with the board's direction. The peer review shall comply with all of the following:

a. Include a peer review report that contains a statement of facts and a recommendation as to whether a violation of the standard of care occurred, with consideration given to relevant statutes, board rules, ethical standards and standards of care in making its recommendations.

b. Include in the report the signature of each peer reviewer that participated in the investigation. In the case of dissension by a peer reviewer, the dissension should be noted in the report.

c. Submit the peer review report and all investigative information to the board upon completion.

481—580.8(272C) Board review. The board shall review all investigative reports and proceed pursuant to 481—Chapter 506.

481—580.9(272C) Confidentiality of investigative files.

580.9(1) Complaint and investigation files, all other investigation reports and all other information in the possession of the board or peer reviewers acting under the authority of the board, its employees or its agents that relate to licensee or registrant discipline shall be subject to all of the following:

a. Are privileged and confidential;

b. Are not subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee or registrant and the board, its employees and its agents that are involved in licensee or registrant discipline; and

c. Are not admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee or registrant discipline.

580.9(2) A final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

481—580.10(272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers, licensees or registrants involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of complaints.

481—580.11(147,272C) Immunities.

580.11(1) Pursuant to Iowa Code sections 147.135, 272C.8 and 272C.6(3)*"b,"* a person shall not be civilly liable in relation to the following:

a. Filing a report or complaint with the board;

b. Disclosing to the board, its agents or employees, whether or not pursuant to a subpoena, records, documents, testimony or other forms of information that constitute privileged matter concerning a recipient of health care services or some other person;

c. Serving in connection with proceedings of a peer review; and

d. Serving in connection with other authorized duties of the board.

580.11(2) Immunity from civil liability shall not apply if the act is done with malice.

These rules are intended to implement Iowa Code chapter 17A and sections 153.33, 272C.3 and 272C.4.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 581
"Dental Board Discipline"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.76 and 153.33

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 147, 153, 252J and 272C

Public Hearing

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

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Purpose and Summary

This proposed rulemaking promulgates Chapter 571 and implements Iowa Code chapters 147 and 153 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code sections 147.76 and 153.33 provide that rulemaking authority.

This rulemaking implements Iowa Code chapters 147, 153, 252J and 272C by providing protection to Iowans because it publicly defines required professional standards for those licensed under the Dental Board. This is important to both the public and the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against the licensee's license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. Licensees may be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at $10,000.

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

The intended benefit of this rulemaking is to ensure public safety and maintain a high level of care for Iowans. The public is undoubtedly the class most benefited by disciplinary regulation. In order to regulate the professions as directed in statute, disciplinary authority and action are crucial to protecting the public safety. Discipline ensures corrective action of licensees not abiding by requirements established to reduce harm to the public. Licensees also benefit from disciplinary measures because those measures ensure that all members of the profession are providing high-quality care and services.

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:

Discipline allows for action to be taken against licensees found to have violated the requirements of the licensee's profession. A board may impose a civil penalty against a licensee for violation of board rules. Civil penalties are set by statute and capped at a certain amount depending on the profession. Additionally, licensees may incur legal costs for representation during the disciplinary proceedings and costs to correct the violating behavior, such as evaluations or additional education on a particular subject matter.

- Qualitative description of impact:

These boards regulate professionals utilizing skills that could harm the public if not regulated. The boards need to have a method to initiate disciplinary proceedings when a licensee violates a board's rules and puts the public safety and welfare at risk.

3. Costs to the State:

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

Costs to the agency are for the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints, the act of investigating a case, and preparing the cases for Board review. An executive officer supports the full scope of work of this Board at approximately 0.5 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees on items such as practice standards, continuing education, and board meeting administration. There is also 1.0 FTE position for an investigator for this Board and approximately 1.5 FTE positions for administrative staff. Compared to other larger boards, costs specific to managing complaints and investigations are significantly less for this Board. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

This rule has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund.

During disciplinary proceedings, the boards bring in an Administrative Law Judge to preside over the hearing. Administrative Law Judges are paid by the State of Iowa. The boards do not have data on the salary or annual cost of the Administrative Law Judge's services for the boards.

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

The boards believe the costs associated with this rulemaking are justified by the benefits being achieved. In order to regulate the profession as directed in statute, the boards need the authority to discipline licensees and act on complaints of rule violations in order to protect the public and ensure the public's safety and well-being. Discipline ensures corrective action of licensees who are not

abiding by requirements established to reduce harm to the public. The boards believe inaction in the area of discipline would create a situation where incompetent practitioners are serving the public. Incompetency could lead to serious harm for the public.

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

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive dental care from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The boards considered options of reducing or eliminating grounds for discipline, but the boards believe that these requirements are important in order to ensure high-quality services for all Iowans.

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

The boards are tasked with regulating the professions as directed in statute. Reducing or eliminating the grounds for discipline would leave the public at risk of harm from incompetent practitioners.

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 relate to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. While some dental professionals may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 581:

CHAPTER 581
DENTAL BOARD DISCIPLINE

481—581.1(147,153,272C) Authority and methods of discipline.

581.1(1) The board has the authority to impose discipline pursuant to Iowa Code title IV, Iowa Code chapter 272C, Iowa Code sections 147.55 and 153.34, and the rules promulgated thereunder.

581.1(2) The board may impose one or more methods of disciplinary action in accordance with Iowa Code sections 153.34 and 272C.3(2).

481—581.2(153,272C) Discretion of the board. The board may consider the following factors in determining the nature and severity of the disciplinary action to be imposed in accordance with Iowa Code section 272C.15:

1. The relative seriousness of the violation as it relates to ensuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating circumstances or other countervailing considerations.
4. Number of prior violations or complaints.
5. Seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee or registrant.

481—581.3(147,153,272C) Grounds for discipline. Violations of the provisions of Iowa Code chapter 272C and sections 147.55, 153.32, 153.34 and 272C.15 and other applicable sections of Iowa law shall constitute grounds for the imposition by the board of disciplinary action pursuant to rule 481—581.1(147,153,272C). This rule is not subject to waiver pursuant to 481—Chapter 6 or any other provision of law.

581.3(1) The following violations related to notification, compliance and other state laws constitute grounds for disciplinary action:

a. Failure to comply with the requirements of 481—Chapter 584, except as otherwise provided by law;

b. Failure to preserve the confidentiality of patient information or accessing any confidential patient information without authorization;

c. Practice of dentistry, dental hygiene or dental assisting beyond training;

d. Delegation of any acts to any licensee or registrant that are beyond the training or education of the licensee or registrant, or that are otherwise prohibited by rule;

e. Failure to comply with requirements related to prescribing, administering or dispensing any drug pursuant to Iowa Code chapter 124, the provisions of Iowa Code chapter 155A that are applicable to the practice of dentistry, and 481—Chapter 578;

f. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to, a patient or a coworker;

g. Actions that are abusive, coercive, intimidating, harassing, untruthful or threatening in the practice of dentistry; or

h. Failure to comply with an order of the board.

581.3(2) The following violations related to infection control constitute grounds for disciplinary action:

a. Failure to maintain adequate safety and sanitary conditions for a dental office; or

b. Failure to comply with standard precautions for preventing and controlling infectious diseases and managing personnel health and safety concerns related to infection control, as required or recommended for dentistry by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services and the Iowa occupational safety and health administration.

581.3(3) Violations related to continuing education constitute grounds for disciplinary action:

a. Failure to respond to the board during a continuing education audit, or failure to submit verification of continuing education requirements within the time period provided;

b. Knowingly submitting a false report of continuing education; or

c. Failure to meet the required continuing education hours per renewal period.

581.3(4) Violations related to board investigations constitute grounds for disciplinary action:

a. Interference with, or knowingly providing false information to the board or an agent of the board related to, an inspection or investigation;

b. Failure to comply with a subpoena issued by the board;

c. Failure to fully and promptly comply with office inspections conducted at the request of the board to determine compliance with sanitation and infection control standards or sedation permit requirements;

d. Failure to cooperate with a board investigation; or

e. Retaliating against, threatening or coercing any person for filing a complaint with the board or cooperating with a board inspection or investigation.

581.3(5) The following violations may constitute grounds for disciplinary action:

a. Failure to notify the board of change of name or address within 60 days;

b. Failure to prominently display the names of all persons who are practicing dentistry, dental hygiene or dental assisting within an office; or

c. Giving or receiving cash or cash equivalents, or giving or receiving any gifts exceeding nominal value, for referral of patients.

481—581.4(272C) Prohibited grounds for discipline. The board shall not suspend or revoke the license of a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

These rules are intended to implement Iowa Code chapters 147, 153, 252J, 272C and 598.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapters 880, 885, and 895
"Behavioral Health Professionals Licensing"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 154B, 154C, 154D and 272C

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154B, 154C, 154D and 272C

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.	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/mku-itia-ciq Or dial: 1.573.342.3106 PIN: 861 856 486#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed chapter sets minimum standards for entry into the professions of mental health counselors, marital and family therapists, behavior analysts, assistant behavior analysts, social workers, and psychologists. Iowa residents, licensees and employers benefit from the chapter because it articulates the processes by which individuals apply for licensure as a behavioral health professional in the state of Iowa, as directed in statute. This includes the processes for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering these professions has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

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 known direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the

licensee. The fee for initial licensure is $120. Iowa's initial licensure application process is similar to those implemented by other state boards of behavioral science. The application fees vary by state, however.

Initial Licensure Fees

License Type	Iowa	MN	WI	IL	MO	KS	NE	SD	ID	AZ
Mental Health Counselor	$120	$433	$77	$100	$100	$150	$205	$225	$100	$250
Marriage and Family Therapist	$120	$433	$77	$100	$100	$150	$205	$225	$100	$250
Behavior Analyst	$120	N/A	$60	N/A	$150	$120	N/A	$650	$450	$350
Psychologist	$120	$800	$60	$50	$150	$175	$183	$300	$150	$350
Bachelor of Social Work	$120	$108.25	$60	$50	$70	$100	$125	$130	$70	$250
Master of Social Work	$120	$108.25	$60	$50	$70	$150	$205	$170	$70	$250
Independent Social Worker	$120	$108.25	$60	$50	$70	$200	$205	$210	$70	$250

Renewal Fees

License Type	Iowa 2yr	MN	WI 2 years	IL 2 years	MO 2 years	KS 2 years	NE 2 years	SD	ID 1 year	AZ 2 years
Mental Health Counselor	$120	$250 1 year	$60	$60	$175	$125	$205	$225 2 years	$120 1 year	$250
Marriage and Family Therapist	$120	$250 1 year	$60	$60	$175	$125	$205	$225 2 years	$120 1 year	$250
Behavior Analyst	$120	N/A	$59	N/A	$150	$120	N/A	$350 1 year	N/A	$500
Psychologist	$170	$500 2 years	$60	$80	$150	$150	$183	$300 1 year	$250 1 year	$500
Bachelor of Social Work	$72	$115 2 years	$60	$60	$65	$50	$125	$130 2 years	$90 2 years	$250
Master of Social Work	$120	$210 2 years	$60	$60	$65	$75	$125	$170 2 years	$90 2 years	$250
Independent Social Worker	$144	$335 2 years	$60	$60	$65	$100	$125	$210 2 years	$90 2 years	$250

The licensee would also have costs related to educational requirements and examination requirements. The Board of Behavioral Health Professionals has not identified an exact cost of education for these professions because the cost varies depending on the school the licensee chooses to attend to meet those requirements. Examination costs are consistent across states with a national examination. The fee for the mental health counselor examination is $275, the marriage and family therapy examination is $365, the behavior analyst examination is $350, the bachelor- and master-level social work examination is $230, the independent-level social work examination is $260, and the psychology examination is $600.

Board staff review applications for initial and renewal licenses, answer inquiries on licensing, and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 1.0 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The public and professionals benefit from the proposed chapter. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to 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:

Educational institutions provide the academic training for mental health counselors, marital and family therapists, behavior analysts, and assistant behavior analysts to obtain their license in the state of Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the examination. Because the cost of education is so variable depending on the institution the person attends, the Board is unable to put an exact cost on the cost of education or examination preparation.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would be increasing the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

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

Costs to the agency are for the staff time needed to manage Board activities, which include managing applications for initial licenses, renewals and reinstatements. Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 1.0 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of mental health counselors, marital and family therapists, behavior analysts, social workers, and psychologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

The surrounding states all require similar licensing procedures for mental health counselors, marital and family therapists, behavior analysts, social workers, and psychologists.

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

The Board has not identified a more cost-effective alternative to the licensure of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure of mental health counselors, marital and family therapists, behavior analysts, social workers, and psychologists in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government realignment, this Board is now part of the Department. The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The updates to this chapter support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the licensure of mental health counselors, marital and family therapists, behavior analysts, social workers, and psychologists. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to licensure requirements, which makes obtaining licensure in multiple states simpler for applicants.

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

The Board has not identified a more cost-effective alternative to the licensure of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the chapter provides consistency related to the licensure in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to the state government realignment, this Board is now part of the Department. The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The updates to this chapter support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

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 relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts. While some mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts likely are running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 880:

CHAPTER 880
BEHAVIORAL HEALTH PROFESSIONALS LICENSING

481—880.1(148,154B,154C,154D) Definitions.

"Active license" means a license that is current and has not expired.

"AMFTRB" means the Association of Marital and Family Therapy Regulatory Boards.

"ASPPB" means the Association of State and Provincial Psychology Boards.

"ASWB" means the Association of Social Work Boards.

"BACB" means the Behavior Analyst Certification Board.

"Board" means the board of behavioral health professionals.

"CCE" means the Center for Credentialing and Education, Inc.

"Course" means three graduate semester credit hours.

"Certified health service provider in psychology" means a person who works in a clinical setting, who is licensed to practice psychology and who has a doctoral degree in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"NBCC" means the National Board for Certified Counselors.

"Provisional license" means a license issued to a person who is completing a predoctoral internship or postdoctoral residency under supervision in order to satisfy the requirements for licensure.

"Reactivate" or *"reactivation"* means the process as outlined in rule 481—880.11(272C) and 481—880.14(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in rule 481—506.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

"Temporary license" means a license to practice marital and family therapy or mental health counseling under direct supervision of a qualified supervisor as determined by the board by rule to fulfill the postgraduate supervised clinical experience requirement in accordance with this chapter.

481—880.2(154B,154C,154D) License requirements.

880.2(1) *Requirements for permanent and temporary licensure as a mental health counselor or marriage and family therapist.* The following criteria shall apply to licensure:

a. The applicant shall submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 481—507.3(147,154D).

b. The applicant for a mental health counseling license shall submit two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). The cost of the criminal history background check by the DCI and the FBI shall be assessed to the applicant.

c. No application will be considered by the board until official copies of academic transcripts sent directly from the school to the board have been received by the board or an equivalency evaluation completed by the CCE has been received by the board. The applicant shall present proof of meeting the educational requirements. Documentation of such proof shall be on file in the board office with the application and include one of the following:

(1) For licensure as a marital and family therapist, an official transcript verifying completion of a marital and family therapy program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) as defined in paragraph 880.4(1)*"a"* or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in paragraph 880.4(1)*"b."*

(2) For licensure as a mental health counselor, an official transcript verifying completion of a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) as defined in paragraph 880.4(2)*"a"* or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in paragraph 880.4(2)*"b."*

d. The applicant is required to take the examination(s) provided in subrule 880.3(1).

e. The applicant for permanent licensure shall submit the required attestation of supervision forms documenting clinical experience as required in rule 481—880.7(154D).

f. The applicant for temporary licensure must submit a supervision plan to the board prior to licensure. Within 30 days of completion of the supervised clinical experience, the attestation of the completed supervised experience must be submitted to the board office. The temporary licensee shall remain under supervision until a permanent license is issued.

g. A temporary license is only valid for the purpose of fulfilling the postgraduate supervised clinical experience requirement. It is valid for three years and may be renewed at the discretion of the board.

h. A licensee who was issued an initial permanent license within six months prior to the renewal shall not be required to renew the license until the renewal date two years later.

i. An application for a temporary or permanent license will be considered active for two years from the date the application is received. If the applicant does not submit all materials within this time period or if the applicant does not meet the requirements for the license, the application shall be considered incomplete. An applicant whose application is filed incomplete must submit a new application, supporting materials, and the application fee. The board shall destroy incomplete applications after two years.

880.2(2) *Licensure of behavior analysts and assistant behavior analysts.*

a. The applicant must submit a completed application for licensure and pay the nonrefundable licensure fee specified in rule 481—507.3(147,154D).

b. For licensure as a behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified behavior analyst or board-certified behavior analyst-doctoral. For licensure as an assistant behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified assistant behavior analyst.

880.2(3) *Requirements for initial psychology licensure.* The following criteria shall apply to licensure:

a. The applicant must submit a completed application for licensure and pay the nonrefundable licensure fee specified in rule 481—507.16(147,154B).

b. Except as otherwise stated in these rules, no application will be considered by the board until:

(1) Official copies of academic transcripts sent directly from the school to the board have been received by the board; and

(2) Satisfactory evidence of the candidate's qualifications has been supplied in writing on the prescribed forms by the candidate's supervisors.

c. An applicant shall successfully pass the national Examination for Professional Practice in Psychology (EPPP).

d. The applicant shall have the national examination score sent directly from the ASPPB to the board.

e. Incomplete applications that have been on file in the board office for more than two years without additional supporting documentation shall be:

(1) Considered invalid and shall be destroyed; or

(2) Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

880.2(4) *Requirements for provisional license.*

a. Predoctoral internship. An applicant for a provisional license for purposes of completing a predoctoral internship shall provide the following:

(1) A completed provisional application for licensure and the nonrefundable licensure fee specified in rule 481—507.16(147,154B).

(2) A copy of the applicant's acceptance letter for the predoctoral internship.

(3) Identification of the training director and the training director's contact information.

(4) Evidence that the applicant is enrolled in an educational program that meets the requirements of rule 481—880.4(154B,154C,154D).

b. Postdoctoral residency. An applicant for a provisional license for purposes of completing a postdoctoral residency shall provide the following:

(1) A completed application for licensure and the nonrefundable licensure fee specified in rule 481—507.16(147,154B).

(2) Official copies of academic transcripts sent directly from the school establishing that the requirements stated in subrule 880.4(4) are met.

(3) A completed supervision plan on the prescribed board form, signed by the applicant's supervisors. A change in supervisor or in the supervision plan requires submission of a new supervision plan on the prescribed board form.

c. Duration. The provisional license is effective for two years from the date of issuance. A provisional license issued for purposes of completing a predoctoral internship can be used for purposes of completing a postdoctoral residency until the provisional license expires. The provisional licensee shall submit a completed supervision plan on the prescribed board form, signed by the licensee's supervisors, prior to beginning the postdoctoral residency. A change in supervisor or in the supervision plan requires submission of a new supervision plan on the prescribed board form. A provisional license may be renewed one time for a period of two years upon submission of the following:

(1) A provisional license renewal application;

(2) A provisional license renewal fee; and

(3) A current supervision plan as required in these rules.

880.2(5) *Certified health service provider in psychology.*

a. Requirements for the health service provider in psychology. The applicant shall:

(1) Verify at least one year of clinical experience in an organized health service training program that meets the requirements of paragraph 880.2(5)*"b"* and at least one year of clinical experience in a health service setting that meets the requirements for postdoctoral residency stated in rule 481—880.8(154B). Alternatively, an applicant may submit verification of current registration at the doctoral level by the National Register of Health Service Psychologists to verify completion of the required clinical experience.

(2) Submit a completed application and nonrefundable application fee along with supporting documentation. Incomplete applications that have been on file in the board office for more than two years without additional supporting documentation shall be:

1. Considered invalid and shall be destroyed; or

2. Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

(3) Renew the certificate biennially at the same time as the psychology license.

b. Requirements of the organized health service training program. Internship programs in professional psychology that are accredited by the American Psychological Association (APA) or the Canadian Psychological Association (CPA) or that hold membership in the Association of Psychology Postdoctoral and Internship Centers (APPIC) are deemed approved. Applicants completing an organized health service training program that is not accredited by the APA or the CPA, or is not APPIC-designated at the time the applicant completes the training shall cause documentation to be sent from the program to establish that the program:

(1) Provides the intern with a planned, programmed sequence of training experiences.

(2) Has a clearly designated doctoral-level staff psychologist who is responsible for the integrity and quality of the training program and is actively licensed by the board of psychology in the jurisdiction in which the program exists.

(3) Has two or more doctoral-level psychologists on the staff who serve as supervisors, at least one of whom is actively licensed by the board of psychology in the jurisdiction in which the program exists.

(4) Has supervision that is provided by staff members of the organized health service training program or by an affiliate of the organized health service training program who carries clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one or more doctoral-level psychologists.

(5) Provides training in a range of psychological assessment and treatment activities conducted directly with recipients of psychological services.

(6) Ensures that trainees have a minimum of 375 hours of direct patient contact.

(7) Includes a minimum of two hours per week (regardless of whether the internship is completed in one year or two years) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also be at least two additional hours per week in learning activities such as case conferences involving a case in which the intern is actively involved, seminars dealing with clinical issues, cotherapy with a staff person including discussion, group supervision, and additional individual supervision.

(8) Has training that is at the postclerkship, postpracticum, and postexternship level.

(9) Has a minimum of two interns at the internship level of training during any period of training.

(10) Designates for internship-level trainees titles such as “intern,” “resident,” “fellow,” or other designation of trainee status.

(11) Has a written statement or brochure that describes the goals and content of the internship, states clear expectations for quantity and quality of trainees’ work and is made available to prospective interns.

(12) Provides a minimum of 1,500 hours of training experience that shall be completed in no less than 12 months within a 24-consecutive-month period.

880.2(6) *Exemption to licensure.* Psychologists residing outside the state of Iowa and intending to practice in Iowa under the provisions of Iowa Code section 154B.3(5) shall complete and submit the application for the exemption to licensure and the nonrefundable licensure fee specified in rule 481—507.16(147,154B).

a. The applicant shall provide a summary of the intent to practice and a verification of the license in the applicant’s jurisdiction of residence, sent directly from the jurisdiction to the board

office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license.

b. The exemption must be issued prior to practice in Iowa. The exemption shall be valid for 10 consecutive business days or not to exceed 15 business days in any 90-day period.

880.2(7) *Requirements for social work licensure.* The following criteria shall apply to licensure:

a. The applicant must submit a completed application for licensure and pay the nonrefundable licensure fee specified in rule 481—507.19(147,154C).

b. No application will be considered by the board until official copies of academic transcripts have been received by the board except as provided in paragraph 880.2(7)*"g."*

c. The applicant provides verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license.

d. The applicant will take the examination(s) provided in subrule 880.3(3).

e. Licensees who were issued their initial licenses within six months prior to the renewal shall not be required to renew their licenses until the renewal date two years later.

f. Incomplete applications that have been on file in the board office for more than two years will be:

(1) Considered invalid and be destroyed; or

(2) Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

g. In lieu of the requirements in paragraphs 880.2(7)*"b"* and *"c,"* the board will accept the ASWB Social Work Registry verification of academic transcripts and verification of licensure in other states.

481—880.3(154B,154C,154D) Examination requirements.

880.3(1) *Examination requirements for mental health counselors and marital and family therapists.* The following criteria shall apply to the written examination(s):

a. The applicant will take and pass the following examinations in order to qualify for licensing:

(1) For a marital and family therapist license, the AMFTRB Examination in Marital and Family Therapy.

(2) For a temporary mental health counselor license, the National Counselor Examination (NCE) of the NBCC or the National Clinical Mental Health Counselor Examination (NCMHCE) of the NBCC.

(3) For a mental health counselor license, the NCMHCE of the NBCC.

b. The passing score on the written examination shall be the passing point criterion established by the appropriate national testing authority at the time the test was administered.

c. An applicant who is requesting approval to take the licensure examination prior to graduation shall:

(1) Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 481—507.3(147,154D).

(2) Have a letter on official school letterhead sent directly from the program director to the board indicating that the applicant is in good academic standing, that the applicant will graduate from the program within three months of the date on the letter, and the applicant's anticipated date of graduation.

880.3(2) *Psychology examination requirements.* An applicant will pass the national examination to be eligible for licensure in Iowa.

a. To be eligible to take the national examination, the applicant will:

(1) Meet all requirements of paragraphs 880.2(3)*"a"* and 880.2(3)*"b"*; and

(2) Provide official copies of academic transcripts sent directly from the school to the board of psychology verifying completion of a doctoral degree in psychology in accordance with subrule 880.4(4).

b. The EPPP passing score shall be utilized as the Iowa passing score.

880.3(3) *Social work examination requirements.*

a. The applicant will take and pass the ASWB examination at the appropriate level as follows:

(1) Bachelor-level social worker—the basic level examination.

(2) Master-level social worker—the intermediate level examination.

(3) Independent-level social worker—the clinical level examination.

b. The board will accept only official results from the ASWB examination service that are sent directly from the examination service to the board.

c. The ASWB passing score will be utilized as the Iowa passing score.

d. An applicant may sit for the examination if the applicant meets the requirements stated in subrule 880.2(7). Upon written request of the applicant, the board may authorize a student to sit for the examination prior to the receipt of the official transcript if the student is in the last semester of an approved master of social work program. The student shall submit an application for licensure at the master level and the fee, and, in lieu of a transcript, the student shall request that the school submit a letter directly to the board office. The letter shall state that the student is currently enrolled in a master of social work program and the student's expected date of graduation. Upon completion of degree requirements, the applicant shall have the transcript showing the date of the degree sent directly from the school to the board office.

e. In lieu of the requirements in paragraph 880.3(3)*"b,"* the board will accept the ASWB Social Work Registry verification of the ASWB examination results.

f. In lieu of the requirements in paragraph 880.3(3)*"a,"* the board will accept verification of passing the state of California equivalent level licensing examination.

481—880.4(154B,154C,154D) Educational requirements.

880.4(1) *Educational qualifications for marital and family therapists.* The applicant must complete the required semester credit hours, or equivalent quarter hours, of graduate level coursework in each of the content areas identified in paragraph 880.4(1)*"b"*; no course may be used more than once. The applicant must present proof of completion of the following educational requirements for licensure as a marital and family therapist:

a. Accredited program. Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy from a program accredited by the COAMFTE from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

b. Content-equivalent program. Applicants must present an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy, behavioral science, or a counseling-related field from a college or university accredited by an agency recognized by the United States Department of Education,

which is content-equivalent to a graduate degree in marital and family therapy. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. Graduates from non-COAMFTE-accredited marital and family therapy programs shall provide an equivalency evaluation of the graduates' educational credentials by the CCE, website cce-global.org.

880.4(2) *Educational qualifications for mental health counselors.* The applicant must complete three semester credit hours, or equivalent quarter hours, of graduate level coursework in each of the content areas identified in paragraph 880.4(2)*"b"*; no course may be used to fulfill more than one content area. The applicant must present proof of completion of the following educational requirements for licensure as a mental health counselor:

a. Accredited program. Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or equivalent quarter hours) or a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the CACREP from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2012, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

b. Content-equivalent program. Applicants must present an official transcript verifying completion of a master's degree or a doctoral degree from a college or university accredited by an agency recognized by the United States Department of Education that is content-equivalent to a master's degree in counseling with emphasis in mental health counseling. Graduates from non-CACREP accredited mental health counseling programs shall provide an equivalency evaluation of their educational credentials by the CCE, website cce-global.org.

880.4(3) *Foreign-trained marital and family therapists or mental health counselors.* Foreign-trained marital and family therapists or mental health counselors shall:

a. Provide an equivalency evaluation of their educational credentials by the following: International Education Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone 310.258.9451; website www.ierf.org or email at info@ierf.org. A candidate shall bear the expense of the curriculum evaluation.

b. Receive a final determination from the board regarding the application for licensure.

880.4(4) *Psychology educational qualifications.* An applicant for licensure to practice as a psychologist shall possess a doctoral degree in psychology.

a. At the time of an applicant's graduation:

(1) The program from which the doctoral degree in psychology is granted must be:

1. Accredited by the APA;
2. Accredited by the Canadian Psychological Association; or
3. Designated by the ASPPB/National Register; or

(2) The applicant must hold current board certification from the American Board of Professional Psychology; or

(3) The applicant must possess a postdoctoral respecialization certificate from a program accredited by the APA.

b. Foreign-trained psychologists who possess a doctoral degree in psychology and who do not meet the requirements of paragraph 880.4(4)*"a"* will:

(1) Provide an equivalency evaluation of their educational credentials by the National Register of Health Service Psychologists, 1200 New York Avenue NW, Suite 800, Washington, D.C. 20005, telephone 202.783.7663, website www.nationalregister.org, or by an evaluation service with membership in the National Association of Credential Evaluation Services at www.naces.org. A certified translation of documents submitted in a language other than English shall be provided. The candidate will bear the expense of the curriculum evaluation and translation of application documents. The educational credentials must be equivalent to programs stated in paragraph 880.4(4)*"a."*

(2) Submit evidence of meeting all other requirements for licensure stated in these rules.

880.4(5) *Social work educational qualifications.*

a. Bachelor level social worker. An applicant for a license will possess a bachelor's degree in social work from a college or university accredited by the Council on Social Work Education at the time of graduation.

b. Master and independent level social worker. An applicant for a license will present evidence satisfactory to the board that the applicant:

(1) Possesses a master's degree in social work from a college or university accredited by the Council on Social Work Education at the time of graduation; or

(2) Possesses a doctoral degree in social work from a college or university approved by the board at the time of graduation.

c. Foreign-trained social workers shall provide an equivalency evaluation of their educational credentials by International Education Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, California 90231-3665, telephone 310.258.9451, website www.ierf.org or email at info@ierf.org; or obtain a certificate of equivalency from the Council on Social Work Education, 1701 Duke Street, Suite 200, Alexandria, Virginia 22314-3457, telephone 703.683.8080, website www.cswe.org. The professional curriculum must be equivalent to that stated in these rules. The applicant shall bear the expense of the curriculum evaluation.

481—880.5(154D) Licensure by endorsement for mental health counselors and marital and family therapists. An applicant who has been a licensed marriage and family therapist or mental health counselor under the laws of another jurisdiction may file an application for licensure by endorsement with the board office.

880.5(1) The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

a. Meets the requirements of paragraph 880.2(1)"a"; and

b. Provides verification of license from the jurisdiction in which the applicant has been most recently licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license.

880.5(2) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 481—501.1(272C).

481—880.6(147) Licensure by endorsement for psychologists. An applicant who possesses a doctoral degree in psychology and has been a licensed psychologist at the doctoral level under the laws of another jurisdiction may file an application for licensure by endorsement with the board office.

880.6(1) The board may license by endorsement any applicant from the District of Columbia or another state, territory, province, or foreign country who:

a. Submits a completed application for licensure and pay the nonrefundable licensure fee specified in rule 481—507.16(147,154B).

b. Provides verification of license from the jurisdiction in which the applicant has most recently been licensed, and additional verifications if necessary to verify at least three years of an independent license as described in paragraph 880.6(1)*"c"* sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;
(2) Date of initial licensure;
(3) Current licensure status; and
(4) Any disciplinary action taken against the license.

c. Provides verification of a current Certificate of Professional Qualification (CPQ) issued by the ASPPB, or verification of a doctoral degree in psychology and an independent license to practice psychology in another jurisdiction for at least three years with no disciplinary history. Except as stated in paragraph 880.4(4)*"b,"* applicants providing certification or verification are deemed to have met the requirements stated in subparagraphs 880.6(1)*"c"*(1) and (2). The board may license by endorsement any other applicant who:

(1) Provides the official EPPP score sent directly to the board from the ASPPB or verification of the EPPP score sent directly from the state of initial licensure. The recommended passing score established by the ASPPB shall be considered passing.

(2) Shows evidence of licensure requirements that are substantially equivalent to those required in Iowa by one of the following means:

1. Provides:

- Official copies of academic transcripts that have been sent directly from the school; and
- Satisfactory evidence of the applicant's qualifications in writing on the prescribed forms by the applicant's supervisors. If verification of professional experience is not available, the board may consider submission of documentation from the jurisdiction in which the applicant is currently licensed or equivalent documentation of supervision; or

2. Has an official copy of one of the following certifications sent directly to the board from the certifying organization:

- Current credentialing at the doctoral level as a health service provider in psychology by the National Register of Health Service Psychologists.
- Board certification by the American Board of Professional Psychology that was originally granted on or after January 1, 1983.

880.6(2) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 481—501.1(272C).

481—880.7(154D) Supervised clinical experience. An applicant for licensure as a mental health counselor, marital and family therapist, or independent level social worker must complete a supervised clinical experience as set forth in this rule.

880.7(1) *Minimum requirements.* The supervised clinical experience must satisfy all of the following requirements:

a. Timing. The supervised clinical experience cannot begin until after all graduate coursework has been completed with the exception of the thesis.

b. Duration. The supervised clinical experience must be for a minimum of two years.

c. Minimum number of hours. The supervised clinical experience must consist of at least 3,000 hours of practice.

d. Minimum number of direct client hours. The supervised clinical experience will consist of at least 1,500 hours of direct client contact.

e. Minimum number of direct supervision hours. The supervised clinical experience will consist of at least 110 hours of direct supervision equitably distributed throughout the supervised clinical experience. A maximum of 50 hours of direct supervision may be obtained through group supervision. Direct supervision can occur in person or by using videoconferencing. After 110 hours of direct supervision are complete, ongoing direct supervision will continue to occur for the remainder of the supervised clinical experience.

f. Number of supervisors. A supervisee may utilize a maximum of four supervisors at any given time. A supervisee is responsible for notifying each supervisor if another supervisor is also being utilized to allow for coordination as appropriate.

g. Number of supervisees. A supervisor will determine the number of supervisees who can be supervised safely and competently and will not exceed that number.

h. Content. The supervised clinical experience must involve performing psychosocial assessments, diagnostic practice using the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) published March 2022, and providing treatment, including the establishment of treatment goals, psychosocial therapy using evidence-based therapeutic modalities, and differential treatment planning. The supervised clinical experience will prepare the supervisee for independent practice and must include training on practice management, ethical standards, legal and regulatory requirements, documentation, coordination of care, and self-care.

880.7(2) *Eligible supervisors.* A supervisor must satisfy all of the following requirements:

a. Hold an active license as an independent level social worker, mental health counselor, or marital and family therapist in Iowa.

b. Have a minimum of three years of independent practice.

c. Have completed at least a six-hour continuing education course in supervision or one graduate-level course in supervision.

d. Be knowledgeable of the applicable ethical code and licensing rules governing the supervisee. Any request for a supervisor who does not meet these requirements must be approved by the board before supervision begins.

880.7(3) *Supervision plan.* Prior to beginning supervision, the supervisee will submit a written supervision plan to the board using the current form published by the board. The supervisee will also submit a written supervision plan to the board prior to beginning supervision with a new supervisor.

880.7(4) *Supervision report.* When supervision is complete, or when a supervisor ceases providing supervision to the supervisee, the supervisee will ensure a completed supervision report using the current form published by the board is submitted to the board. If the supervisor reports that the supervisee is not adequately prepared for independent licensure, or reports violations of the board's rules or applicable ethical code, the board may require the supervisee to complete additional supervision or training as deemed appropriate prior to licensure.

880.7(5) *Supervised clinical experience in other states.* An applicant who completed some or all of the supervised clinical experience in another state without obtaining licensure in that state should contact the board to determine whether some or all of the supervised clinical experience that has been completed can be used to qualify for licensure in Iowa.

880.7(6) *Grandfather clause.* Any new or additional requirements imposed by this rule do not apply to supervision that started prior to July 20, 2022.

481—880.8(154B) Psychology postdoctoral residency.

880.8(1) The postdoctoral residency may begin after all academic requirements for the doctoral degree, including completion of the predoctoral internship, have been completed. The postdoctoral residency shall consist of a minimum of 1,500 hours that are completed in no less than ten months.

880.8(2) During the postdoctoral residency, the supervisee will competently apply the principles of psychology under the supervision of a licensed psychologist who is actively licensed in the jurisdiction where the supervision occurs in accordance with the following:

a. The supervisee and supervisor will complete a supervision plan using the form provided by the board. The supervision plan must be submitted to the board if the supervisee is applying for or utilizing a provisional license.

b. A supervisor will not have more than three concurrent full-time supervisees or the equivalent in part-time supervisees. Full-time is defined as 40 hours per week.

c. The supervisee and supervisor will meet individually in person or via videoconferencing during each week in which postdoctoral residency hours are accrued, for no less than a total of 45

hours during the postdoctoral residency. Group supervision hours cannot count toward the 45 hours of individual supervision required.

d. The supervisor will provide supervision at all times, which means the supervisor will be readily available on site, or via electronic or telephonic means, at all times when the supervisee is providing services so that the supervisee may contact the supervisor for advice, assistance, or instruction. A supervisor will identify one or more licensed mental health providers who can be contacted for advice, assistance, or instruction during times in which the supervisor will not be readily available.

e. The supervisee and supervisor will have a crisis plan in place any time the supervisee is providing services and the supervisor is not on site in the same physical setting as the supervisee.

f. The supervisor will establish and maintain a level of supervisory contact consistent with established professional standards and be fully accountable in the event that professional, ethical or legal issues are raised.

g. The supervisor will provide training that is appropriate to the functions to be performed. The supervisee shall have the background, training, and experience that is appropriate to the functions performed. The supervisor shall not permit the supervisee to engage in any psychological practice that the supervisor cannot perform competently.

h. The supervisor and supervisee will ensure clients are informed regarding the supervisee's status and the sharing of information between the supervisee and supervisor.

i. The supervisor will have reasonable access to the clinical records corresponding to the work being supervised. The supervisor will countersign all written reports, clinical records and clinical communications as "Reviewed and Approved" by the supervisor.

j. All services will be offered in the name of the supervisor. The supervisee and supervisor will ensure that the supervisee uses a title in accordance with rule 481—880.17(147,154B).

k. The fee schedule and receipt of payment will remain the sole domain of the supervisor or employing agency.

l. The supervisor will maintain an ongoing record of supervision that details the types of activities in which the supervisee is engaged, the level of the supervisee's competence in each, and the type and outcome of all procedures.

m. The supervisor is responsible for determining the competency of the work performed by the supervisee and must honestly and accurately complete the supervision report at the conclusion of providing supervision.

481—880.9(154B) Psychologists' supervision of persons other than postdoctoral residents in a practice setting.

880.9(1) This rule applies when a psychologist is supervising individuals who are not licensed or who are provisionally licensed and completing the predoctoral internship. This rule does not apply to supervision of an individual completing a postdoctoral residency in accordance with rule 481—880.17(147,154B), regardless of whether the individual is provisionally licensed or not.

880.9(2) The supervising psychologist will:

a. Be vested with administrative control over the functioning of assistants in order to maintain ultimate responsibility for the welfare of every client. When the employer is a person other than the supervising psychologist, the supervising psychologist must have direct input into administrative matters.

b. Have sufficient knowledge of all clients, including face-to-face contact when necessary, in order to plan effective service delivery procedures. The progress of the work will be monitored through such means as will ensure that full legal and professional responsibility can be accepted by the supervisor for all services rendered. Supervisors will also be available for emergency consultation and intervention.

c. Provide work assignments that are commensurate with the skills of the supervisee. All procedures will be planned in consultation with the supervisor.

d. Work in the same physical setting as the supervisee, unless the supervisee is receiving formal training pursuant to the requirements for licensure as a psychologist. For supervisees working off site while receiving formal licensure training, ensure the off-site location has a licensed mental health provider or primary care provider on site whenever the supervisee is working for purposes of providing emergency consultation.

e. Make public announcement of services and fees; contact with laypersons or the professional community will be offered only by or in the name of the supervising psychologist. Titles of unlicensed persons must clearly indicate their supervised status.

f. Provide specific information to clients when an unlicensed person delivers services to those clients, including disclosure of the unlicensed person's status and information regarding the person's qualifications and functions.

g. Inform clients of the possibility of periodic meetings with the supervising psychologist at the client's, the supervisee's or the supervisor's request.

h. Provide for setting and receipt of payment that will remain the sole domain of the employing agency or supervising psychologist.

i. Establish and maintain a level of supervisory contact consistent with established professional standards, and be fully accountable in the event that professional, ethical or legal issues are raised.

j. Provide a detailed job description in which functions are designated at varying levels of difficulty, requiring increasing levels of training, skill and experience. This job description will be made available to representatives of the board and service recipients upon request.

k. Be responsible for the planning, course, and outcome of the work. The conduct of supervision shall ensure the professional, ethical, and legal protection of the client and of the unlicensed persons.

l. Countersign all written reports, clinical records and clinical communications as "Reviewed and Approved" by the supervising psychologist.

481—880.10(147) License renewal for mental health counselors and marriage and family therapists.

880.10(1) The biennial license renewal period for a license to practice marital and family therapy or mental health counseling shall begin on October 1 of an even-numbered year and end on September 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

880.10(2) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 481—881.2(272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date. An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

880.10(3) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting as required by Iowa Code section 232.69(3)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 880.10(3)*"d."*

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 880.10(3)*"d."*

c. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs 880.10(3)*"a"* and *"b,"* including program date(s), content, duration, and proof of participation.

d. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 481—Chapter 500.

e. The board may select licensees for audit of compliance with the requirements in paragraphs 880.10(3)*"a"* through *"d."*

880.10(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

880.10(5) A person licensed to practice as a marital and family therapist or mental health counselor shall keep the person's license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

880.10(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 481—subrule 507.3(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

880.10(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but shall not practice mental health counseling or marital and family therapy in Iowa until the license is reactivated. A licensee who practices mental health counseling or marital and family therapy in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

481—880.11(272C) Initial licensing, reactivation, and license renewal for behavior analysts and assistant behavior analysts.

880.11(1) An initial license for a behavior analyst or assistant behavior analyst shall be issued with the same expiration date as the applicant's current certification issued by BACB.

880.11(2) The biennial license renewal period for a behavior analyst or assistant behavior analyst shall run concurrent with the licensee's BACB certification. Each license renewed shall be given the expiration date that is on the licensee's current BACB certification. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

880.11(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements required by BACB to renew a certification.

b. Maintain current certification as a board-certified behavior analyst, board-certified behavior analyst-doctoral, or board-certified assistant behavior analyst issued by BACB.

c. Submit the completed renewal application and renewal fee before the license expiration date.

880.11(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

880.11(5) A person licensed as a behavior analyst or assistant behavior analyst shall keep the person's license certificate and renewal displayed in a conspicuous public place at the primary site of practice.

880.11(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 481—subrule 507.3(5). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

880.11(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but shall not engage in the practice of applied behavior analysis for which a license is required in Iowa until the license is reactivated. A licensee who practices applied behavior analysis in a capacity that requires licensure in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

880.11(8) Reactivation. To apply for reactivation of an inactive license, a licensee shall submit a completed renewal application and proof of current certification and shall be assessed a reactivation fee as specified in 481—subrule 507.3(6).

481—880.12(147) Psychology license renewal.

880.12(1) The biennial license renewal period for a license to practice psychology shall begin on July 1 of even-numbered years and end on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

880.12(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

880.12(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 481—881.2(272C) and the mandatory reporting requirements of subrule 880.12(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

880.12(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting as required by Iowa Code section 232.69(3)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 880.12(4)*"e."*

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 880.12(4)*"e."*

c. The course(s) shall be the curriculum provided by the department of health and human services.

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs 880.12(4)*"a"* through *"c,"* including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in rule 481—500.14(272C).

f. The board may select licensees for audit of compliance with the requirements in paragraphs 880.12(4)*"a"* through *"e."*

880.12(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

880.12(6) A person licensed to practice as a psychologist shall keep the person's license certificate and renewal displayed in a conspicuous public place at the primary site of practice.

880.12(7) Late renewal.

a. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 481—subrule 507.16(3).

b. To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

880.12(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa but shall not practice as a psychologist or health service provider in psychology in Iowa until the license is reactivated. A licensee who practices as a psychologist or health service provider in psychology in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

481—880.13(154C) Social work license renewal.

880.13(1) The biennial license renewal period for a license to practice social work will begin on January 1 of odd-numbered years and end on December 31 of the next even-numbered year. Every licensee will renew on a biennial basis. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice does not relieve the licensee of the responsibility for renewing the license.

880.13(2) Renewal procedures.

a. A licensee seeking renewal will:

(1) Meet the continuing education requirements of rule 481—881.2(272C) and the mandatory reporting requirements of subrule 880.13(3); and

(2) Submit the completed renewal application and renewal fee before the license expiration date.

b. Those persons licensed for the first time will not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 27 hours of continuing education per biennium for each subsequent license renewal.

c. Persons licensed to practice social work shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

d. Failure to receive the notice of renewal will not relieve the licensee of the responsibility for submitting the required materials and the renewal fee to the board office 30 days before license expiration.

e. A social worker whose Iowa license is delinquent, closed, retired, voluntarily surrendered, suspended, or revoked cannot advance to a higher level until the license is again active.

880.13(3) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal

application completion of two hours of training in child abuse identification and reporting as required by Iowa Code section 232.69(3)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 880.13(3)*"e."*

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 880.13(3)*"e."*

c. The course(s) shall be the curriculum provided by the department of health and human services.

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs 880.13(3)*"a"* through *"c,"* including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in rule 481—500.14(272C).

f. The board may select licensees for audit of compliance with the requirements in paragraphs 880.13(3)*"a"* through *"e."*

880.13(4) Late renewal. To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

880.13(5) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but shall not practice as a social worker in Iowa until the license is reactivated. A licensee who practices as a social worker in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

880.13(6) Upon receiving the information required by this rule and the required fee, board staff will administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

481—880.14(17A,147,272C) License reactivation for mental health counselors, marital and family therapists, psychologists, and social workers. To apply for reactivation of an inactive license, a licensee shall:

880.14(1) Submit a reactivation application.

880.14(2) Pay the reactivation fee that is due as specified in 481—Chapter 507.

880.14(3) Provide verification of license from the jurisdiction in which the applicant has been most recently licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification directly from the jurisdiction's board office if the verification provides:

a. Licensee's name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary action taken against the license.

880.14(4) For mental health counseling and marriage and family therapy, provide verification of a current active license in another jurisdiction at the time of application or verification of completion

of continuing education taken within two years of the application. If the license has been inactive for less than five years, the applicant must submit verification of 40 hours of continuing education, and if the license has been inactive for more than five years, the applicant must submit verification of 80 hours of continuing education.

880.14(5) For psychology, provide verification of a current active license in another jurisdiction at the time of application or verification of completion of continuing education taken within two years of the application. If the license has been inactive for less than five years, the applicant must submit verification of 40 hours of continuing education, and if the license has been inactive for more than five years, the applicant must submit verification of 80 hours of continuing education.

880.14(6) For social work, provide:

a. Verification of completion of 27 hours of continuing education within two years of application for reactivation or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, the verification in paragraph 880.14(6)*"a"* and one of the following:

(1) Verification of passing the ASWB examination within the last five years at the appropriate or higher level as follows:

1. Bachelor-level social worker—the bachelor's level examination;
2. Master-level social worker—the master's level examination; or
3. Independent-level social worker—the clinical level examination; or

(2) Verification of continued social work practice at the appropriate or higher level in another state for a minimum of two years immediately preceding the application for reactivation.

481—880.15(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 481—506.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 481—880.14(17A,147,272C) prior to practicing in this state.

481—880.16(154C) Social work services subject to regulation. Social work, marital and family therapy, and mental health counseling services provided to an individual in this state through telephonic, electronic or other means, regardless of the location of the practitioner, shall constitute the practice of the profession and is subject to regulation in Iowa.

481—880.17(147,154B) Psychology title designations.

880.17(1) Students who are enrolled in an education program that satisfies the requirements of subrule 880.4(4) and who are completing the predoctoral internship may be designated "psychology intern" or "intern in psychology."

880.17(2) Applicants for licensure who have met educational requirements and who are completing the postdoctoral residency to be eligible for licensure may be designated "psychology resident," "resident in psychology," "psychology postdoctoral fellow," or "postdoctoral fellow in psychology." The designation of "resident" shall not be used except during a postdoctoral residency that meets the requirements of rule 481—880.8(154B).

880.17(3) Persons who possess provisional licenses shall add the designation "provisional license in psychology" following the "resident," "intern," or "fellow" designation.

481—880.18(147) Professional counselor licensing compact. The rules of the Counseling Compact Commission are incorporated by reference.

481—880.19(154D) Temporary licensees. A temporary licensee shall engage only in the practice of marital and family therapy or mental health counseling as part of an agency or group practice with oversight over the temporary licensee. The agency or group practice shall have at least one

independently licensed mental health provider. A temporary licensee shall not practice as a solo practitioner or solely with other temporary licensees.

These rules are intended to implement Iowa Code chapters 17A, 147, 154B, 154C, 154D and 272C.

ITEM 2. Rescind and reserve **481—Chapter 885**.

ITEM 3. Rescind and reserve **481—Chapter 895**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapters 881, 886, 892, and 896
"Continuing Education for Marital and Family Therapists, Mental Health Counselors, Social Workers, and Psychologists"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 154B, 154C, 154D and 272C

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154B, 154C, 154D and 272C

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.	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/mku-itia-ciq Or dial: 1.573.342.3106 PIN: 861 856 486#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed chapter sets forth continuing education requirements for mental health counselors, marriage and family therapists, social workers, and psychologists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the chapter, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Licensees are responsible for the cost of continuing education. Private industry offers these courses, so the Board of Behavioral Science Professionals is not privy to exact costs. Licensees have

multiple options. Courses can range anywhere from $0 to $100 per hour. The Board allows for online coursework, which increases the availability of free or low-cost options.

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

The intended benefit of continuing education is to ensure that licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

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:

Private industry, including educational institutions, professional associations, and businesses, offers these courses, so the Board is not privy to exact costs. Courses can range anywhere from $0 to $100 per hour. The Board allows for online coursework, which increases the availability of free or low-cost options. The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 40 hours of continuing education for mental health counselors, marriage and family therapists, and psychologists every two years. Social workers require 27 hours every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures that licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

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

Costs to the agency are for the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.35 full-time equivalent (FTE) position, which includes answering questions from the public and licensees relating to topics such as practice standards, continuing education, Board meeting administration, etc.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. This rulemaking has no anticipated impact on state revenues.

Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board has not recommended a reduction in hours. The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline. There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

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

Less restrictive alternatives would be to reduce the amount of continuing education required. A review of surrounding states has shown that Iowa is in line with neighboring jurisdictions. Mental health counselors in Iowa require 40 hours of continuing education every two years. Illinois and Kansas require 30 hours; Nebraska requires 32; and Minnesota, Missouri, and South Dakota require 40. Psychologists in Iowa require 40 hours of continuing education every two years. A review of surrounding states indicates that Illinois and Nebraska require 24 hours; Minnesota, Missouri, and South Dakota require 40 hours; and Kansas requires 50 hours. Social workers in Iowa require 27 hours of continuing education every two years. A review of surrounding states indicates that Illinois, Missouri, and South Dakota each require 30 hours; Nebraska requires 32 hours; and Minnesota and Kansas require 40 hours. Staff held conversations with Board members inquiring whether the Board would recommend lowering the continuing education requirements. The Board did not recommend a change in continuing education hours.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Board inquiring whether the Board would recommend lowering the continuing education requirements. The Board has considered a change of the total continuing education hours, the frequency of hours, and the safety of the public. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

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

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation and is unable to submit evidence of this belief.

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?

Mental health counselors, marriage and family therapists, social workers, and psychologists practice in a number of settings, including private practice clinics, major hospital systems, residential health care facilities, and educational institutions. While some licensees likely are running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Conversely, there may be a negative impact on revenue for the entities that provide continuing education due to decreased demand for the entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 881:

CHAPTER 881
CONTINUING EDUCATION FOR MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS, SOCIAL WORKERS, AND PSYCHOLOGISTS

481—881.1(272C) Definitions. For the purpose of these rules, the following definitions will apply:

"Active license" means the license is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the board of behavioral health professionals.

"Continuing education" means planned, organized learning acts designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Independent study" means a continuing education program or activity that a licensee pursues autonomously that includes a posttest and meets the general criteria in subrule 881.2(9).

"License" means license to practice.

"Licensee" means any person licensed to practice marital and family therapy, mental health counseling, social work, or psychology in the state of Iowa.

"Practice of psychology" means the application of established principles of learning, motivation, perception, thinking, psychophysiology and emotional relations to problems, behavior, group relations, and biobehavior by persons trained in psychology for compensation or other personal gain. The application of principles includes but is not limited to counseling and the use of psychological remedial measures with persons, in groups or individually, with adjustment or emotional problems in the areas of work, family, school and personal relationships. The practice of psychology also means measuring and testing personality, mood-motivation, intelligence/aptitudes, attitudes/public opinion, and skills; the teaching of such subject matter; and the conducting of research on the problems relating to human behavior.

481—881.2(272C) Continuing education requirements.

881.2(1) The biennial continuing education compliance period for mental health counselors and marriage and family therapists shall extend for a 25-month period beginning on September 1 of the even-numbered year and ending on September 30 of the next even-numbered year. Each biennium, each person who is licensed to practice as a mental health counselor or marriage and family therapist in this state is required to complete a minimum of 40 hours of continuing education that meets the requirements of this chapter.

881.2(2) The biennial continuing education compliance period for psychologists shall extend for a two-year period beginning on July 1 of even-numbered years and ending on June 30 of even-

numbered years. Each biennium, each person who is licensed to practice as a psychologist in this state shall be required to complete a minimum of 40 hours of continuing education approved by the board.

881.2(3) The biennial continuing education compliance period for social workers extends for a two-year period beginning on January 1 of each odd-numbered year and ending on December 31 of the next even-numbered year. Each biennium, each person who is licensed to practice as a social worker in this state will be required to complete a minimum of 27 hours of continuing education approved by the board.

881.2(4) Requirements for new mental health counselor, marriage and family therapist, and psychology licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired any time from the initial licensing until the second license renewal may be used. A new mental health counselor, marriage and family therapist, or psychology licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal. A new social work licensee will be required to complete a minimum of 27 hours of continuing education per biennium for each subsequent license renewal.

881.2(5) No hours of continuing education are required to renew a provisional license.

881.2(6) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

881.2(7) Up to 50 percent of continuing education can be carried over into the next biennium if there was an amount of continuing education completed during the prior period that exceeded the minimum requirement. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

881.2(8) It is the responsibility of each licensee to finance the cost of continuing education.

881.2(9) General criteria. A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

881.2(10) Specific marriage and family therapy and mental health counseling criteria. Continuing education hours of credit may be obtained by completing the following:

a. Attendance at workshops, conferences, symposiums and webinars.

b. Academic courses. Official transcripts indicating successful completion of academic courses that apply to the field of mental health counseling or marital and family therapy, as appropriate, will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

c. Completion of independent study courses that meet the general criteria in subrule 881.2(9).

d. A maximum of 20 hours of continuing education credit may be granted for any of the following activities not to exceed a combined total of 20 hours:

(1) Presenting professional programs that meet the criteria in subrule 881.2(9). Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be

maintained for audit. Presenting at a professional program does not include teaching a class at an institution of higher learning at which the applicant is regularly and primarily employed. Presentations to lay public are excluded.

(2) Scholarly research or other activities, the results of which are published in a recognized professional publication such as a refereed journal, monograph or conference proceedings. The scholarly research must be integrally related to the practice of the professions.

(3) Publication in a refereed journal. The article in a refereed journal for which the licensee is seeking continuing education credit must be integrally related to the practice of the professions.

(4) Teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of the course.

(5) Authoring papers, publications, and books. The licensee will receive 5 hours of credit per page with a maximum of 20 hours of credit.

(6) Serving on a state or national professional board. The licensee will receive a maximum of three hours of credit.

881.2(11) Additional required specific criteria:

a. Three hours of the 40 continuing education hours will be in ethics.

b. Effective with the biennial continuing education compliance period that begins October 1, 2022, persons serving in a supervisory role must complete three hours of continuing education in supervision.

c. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats adults in Iowa shall complete, within six months of employment or prior to the expiration of a current certification, an initial two-hour course in dependent adult abuse training for mandatory reporters offered by the department of health and human services. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certification.

d. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats children in Iowa shall complete, within six months of employment or prior to the expiration of a current certification, an initial two-hour course in child abuse training for mandatory reporters offered by the department of health and human services. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certification.

881.2(12) Specific psychology criteria.

a. For the second license renewal, licensees shall obtain six hours of continuing education pertaining to the practice of psychology in either of the following areas: Iowa mental health laws and regulations, or risk management.

b. For all renewal periods following the second license renewal, licensees shall obtain six hours of continuing education pertaining to the practice of psychology in any of the following areas: ethical issues, federal mental health laws and regulations, Iowa mental health laws and regulations, or risk management. For all board members, a maximum of two of these hours may be obtained by providing service as a member of the board as follows:

(1) One hour of credit for attendance and participation at a minimum of three regular quarterly board meetings during the license biennium, or

(2) Two hours of credit for attendance and participation at a minimum of six regular quarterly board meetings during the license biennium.

c. A licensee may obtain the remainder of continuing education hours of credit by:

(1) Completing training to comply with mandatory reporter training requirements, as specified in 481—subrule 880.10(3). Hours reported for credit shall not exceed the hours required to maintain compliance with required training.

(2) Attending programs/activities that are sponsored by the American Psychological Association or the Iowa Psychological Association.

(3) Attending workshops, conferences, or symposiums that meet the criteria in subrule 881.2(9).

(4) Completing academic coursework that meets the criteria set forth in these rules. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(5) Completing home study courses for which a certificate of completion is issued.

(6) Completing electronically transmitted courses for which a certificate of completion is issued.

(7) Conducting scholarly research, the results of which are published in a recognized professional publication. In order to claim such credit, the licensee must attest to the hours actually spent conducting research, demonstrate that the research is integrally related to the practice of psychology, explain how the research advances the licensee's knowledge in the field, and provide the published work.

(8) Preparing new courses on material that is integrally related to the practice of psychology and is beyond entry level. In order to claim such credit, the licensee must: attest that the licensee has not taught the course in the past or that the licensee has not substantially altered the course content; request a specific amount of continuing education credit; describe how the course is integrally related to the practice of the profession and advances the licensee's knowledge in the field; and supply a course syllabus that supports the licensee's request for credit.

(9) Presenting to other professionals. A licensee may receive credit on a one-time basis for presenting continuing education programs that meet the criteria of subrule 881.2(9). Two hours of credit will be awarded for each hour of presentation.

d. A combined maximum of 30 hours of credit per biennium may be used for scholarly research, preparation of new courses, and presentations to other professionals.

881.2(13) Specific social work criteria. Continuing education hours of credit can be obtained by completing:

a. Coursework pertaining to one of the following content areas:

(1) Human behavior.

1. Theories and concepts of the development of human behavior in the life cycle of individuals, families and the social environment;
2. Community and organizational theories;
3. Normal, abnormal and addictive behaviors;
4. Abuse and neglect; and
5. Effects of culture, race, ethnicity, sexual orientation and gender.

(2) Assessment and treatment.

1. Psychosocial assessment/interview;
2. Utilization of the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) of the American Psychiatric Association, published March 2022;
3. Theoretical approaches and models of practice—individual, couple, and family therapy and group psychotherapy;
4. Establishing treatment goals and monitoring progress;
5. Techniques of social work practice; and
6. Interdisciplinary consultation and collaboration.

(3) Social work research, program evaluation, or practice evaluation.

(4) Management, administration, and social policy.

1. Organizational policies and procedures;
2. Advocacy and prevention in social work practice;
3. Management of social work staff and other personnel; and
4. Management of social work programs.

(5) Theories and concepts of social work education.

(6) Social work ethics as they pertain to the rules of conduct.

(7) An area, as demonstrated by the licensee, that directly relates to the licensee's individual practice as a social worker. The licensee will submit for consideration by the board a specific explanation of how the program relates to the licensee's individual practice setting as a social worker.

b. A minimum of three hours per biennium in social work ethics.

c. Academic coursework that meets the criteria set forth in the rules. Continuing education equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

d. Programs designed for the purpose of enhancing the licensee's administrative, management or other clinical skills.

e. Activities/programs that are sponsored or approved by:

(1) ASWB Approved Continuing Education (ACE) program; or

(2) National Association of Social Workers (NASW) Continuing Education Unit (CEU) Approval Program.

f. Pro bono or volunteer work that meets the following criteria:

(1) A licensee may earn a maximum of 3 of the required 27 hours of continuing education for credit during one biennium by performing pro bono or volunteer services for indigent, underserved populations or in areas of critical need within the state of Iowa. Such services must be approved in advance by the board.

(2) A licensee will apply for prior approval of pro bono or volunteer services by sending a letter to the board indicating that the following requirements will be met:

1. The site for these services is identified including information about the clients, the services that will be offered, how they will be performed and the learning objectives.

2. A contract will be established between licensee and client(s), and each party will be aware that the services are being provided without charge.

3. The services will be subject to all the legal responsibilities and obligations related to the licensee's profession.

4. The licensee will keep records and files of these client services pursuant to this rule.

5. A representative from the site for pro bono or volunteer services must provide a letter stating that these services are to be performed by the licensee.

6. Upon review, the licensee will receive a letter from the board indicating prior approval for these pro bono or volunteer services that will be done for continuing education credit.

7. Following completion of such services:

- The licensee must provide the board a letter stating that the services were performed as planned.
- The representative from the site must provide a letter indicating such completion.

g. Instruction of a course at an approved college, university or graduate school of social work. A licensee may receive credit on a one-time basis, not to exceed three hours of continuing education credit per biennium.

h. Instruction, presentation, or moderation of continuing education programs. A licensee may receive credit on a one-time basis, not to exceed three hours of continuing education credit per biennium, for programs at which the licensee is actually in attendance for the complete program, provided the licensee receives a certificate of attendance in compliance with this rule.

i. Authorship of professional papers, publications or books and preparation of presentations and exhibits. A presentation must be made before a professional audience. Presentations may receive credit on a one-time basis for the article, publication, book or preparation of a presentation or exhibit, not to exceed three hours of continuing education credit per biennium.

j. Supervision of a social work practicum student(s) from an accredited social work education program. A licensee may receive one credit for every 100 hours supervised, not to exceed 6 hours of continuing education credit per biennium.

These rules are intended to implement Iowa Code chapters 154B, 154C, 154D and 272C.

ITEM 2. Rescind and reserve **481—Chapter 886**.

ITEM 3. Rescind and reserve **481—Chapter 892**.

ITEM 4. Rescind and reserve **481—Chapter 896**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapters 882, 887, 893, 898
"Discipline for Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, Psychologists, and Social Workers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 154B, 154C, 154D and 272C

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154B, 154C, 154D and 272C

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.	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/mku-itia-ciq Or dial: 1.573.342.3106 PIN: 861 856 486#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed chapter provides protection to Iowans because it publicly defines disciplinary options when a mental health counselor, marriage and family therapist, behavior analyst, psychologist, or social worker fails to provide the standard of care. This is important to both the public and the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against the licensee's license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board of Behavioral Health Professionals has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only

those disciplinary grounds that are unique to the Board and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The rules in this chapter are related to standards of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care in medical journals, etc. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at $1,000.

Costs to the agency are for the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 1.0 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees related to practice standards, continuing education, Board meeting administration, etc. The Board receives a number of complaints each year. In 2021, the Board received 120 complaints, and in 2022, it received 113. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The intended benefit of this chapter is to ensure public safety and maintain a high level of care for Iowans. The Board receives a number of complaints and regularly issues discipline. The Board receives a number of complaints each year. In 2021, the Board received 120 complaints, and in 2022, it received 113. The Board initiated 27 public discipline actions during that two-year period. The Board has approximately 9,200 active licensees.

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 has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

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

Costs to the agency are for the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 1.0 FTE position.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, $1,000 in penalties was paid into the General Fund for disciplinary fees assessed by the Board.

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

The Board receives a number of complaints each year. In 2021, the Board received 120 complaints, and in 2022, it received 113. The Board initiated 27 public discipline actions during that two-year period. Licensees routinely provide mental health services to Iowans. Licensees who fail to meet practice standards have the potential to inflict serious harm to vulnerable Iowans who receive their services, so the Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The 19 Boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This proposed chapter contains only those disciplinary grounds that are unique to the mental health counselor, marriage and family therapist, behavior analyst, psychologist, and social work professions and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules.

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

There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important to ensure Iowans receive services from competent practitioners.

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 relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for licensees. While some licensees likely are running a small business of their own, some also work for large organizations, such as hospital systems. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 882:

CHAPTER 882
DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, PSYCHOLOGISTS, AND SOCIAL WORKERS

481—882.1(154D,272C) Mental health counselors, marriage and family therapists, and behavioral analysts—grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 481—Chapter 504:

882.1(1) Failure to comply with the national association's code of ethics.

a. Marital and family therapists. Failure to comply with the current American Association for Marriage and Family Therapy (AAMFT) Code of Ethics revised January 2015, which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the AAMFT's website.

b. Mental health counselors. Failure to comply with the current Code of Ethics of the American Counseling Association (ACA) published 2014, which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the ACA website.

c. Behavior analysts and assistant behavior analysts. Failure to comply with the current Behavior Analyst Certification Board (BACB) Professional and Ethical Compliance Code for Behavior Analysts published January 2023, which is hereby adopted by reference. Copies of the Professional and Ethical Compliance Code may be obtained from the BACB website.

882.1(2) Sexual relationships.

a. Current clients. A licensee shall not engage in sexual activities or sexual contact with a client, regardless of whether such contact is consensual or nonconsensual.

b. Former clients. A licensee shall not engage in sexual activities or sexual contact with a former client within the five years following termination of the client relationship. A licensee shall not engage in sexual activities or sexual contact with a former client, regardless of the length of time elapsed since termination of the client relationship, if the client has a history of physical, emotional, or sexual abuse or if the client has ever been diagnosed with any form of psychosis or personality disorder or if the client is likely to remain in need of therapy due to the intensity or chronicity of a problem.

c. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's spouse or significant other.

d. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's relative within the second degree of consanguinity (client's parent, grandparent, child, grandchild, or sibling) when there is a risk of exploitation or potential harm to a client or former client.

e. A licensee shall not provide clinical services to an individual with whom the licensee has had prior sexual contact.

882.1(3) Physical contact. A licensee shall not engage in physical contact with a client when there is a possibility of psychological harm to the client as a result of the contact. A licensee who engages in appropriate physical contact with a client is responsible for setting clear, appropriate, and culturally and age-sensitive boundaries that govern such contact.

481—882.2(147,272C) Psychologists—grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of the following offense or those listed in 481—Chapter 504: failure to comply with the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association, as published in the December 2002 edition of American Psychologist and including amendments effective January 1, 2017, hereby adopted by reference. Copies of the Ethical Principles of Psychologists and Code of Conduct may be obtained from the American Psychological Association's website at www.apa.org.

481—882.3(272C) Social workers—grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of the following offense or those listed in 481—Chapter 504: violation of a regulation, rule, or law of this state, another state, or the United States that relates to the practice of social work, including but not limited to the rules of conduct found in rule 481—884.4(154C).

These rules are intended to implement Iowa Code chapters 147, 154B, 154C, 154D and 272C.

ITEM 2. Rescind and reserve **481—Chapter 887**.

ITEM 3. Rescind and reserve **481—Chapter 893**.

ITEM 4. Rescind and reserve **481—Chapter 898**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapters 883 and 889 "Prescribing Psychologists"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 147.36, 147.76, 154B.13, 154B.14, 272C.3 and 272C.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154B and 272C

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.	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/mku-itia-ciq Or dial: 1.573.342.3106 PIN: 861 856 486#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed chapter lays out the minimum standards for education and practice of psychologists with a conditional prescribing certificate and psychologists with a prescribing certificate. Members of the public, licensees, training programs, and employers benefit from having a clear understanding of the minimum standards for appropriate training and practice in this state. Requirements include the application process, minimum educational qualifications, and supervision requirements.

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 direct cost to the general public; however, there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee. The licensee must complete a postdoctoral clinical psychopharmacology master's degree. The Board has not identified an exact cost of education, since it varies depending on the school the licensee chooses to attend to meet the educational requirements.

A licensed psychologist seeking a conditional prescription certificate must pay an application fee of $270 (application fees are addressed in 481—Chapter 5). The conditional prescription certificate is valid for a period of four years and authorizes a psychologist to prescribe psychotropic medications to patients with mental disorders under supervision in accordance with the requirements of this chapter.

Once the licensee has completed the requirements of supervised practice, the licensee may apply for a prescription certificate and pay an application fee of $60. The biennial renewal fee is $60.

Prescribing psychologists are licensed in Guam, New Mexico, Louisiana, Idaho, Illinois, and Colorado. The application fees for a conditional prescription certificate are comparable to Iowa's: Guam, $125; New Mexico, $125; Louisiana, $275; Idaho, $250; and Illinois, $150. Colorado recently passed legislation to license prescribing psychologists; therefore, no fee information is available at this time.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.2 full-time equivalent (FTE) position to review application materials. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The public and professionals benefit from the proposed rulemaking. The chapter clearly articulates appropriate minimum standards for safe practice as a means of protecting patient safety.

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 direct cost to the general public; however, there is a cost to the applicant since complying with the minimum requirements to enter into the profession is at the expense of the licensee.

The licensee must complete a postdoctoral clinical psychopharmacology master's degree. The Board has not identified an exact cost of education, since it varies depending on the school the licensee chooses to attend to meet the educational requirements.

Application fees are $270 for a conditional prescription certificate and $60 for a prescription certificate. The biennial renewal fee for a prescription certificate is $60.

Staff salaries to support the work of the Board are covered by the fund. It takes roughly 0.2 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without having an established threshold for entry into the profession, individuals who are not appropriately trained could harm the public.

3. Costs to the State:

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

Staff salaries to support the work of the Board are covered by the fund. It takes roughly 0.2 FTE position to review application materials. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The Board believes the cost to license this profession is justified by the benefits achieved because it ensures that Iowans are treated with competent and qualified practitioners. This is especially

important given the highly sensitive nature of the psychotropic medications that these licensees are allowed to prescribe once they have complied with these rules and statute.

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

The Board has not identified less restrictive means of regulating psychologist prescribing. The professional standards articulated in these rules are consistent with those established by the handful of other states that license this practice and recognize the highly sensitive nature of the services being provided. These standards could be reduced; however, the Board would have concerns that doing so would increase the potential for inappropriate or dangerous practices occurring in Iowa.

6. Alternative methods considered by the agency:

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

The Board has not identified less restrictive means of regulating psychologist prescribing. The professional standards articulated in these rules are consistent with those established by the handful of other states that license this practice and recognize the highly sensitive nature of the services being provided. These standards could be reduced; however, the Board would have concerns that doing so would increase the potential for inappropriate or dangerous practices occurring in Iowa.

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

The Board has not identified less restrictive means of regulating psychologist prescribing. The professional standards articulated in these rules are consistent with those established by the handful of other states that license this practice and recognize the highly sensitive nature of the services being provided. These standards could be reduced; however, the Board would have concerns that doing so would increase the potential for inappropriate or dangerous practices occurring in Iowa.

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 relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for psychologists. While some psychologists likely are running a small business of their own, some also work for large corporations and hospitals. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 883:

CHAPTER 883
PRESCRIBING PSYCHOLOGISTS

481—883.1(148,154B) Definitions—joint rule.

"APA" means the American Psychological Association.

"Applicant" means a psychologist applying for a conditional prescription certificate.

"Board" means the Iowa board of psychology.

"Board of medicine" means the Iowa board of medicine.

"Collaborating physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall engage in the practice of family medicine, internal medicine, neurology, pediatrics, or psychiatry.

"Conditional prescribing psychologist" means a person licensed to practice psychology in Iowa who holds an active conditional prescription certificate. This term does not include prescribing psychologists.

"Conditional prescription certificate" means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication under the supervision of a supervising physician.

"CSA registration" means a Controlled Substance Act registration issued by the Iowa board of pharmacy authorizing a psychologist to possess and prescribe controlled substances.

"DEA registration" means a mid-level practitioner registration with the Drug Enforcement Administration authorizing a psychologist to possess and prescribe controlled substances.

"Joint rule" means a rule adopted by agreement of the board of psychology and the board of medicine through the joint rulemaking process.

"Mental disorder" means a disorder that is defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) published by the American Psychiatric Association March 2022, or contained within the mental and behavioral disorders chapter of the most recent version of the International Classification of Diseases, 11th revision, effective January 1, 2022.

"Prescribing psychologist" means a person licensed to practice psychology in Iowa who holds an active prescription certificate. This term does not include conditional prescribing psychologists.

"Prescription certificate" means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication.

"Primary care provider" means a person who engages in the practice of family medicine, internal medicine, neurology, pediatrics, obstetrics and gynecology, or psychiatry and oversees a patient's general medical care, consistent with Iowa Code section 280A.1.

"Psychologist" means a person licensed to practice psychology in Iowa.

"Psychotropic medication" means a medication that shall not be dispensed or administered without a prescription and that has been explicitly approved by the federal Food and Drug Administration for the treatment of a mental disorder, as defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) published by the American Psychiatric Association March 2022, or the most recent version of the International Classification of Diseases, 11th revision, effective January 1, 2022. "Psychotropic medication" does not include narcotics.

"Supervising physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who supervises a conditional prescribing psychologist. A supervising physician shall specialize in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

"Training director" means an employee of the psychopharmacology training program who is primarily responsible for directing the training program.

"Training physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who provides training to a psychologist as part of the clinical experience and practicum described in rule 481—883.3(148,154B). A training physician shall engage in the practice of family medicine, internal medicine, neurology, pediatrics, or psychiatry. A training physician shall be approved by the psychopharmacology training program.

481—883.2(154B) Conditional prescription certificate. A conditional prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders under supervision in accordance with the requirements of this chapter.

883.2(1) *Application.* Unless a basis for denial exists in accordance with rule 481—883.9(154B), the board shall issue a conditional prescription certificate to an applicant who satisfies the following requirements:

a. Holds an active license to practice psychology in Iowa and an active health service provider certification issued by the board. Both the license and the health service provider certification must be in good standing.

b. Meets the educational requirements set forth in rule 481—883.3(148,154B). Official academic transcripts shall be sent directly from the school to the board.

c. Submits a supervision plan in accordance with subrule 883.4(1).

d. Possesses malpractice insurance that covers the prescribing of psychotropic medications.

e. Submits a completed application and a nonrefundable application fee of $270.

883.2(2) *Term.* A conditional prescription certificate shall be valid for a period of four years from the date of issuance. The board shall not renew a conditional prescription certificate unless a conditional prescribing psychologist cannot complete the requirements of supervised practice within four years due to extenuating circumstances. A conditional prescribing psychologist may request an extension of a conditional prescription certificate when extenuating circumstances exist to provide additional time for the requirements of supervised practice to be met.

481—883.3(148,154B) Educational requirements for conditional prescription certificate—joint rule. An applicant for a conditional prescription certificate shall have completed a program of study designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The program must have included didactic instruction, a clinical experience, and a practicum satisfying the requirements of this rule. A minimum of 40 hours of basic training on clinical assessment skills shall be included as part of the program's didactic instruction.

883.3(1) *Degree.* An applicant shall possess a postdoctoral master of science degree in clinical psychopharmacology from a program designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The degree program must be a minimum of 30 credit hours, not including the practicum, and shall include coursework in basic science; neuroscience; clinical medicine; pathological basis of disease; clinical pharmacology; psychopharmacology; and professional, ethical and legal issues. A minimum of one-third of the coursework must be completed in a live interactive format. A program must be designated by the APA at the time the degree is conferred.

883.3(2) *Clinical experience.* An applicant shall have completed a clinical experience in accordance with the requirements of this subrule. During the clinical experience, a psychologist shall learn clinical assessment techniques and pathophysiology through direct observation and hands-on training with a training physician. During the clinical experience, a psychologist shall become competent in health history interviews, physical examinations, and neurological examinations with a medically diverse patient population. The clinical experience must be associated with the

psychopharmacology training program from which the psychologist obtained the postdoctoral master of science degree in clinical psychopharmacology.

a. Scope. At the beginning of the clinical experience, the psychologist shall directly observe the training physician performing clinical assessments of patients. After the training physician determines the psychologist has gained sufficient knowledge, the clinical experience shall transition to the psychologist's performance of clinical assessments of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may perform clinical assessments of patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients and is reviewing all medical records. A psychologist and a training physician shall have ongoing discussions regarding the psychologist's clinical assessment skills and progress in the clinical experience.

b. Minimum experience. The clinical experience shall consist of a minimum of 600 patient encounters that shall be completed by the end of the practicum.

c. Conflict of interest. A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

d. Milestones. To satisfactorily complete the clinical experience, a psychologist shall demonstrate competency in each of the following:

(1) Perform a health history interview to obtain pertinent information regarding a patient's chief complaint, history of the present illness, past medical and surgical history, family history, allergies, medications, and psychosocial history. The psychologist shall perform a review of systems to elicit a health history and shall appropriately document the health history.

(2) Perform a physical examination in a logical sequence, ensuring appropriate positioning of the patient, proper patient draping, and proper application of the principles of asepsis throughout the examination. The psychologist shall verbalize and assess the components of a general survey and be able to accurately assess all of the following: vital signs, including pulse, respiration, and blood pressure; skin, hair and nails; head, face and neck; eyes; ears, nose, mouth and throat; thorax, lungs and axillae; heart; peripheral vascular system; abdomen; and musculoskeletal system. The psychologist shall be proficient in utilizing any equipment needed to conduct a physical examination.

(3) Complete a neurological examination demonstrating knowledge of the history related to the neurological system and the ability to assess the following: mental status, cranial nerves, motor system, sensory system, and reflexes. The psychologist shall differentiate normal laboratory values from abnormal laboratory values and correlate abnormal laboratory values with impaired physiological systems. The psychologist shall identify adverse drug reactions and identify laboratory data and physical signs indicating an adverse drug reaction.

e. Informed consent. At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the clinical experience. The psychologist shall provide sufficient information regarding the expectations and requirements of the clinical experience to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

f. Training documentation. The psychologist and the training director shall maintain documentation accounting for all clinical experience patient encounters, including the dates, times, and locations of all clinical experience patient encounters, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

g. Certification. The training physician(s) and the training director shall certify on forms provided by the board that the applicant has successfully completed the minimum number of clinical experience patient encounters required and demonstrated competence in clinical assessment techniques and pathophysiology through completion of the milestones defined in these rules.

883.3(3) *Practicum.* An applicant shall have completed a practicum in accordance with the requirements of this subrule. During the practicum, a psychologist shall develop competencies in evaluating and treating patients with mental disorders through pharmacological intervention via observation and active participation. The practicum must be associated with the psychopharmacology training program from which the applicant obtained the postdoctoral master of science degree in clinical psychopharmacology and must be completed in a period of time not less than six months and not more than three years.

a. Scope. At the beginning of the practicum, the psychologist shall directly observe the training physician evaluating and treating patients with mental disorders. After the training physician determines the psychologist has gained sufficient knowledge, the practicum shall transition to the psychologist's evaluation and treatment of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may evaluate and treat patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients, has personal contact with the patient at each visit, and is reviewing all pertinent medical records. During the practicum, the training physician shall make all final treatment decisions, with consultation from the psychologist prior to making a final determination regarding the psychopharmacological treatment of a patient.

b. Minimum number of hours. A practicum shall consist of a minimum of 400 hours. Only hours spent face to face evaluating and treating patients with mental disorders and hours spent discussing treatment plans with a training physician may count as practicum hours. Time spent by the psychologist providing services that are within the scope of practice of a licensed psychologist, such as psychological examinations and psychotherapy, shall not be counted as practicum hours.

c. Minimum number of patients. A psychologist shall see a minimum of 100 individual patients throughout the practicum. A patient can be counted toward this requirement if the patient has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. Over the course of the practicum, the psychologist shall observe, evaluate, and treat patients encompassing a range of ages and a variety of psychiatric diagnoses.

d. Settings. At least 100 hours of the 400 hours must be completed in a psychiatric setting. At least 100 hours of the 400 hours must be completed in a primary care or community mental health setting.

e. Conflict of interest. A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

f. Milestones. To successfully complete the practicum, a psychologist shall demonstrate competency in each of the following:

(1) Physical examination and mental status examination. The psychologist shall perform comprehensive and focused physical examinations and mental status evaluations, demonstrate proper use of instruments, and recognize variation associated with developmental stages and diversity.

(2) Review of systems. The psychologist shall integrate information learned from patient reports, signs, symptoms, and a review of each major body system, recognizing normal developmental variations.

(3) Medical history interview. The psychologist shall systematically conduct a patient clinical interview, producing a patient's medical, surgical, psychiatric, and medication history, as well as a family medical and psychiatric history, and be able to communicate the findings in written and verbal form.

(4) Assessment indications and interpretation. The psychologist shall order and interpret appropriate tests (e.g., psychometric, laboratory, and radiological) for the purpose of making a differential diagnosis and monitoring therapeutic and adverse effects of treatment.

(5) Differential diagnosis. The psychologist shall determine primary and alternate diagnoses using established diagnostic criteria.

(6) Integrated treatment planning. The psychologist shall identify and select, using all available data, the most appropriate treatment alternatives, including medication, psychosocial, and combined treatments, and sequence treatment within the larger biopsychosocial context.

(7) Consultation and collaboration. The psychologist shall understand the parameters of the role of a prescribing psychologist and work with other professionals, including a patient's primary care physician, in an advisory or collaborative manner to effectively treat a patient.

(8) Treatment management. The psychologist shall apply, monitor, and modify as needed the treatment of a patient and learn to write valid and complete prescriptions.

(9) Medical documentation. The psychologist shall demonstrate appropriate medical documentation for the patient-psychologist interaction to include subjective and objective assessment; mental status, physical examination findings, or both; formulation; diagnostic impression; and comprehensive treatment plan.

g. Informed consent. At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the practicum. The psychologist shall provide sufficient information regarding the expectations and requirements of the practicum to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

h. Training documentation. The psychologist and the training director shall maintain documentation regarding all patients observed, evaluated, and treated by the psychologist as part of the practicum. The documentation shall clearly identify the training physician for each patient. The psychologist and the training director shall maintain documentation of all practicum hours, including the dates, times, and locations of all practicum hours, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

i. Certification. The training physician(s) and the training director shall certify on forms provided by the board that the psychologist has successfully completed the minimum number of practicum hours, treated the minimum number of patients, and demonstrated competence in the evaluation and treatment of patients with mental disorders through pharmacological intervention through completion of the milestones defined in these rules.

883.3(4) *Examination.* A psychologist shall pass the Psychopharmacology Examination for Psychologists (PEP) administered by the APA Practice Organization's College of Professional Psychology or by the Association of State and Provincial Psychology Boards. The passing score utilized by the board shall be the passing score recommended by the test administrator. The examination score shall be sent directly from the testing service to the board.

481—883.4(148,154B) Supervised practice as a conditional prescribing psychologist—joint rule. A conditional prescribing psychologist shall complete a minimum of two years of supervised practice in prescribing psychotropic medications to patients with mental disorders in accordance with this rule to be eligible to apply for a prescription certificate.

883.4(1) *Supervision plan.* Prior to issuing a conditional prescription certificate, the board shall review and approve the proposed supervision plan.

a. The proposed supervision plan must include the following:

(1) Conditional prescribing psychologist information. The plan must include the name, license number, address, telephone number, and email address of the supervisee.

(2) Supervising physician information. The plan must include the name, license number, date of licensure, area of specialization, address, telephone number, and email address of each supervising physician.

(3) Primary supervising physician. The plan must include a designation of the primary supervising physician.

(4) Period of supervision. The plan must include the beginning date of the supervision plan and estimated date of completion.

(5) Locations and settings. The plan must include a description of the locations and settings where and with whom supervision will occur.

(6) Scope of practice. The plan must include a description of the scope of practice of the conditional prescribing psychologist, including any limitations on the types of psychotropic medications that may be prescribed and the patient populations to which a prescription may be issued and including the expectations and responsibilities of the supervising physician.

(7) Release of information. The plan must include a provision requiring the conditional prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the conditional prescribing psychologist to share the patient's health information with the supervising physician.

(8) Consultation between the conditional prescribing psychologist and the supervising physician. The plan must include a provision requiring that the conditional prescribing psychologist consult with the supervising physician on a regular basis regarding a patient's psychotropic treatment plan and any potential complications. A conditional prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician objects on the basis of a contraindication.

(9) Consultation between the supervising physician and the primary care physician. The plan must include a provision requiring that the supervising physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

(10) Termination of the supervision plan. The plan must include a description of how the supervision plan may be terminated and the process for notifying affected patients.

(11) Signatures. The plan must include signatures of the psychologist and all supervising physicians.

b. A conditional prescribing psychologist shall inform the board of any amendments to the conditional prescribing psychologist's supervision plan, including the addition of any supervising physicians, within 30 days of the change. Amendments to a supervision plan are subject to board approval.

c. The board shall transmit all approved supervision plans and approved amendments to the board of medicine.

883.4(2) *Responsibilities of a supervising physician.* A supervising physician shall provide supervision in accordance with rules established by the board of medicine.

883.4(3) *Responsibilities of a conditional prescribing psychologist.* At the initial contact, a conditional prescribing psychologist shall inform a patient, or a patient's legal guardian when appropriate, that the conditional prescribing psychologist is practicing under the supervision of a physician for purposes of prescribing psychotropic medication and shall provide the name of the supervising physician. A conditional prescribing psychologist shall provide sufficient information regarding the supervision requirements to obtain informed consent and appropriate releases. Upon request, a conditional prescribing psychologist shall provide additional information regarding the conditional prescribing psychologist's education, training, or experience with respect to prescribing psychotropic medications.

883.4(4) *Specialization.* A conditional prescribing psychologist shall complete the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

a. Children. To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A pediatric practice,

(2) A child and adolescent practice, or

(3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

b. Elderly patients. To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A geriatric practice, or

(2) A general practice with patients across the lifespan including patients who are over 65 years of age.

c. Serious medical conditions. To prescribe to patients with serious medical conditions, including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, a conditional prescribing psychologist shall complete at least one year prescribing psychotropic medications to patients with serious medical conditions.

883.4(5) *Completion of supervised practice.* A conditional prescribing psychologist shall see a minimum of 300 patients over a minimum of two years to complete the supervised practice period, provided each of the 300 patients has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. A conditional prescribing psychologist shall treat a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

a. At the conclusion of the supervised practice period, a primary supervising physician shall certify the following:

(1) Supervision was provided in accordance with rules established by the board of medicine.

(2) A conditional prescribing psychologist has successfully completed two years of supervised practice, considered at least 300 patients for psychopharmacological intervention, and treated at least 100 patients with psychotropic medications.

(3) A conditional prescribing psychologist intending to specialize in the psychological care of children or elderly persons, or persons with serious medical conditions, has completed the requirements of subrule 883.4(4).

(4) A conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones listed in paragraph 883.3(3)*"f"* sufficient to obtain a prescription certificate.

b. If a conditional prescribing psychologist is unable to successfully complete the supervised practice period prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time requested. Any requests for extension must be submitted to and approved by both the board and the board of medicine.

481—883.5(154B) Prescription certificate. A prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders in accordance with the requirements of this chapter.

883.5(1) *Application.* Unless a basis for denial exists in accordance with rule 481—883.9(154B), the board shall issue a prescription certificate to a conditional prescribing psychologist who satisfies the following requirements:

a. Holds an active license to practice psychology in Iowa, an active health service provider certification issued by the board, and an active conditional prescription certificate. The license, certification, and certificate must all be in good standing.

b. Submits documentation regarding successful completion of the supervised practice period.

c. Submits a collaborative practice agreement in accordance with rule 481—883.8(148,154B).

d. Possesses malpractice insurance that covers the prescribing of psychotropic medications.

e. Submits a completed application and a nonrefundable application fee of $60.

883.5(2) *Initial term and renewal.* An initial prescription certificate shall be valid through the current expiration date of the applicant's psychologist license. Thereafter, a prescription certificate shall be renewed biennially concurrent with the renewal of the psychologist license. A prescribing psychologist may renew a prescription certificate by submitting a completed renewal application and a nonrefundable application fee of $60. A prescribing psychologist is responsible for renewing the prescription certificate prior to its expiration.

883.5(3) *Continuing education required.* A prescribing psychologist shall complete a minimum of 20 hours of continuing education in psychopharmacology each year. A total of 40 hours of continuing education in psychopharmacology is required to renew a prescription certificate. These hours are separate from, and in addition to, the continuing education hours needed to renew a psychologist license pursuant to 481—Chapter 241. If a psychologist specializes in treating children, a minimum of 10 hours of continuing education in psychopharmacology each year, for a total of 20 hours of continuing education per renewal period, must be directly related to prescribing psychotropic medication to children.

883.5(4) *Late renewal.* A prescription certificate shall become late when it has not been renewed prior to the expiration date. To renew a late prescription certificate, a prescribing psychologist shall complete the renewal requirements and submit a late fee of $60 within 30 days following the prescription certificate expiration date. A prescribing psychologist who fails to renew a prescription certificate within 30 days following the prescription certificate expiration date shall have an inactive prescription certificate. A psychologist whose prescription certificate is inactive continues to hold the privilege of certification in Iowa but may not prescribe psychotropic medications until the prescription certificate is reactivated.

883.5(5) *Reactivation.* To apply for reactivation of an inactive prescription certificate, a psychologist shall submit a completed reactivation application, a nonrefundable fee of $60, and documentation of a minimum of 40 hours of continuing education in psychopharmacology taken within the preceding two years. If a prescription certificate has been inactive for more than five years, a psychologist shall demonstrate competence in psychopharmacology through one of the following means:

a. Practiced as a prescribing psychologist in another jurisdiction in the preceding two years.

b. Completed a period of supervised practice for a minimum of 12 months. The board may issue a conditional prescription certificate to complete a supervised practice period for purposes of prescription certificate reactivation.

481—883.6(148,154B) Prescribing—joint rule. This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall comply with all prescription requirements described in 657—subrule 8.19(1). The following limits apply to a psychologist's prescriptive authority:

1. A psychologist shall only prescribe psychotropic medications for the treatment of mental disorders.
2. A psychologist shall only prescribe psychotropic medications in situations where the psychologist has adequate education and training to safely prescribe.
3. A prescription shall identify the prescriber as a "psychologist certified to prescribe" and shall include the Iowa license number of the psychologist.
4. A prescription issued by a conditional prescribing psychologist shall contain the name of the supervising physician overseeing the care of the patient.
5. A psychologist shall not delegate prescriptive authority to any other person.
6. A psychologist is prohibited from prescribing narcotics as defined in Iowa Code section 124.101.
7. A psychologist shall maintain an active DEA registration and an active CSA registration in order to dispense, prescribe, or administer controlled substances.

8. A psychologist shall not self-prescribe nor prescribe to any person who is a member of the psychologist's immediate family or household.

9. Before prescribing a psychotropic medication that is classified as a controlled substance, a psychologist shall check the patient's prescriptive profile using the Iowa prescription monitoring program.

10. To prescribe to a patient who is pregnant or lactating, a psychologist shall consult with the patient's obstetrician-gynecologist or the physician managing the patient's pregnancy or postpartum care regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication to a patient if the patient's obstetrician-gynecologist or the physician managing care objects on the basis of a contraindication.

11. To prescribe to a patient who has a serious medical condition, including but not limited to heart disease, kidney disease, liver disease, cancer, stroke, seizures, or comorbid psychological conditions, or to a patient who has a developmental or intellectual disability, a psychologist shall consult with the physician who is managing the comorbid condition for that patient regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication if the patient's physician objects on the basis of a contraindication.

12. A psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician or collaborating primary care provider objects on the basis of a contraindication.

481—883.7(148,154B) Consultation with primary care providers—joint rule. This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall maintain a cooperative relationship with the primary care provider who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical conditions, and significant changes in the patient's medical or psychological condition are discussed.

883.7(1) *Requirement for a primary care provider.* A patient must have a designated primary care provider who engages in the practice of family medicine, internal medicine, neurology, pediatrics, obstetrics and gynecology, or psychiatry in order for a psychologist to have the ability to prescribe psychotropic medications to the patient. If a patient does not have a designated primary care provider, a psychologist shall refer the patient to a primary care provider prior to prescribing psychotropic medications to the patient. A psychologist shall not prescribe psychotropic medications to a patient until the patient has established care with a primary care provider.

883.7(2) *Requirement for a release.* A psychologist shall obtain a release of information from the patient, or the patient's legal guardian when appropriate, authorizing the sharing of the patient's health information between the psychologist and the patient's primary care provider. A psychologist shall not prescribe psychotropic medications to a patient who refuses to sign a release.

883.7(3) *Cooperation and consultation with primary care provider.* A psychologist shall contact each patient's primary care provider on at least a quarterly basis and shall contact the primary care provider to relay information regarding the care of a patient whenever the following occur:

a. A psychologist is considering adding a new psychotropic medication to a patient's medication regimen. A psychologist shall not prescribe a new psychotropic medication if the patient's primary care provider objects on the basis of a contraindication.

b. A psychologist is discontinuing or changing the dosage of a psychotropic medication.

c. A patient experiences adverse effects from any medication prescribed by the psychologist that may be related to the patient's medical condition.

d. A psychologist receives the results of laboratory tests related to the medical care of a patient.

e. A psychologist notes a change in a patient's mental condition that may affect the patient's medical treatment.

481—883.8(148,154B) Collaborative practice—joint rule.

883.8(1) A prescribing psychologist shall have one or more collaborating physicians at all times, as evidenced by a current collaborative practice agreement. Prior to executing a collaborative practice agreement, a prescribing psychologist and a collaborating physician shall review and discuss each other's relevant education, training, experience, and competencies to determine whether a collaborative practice is appropriate and to facilitate drafting a suitable collaborative practice agreement. A collaborative relationship between a prescribing psychologist and a collaborating physician shall ensure patient safety and optimal clinical outcomes. Collaboration may be done in person or via electronic communication in accordance with these rules. A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time. A prescribing psychologist shall not prescribe without a current written collaborative practice agreement with a collaborating physician in place. All collaborative relationships shall be reviewed and evaluated on an annual basis to ensure that the prescribing psychologist is competent to safely prescribe psychotropic medications to patients and that the collaborating physician is providing appropriate feedback to the prescribing psychologist. A collaborative practice agreement shall establish the parameters of the collaborative practice that are mutually agreed upon by the prescribing psychologist and the collaborating physician and shall be reviewed on an annual basis.

883.8(2) A collaborative practice agreement shall include the following:

a. Prescribing psychologist information. The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.

b. Collaborating physician information. The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.

c. Time period. The time period covered by the agreement.

d. Locations and settings. The locations and settings where collaborative practice will occur.

e. Collaboration. A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborating physician is available for timely collaboration with a prescribing psychologist, either in person or via electronic communication, in accordance with these rules.

f. Scope of practice. The scope of practice agreed upon by the collaborating physician and the prescribing psychologist, as it relates to the prescribing psychologist's prescribing of psychotropic medications, including provisions to ensure that the prescribing psychologist's practice complies with all provisions of these rules.

g. Clinical protocols, practice guidelines, and care plans. Clinical protocols, practice guidelines, and care plans relevant to the scope of practice authorized.

h. Methods of communication. A description of how a prescribing psychologist and a collaborating physician may contact each other for consultation.

i. Limitations on psychotropic medications. A description of any limitations on the range of psychotropic medications the prescribing psychologist may prescribe. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only prescribes psychotropic medications that are consistent with the prescribing psychologist's education, training, experience, and competence.

j. Limitations on patient populations. A description of any limitations on the types of populations that the prescribing psychologist may treat with psychotropic medications. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only provides psychopharmacology services to patient populations that are within the prescribing psychologist's education, training, experience, and competence.

k. Release of information. A provision requiring the prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the prescribing psychologist to share the patient's health information with the collaborating physician.

l. Chart review. A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborative physician personally reviews and documents review of at least 10 percent of the prescribing psychologist's patient charts on a quarterly basis in each of the following categories:

(1) Juvenile patients,
(2) Pregnant or lactating patients,
(3) Elderly patients,
(4) Patients with serious medical conditions, and
(5) All other patients.

m. Annual review. A provision requiring an annual review and evaluation of the collaborative relationship and the collaborative practice agreement.

n. Consultation between the prescribing psychologist and the collaborating physician. A provision requiring that the prescribing psychologist consult with the collaborating physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications. A prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the collaborating physician objects on the basis of a contraindication.

o. Consultation between the collaborating physician and the primary care provider. A provision requiring that the collaborating physician consult with the patient's primary care provider on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

p. Termination. A provision describing how the agreement can be terminated and the process for notifying affected patients if there will be an interruption in services.

q. Signatures. Signatures of the prescribing psychologist and all collaborating physicians.

481—883.9(154B) Grounds for discipline. The board may deny, suspend, revoke, or impose other discipline as outlined in 481—Chapter 13 against a psychologist who holds a conditional prescription certificate or prescription certificate for any of the following:

883.9(1) Violating any of the grounds for discipline set forth in rule 481—242.2(147,272C).

883.9(2) The inability to safely prescribe psychotropic medications.

883.9(3) Prescribing medications in violation of rule 481—883.6(148,154B).

883.9(4) Repeatedly failing to cooperate and collaborate with primary care physicians.

883.9(5) Prescribing psychotropic medications without a current written collaborative practice agreement.

883.9(6) Failing to maintain malpractice insurance that covers the prescribing of psychotropic medications.

883.9(7) Practicing outside the scope of a collaborative practice agreement.

883.9(8) Prescribing medications while the conditional prescription certificate or prescription certificate is inactive, or prescribing controlled substances while the DEA registration or CSA registration is not current.

883.9(9) Having a conditional prescription certificate or prescription certificate disciplined by the licensing authority of another state.

883.9(10) Having a license or health service provider certification disciplined by the board or the licensing authority of another state.

481—883.10(154B) List of psychologists. The board shall maintain a list of all current conditional prescribing psychologists and prescribing psychologists. The list shall be transmitted annually to the board of medicine.

883.10(1) *Information.* The list shall include the name of the psychologist, license number, license expiration date, expiration date of the conditional prescription certificate or prescription certificate, and practice locations.

883.10(2) *Additions and deletions.* When a psychologist is added or removed from the list, the board shall notify the board of medicine of the addition or deletion.

481—883.11(148,154B) Complaints—joint rule. Any complaint received by the board alleging a violation of this chapter shall be forwarded to the board of medicine. Any complaint received by the board of medicine alleging a violation of this chapter shall be forwarded to the board.

481—883.12(148,154B) Joint waiver—joint rule. Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

481—883.13(148,154B) Amendment—joint rule. Any rule identified as a joint rule may only be amended by agreement of the board and board of medicine through a joint rulemaking process.

These rules are intended to implement Iowa Code chapters 148 and 154B.

ITEM 2. Rescind and reserve **481—Chapter 889**.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapters 884, 888, 891 and 897
"Practice of Social Workers, Psychologists, Marriage and Family Therapists, and Mental Health Counselors"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 272C, 154B, 154C, 154D and 272C

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154B, 154C, 154D and 272C

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.	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/mku-itia-ciq Or dial: 1.573.342.3106 PIN: 861 856 486#

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 Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking provides Iowans, licensees, and employers with practice guidance and requirements for social workers, psychologists, marriage and family therapists, and mental health counselors. The rules provide guidance on what is considered appropriate and what is not appropriate practice. Categories include informed consent, competency, supervision, privacy and confidentiality, recordkeeping, access to records, billing and fees, dual relationships and conflicts of interest, sexual relationships, physical contact, termination of services, misrepresentations, impairments, research, organization relationships and business practices, discrimination and sexual harassment, electronic social work services, National Code of Ethics, and general guidance.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are often costs associated with practice standards in the form of effort and money associated with compliance, as is true for any service-oriented industry. Members of the public would have costs associated with the services they are seeking to receive. Each licensee's practice has different variables, such as number of clients seen, nature of services provided, how services are delivered (i.e., telehealth or in person) and administrative support. The Board of Behavioral Health Professionals does not have a mechanism for estimating what these total costs might be to the public and to the licensee.

Costs to the agency are for the staff time needed to manage the full scope of Board activities, which include oversight of practice standards, answering questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at 1.0 full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The general public and licensees benefit from this rulemaking. The chapter provides standards of practice for licensees to ensure a licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing they are receiving quality services in this industry.

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 a large number of licensees. Master's and independent level licensees routinely provide mental health services to Iowans. There are approximately 573 licensed bachelor social workers (LBSW), 1,854 licensed master's social workers (LMSW), and 2,683 licensed independent social workers (LISW) who provide these services to Iowans. The Board received 55 complaints in 2021 and 51 in 2022. The Board initiated 15 public disciplinary actions over those two years. There are approximately 976 active psychologists who provide mental health services to Iowans. The Board received 10 complaints against psychologists in 2021 and 12 in 2022. The Board initiated one public discipline action over this two-year period. There are approximately 3,200 total active licenses between marriage and family therapists and mental health counselors. The Board received 55 complaints against marriage and family therapists and mental health counselors in 2021 and 50 in 2022. The Board initiated 11 public discipline actions during that two-year period. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. If this profession were not regulated, it could mean that vulnerable Iowans who are receiving mental health services could be placed at risk. Social workers, psychologists, marriage and family therapists, and mental health counselors are regulated in all 50 states.

Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession was not regulated, it could mean that lower-skilled individuals would be providing services.

3. Costs to the State:

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

Costs to the agency are for the staff time needed to manage the full scope of Board activities, which include oversight of practice standards, answering questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 1.0 FTE position. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues as a result of this rulemaking. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing important mental health services to Iowans. If these professions were not regulated, it could mean that vulnerable Iowans who are receiving mental health services could be placed at risk.

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

Licensing is the highest form of regulation. Lower forms of regulation could be viable, such as registration. That said, social workers, psychologists, marriage and family therapists, and mental health counselors are regulated in all 50 states. These professions practice a form of mental health therapy that is technical in nature and requires a high level of skill, so the Board believes that regulation is necessary.

6. Alternative methods considered by the agency:

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

Currently, social workers, psychologists, marriage and family therapists, and mental health counselors are regulated in all 50 states. These professions practice a form of mental health therapy that is technical in nature and requires a high level of skill, so the Board believes that regulation is necessary.

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

The Board did consider less restrictive alternatives, such as registration as opposed to licensure. The Board ultimately decided that to ensure public safety and the integrity of the profession, licensure requirements should stay in effect. Currently, all 50 states regulate social workers, psychologists, marriage and family therapists, and mental health counselors. Not regulating these professions could jeopardize public safety and lead to serious injury for consumers. The Board believes regulations are necessary and critical to ensuring public safety, which is the paramount concern.

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 relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for practitioners. While some licensees could be running a small business,

some also work for large hospitals, clinics and agencies. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 884:

CHAPTER 884
PRACTICE OF SOCIAL WORKERS, PSYCHOLOGISTS, MARRIAGE AND FAMILY THERAPISTS, AND MENTAL HEALTH COUNSELORS

481—884.1(154B,154C) Definitions.

"APA" means the American Psychological Association.

"Client" means the individual, couple, family, or group to whom a licensee provides direct social work services.

"Clinical records" means records created by a licensee regarding the observation and treatment of patients, such as progress notes, but does not include psychotherapy notes.

"Clinical services" means services provided by an LMSW or LISW that involve the professional application of social work theory and methods in diagnosing, assessing, treating, and preventing psychosocial disabilities or impairments, including emotional and mental disorders.

"Counseling" means a method used by licensees to assist clients in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

"Examinee" means a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney about the psychological functioning of that examinee.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and related regulations promulgated thereunder.

"Patient" means an individual under the care of a licensee in a clinical role and is synonymous with the term "client."

"Personal representative" means a person authorized to act on behalf of the patient in making health care-related decisions such as a parent or legal guardian, an individual with a health care power of attorney, an individual with a general power of attorney or durable power of attorney that includes the power to make health care decisions, or a court-appointed legal guardian.

"Psychosocial therapy" means a specialized, formal interaction between an LMSW or LISW and a client in which a therapeutic relationship is established and maintained to assist the client in overcoming or abating specific emotional, mental, or social problems and achieving specified goals for well-being. Psychosocial therapy is a form of psychotherapy that emphasizes the interface between the client and the client's environment. Therapy is a planned, structured program based on a diagnosis and is directed to accomplish measurable goals and objectives specified in the client's individual treatment plan.

"Psychotherapy notes" means notes recorded by a licensee documenting or analyzing the contents of a conversation during a private therapy session with a patient, or a group, joint, or family therapy session, that are maintained separately from the patient's clinical records. "Psychotherapy notes" excludes medication prescription monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of any clinical tests, and any summary of the following items: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

"Telepsychology" means the provision of psychological services using telecommunication technologies.

"Test data" means raw and scaled scores, patient responses to test questions or stimuli, and notes and recordings concerning patient statements and behavior during an examination.

"Test materials" means the test questions, scoring keys, protocols, and manuals that do not include personally identifying information about the subject of the test.

481—884.2(147,154B,272C) Purpose and scope. The purpose of this rule is to set the minimum standards of practice for psychologists practicing in Iowa. The practice of psychology is occurring in Iowa if the patient or examinee is located in Iowa. Psychologists will ensure any interns or residents under supervision adhere to the minimum standards of practice and must comply with the requirements set forth in 481—subrule 880.2(6). The APA Code of Ethics, published January 1, 2017, is applicable and enforceable to the extent it does not conflict with any standards of practice set forth in this chapter. A psychologist may be disciplined for any violation of this chapter or the APA Code of Ethics.

884.2(1) *Access to records.*

a. Clinical records generally. When records are requested along with a signed release from the patient or the patient's personal representative, a psychologist will provide requested clinical records in a timely manner unless there is a ground for denial under HIPAA (Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, August 21, 1996, 110 Stat. 1936).

b. Psychotherapy notes. A psychologist is not required to release psychotherapy notes in response to a signed release; if a psychologist chooses to release psychotherapy notes, a signed release specifically authorizing the release of those notes will be provided.

c. Substance use disorder treatment programs. Psychologists who practice in a federally assisted substance use disorder treatment program, also known as a Part 2 program, are prohibited from disclosing any information that would identify a patient as having a substance use disorder unless the patient provides written consent in compliance with Part 2 requirements.

d. Clinical records of minor patients. A minor patient is a patient who is under the age of 18 and is not emancipated. A psychologist is not required to release the clinical records of a minor patient to the minor's personal representative if releasing such records is not in the minor's best interest. When a minor patient reaches the age of 18, the clinical records belong to the patient.

e. Clinical records of deceased patients. A psychologist will provide the clinical records of a deceased patient to the deceased patient's executor upon a written request accompanied by a copy of the patient's death certificate and a copy of the legal document identifying the requestor as the patient's executor.

f. Forensic records. A psychologist will provide forensic records consistent with the APA Specialty Guidelines for Forensic Psychology published January 2011.

g. Board. A psychologist shall provide clinical records, test data, or forensic records to the board as requested during the investigation of a complaint. A psychologist is not required to obtain a patient release to send such information to the board because the board is a health oversight agency.

h. Exceptions. These rules do not apply when there is a legal basis for not disclosing requested information.

884.2(2) *Psychological testing.* A psychologist may administer psychological tests and assessments to a patient or examinee if the psychologist has appropriate training for any psychological test or assessment utilized and the test or assessment is scientifically founded.

a. Use of proctors. A psychologist may delegate the administration of a standardized test, intelligence test, or objective personality assessment to an appropriately trained individual. The psychologist is responsible for supervising any proctors.

b. Release of test data. A psychologist will not provide test data to any person, with the exception that the test data with proper written release may be disclosed to a licensed psychologist designated by the patient or examinee. A psychologist who receives test data in this manner shall not further disseminate the test data.

c. Release of test materials. A psychologist shall not disclose test materials to any person, except for another licensed psychologist who has been designated in writing by the subject of a

psychological test to receive the records associated with the psychological testing of the subject. A psychologist shall not disclose test materials in any administrative, judicial, or legislative proceeding.

884.2(3) *Judicial proceedings.* Prior to participating in a judicial proceeding, a psychologist will become familiar with the rules governing the proceeding. A psychologist will understand and clearly identify the psychologist's role in the proceeding.

a. Licensure. A license to practice psychology in Iowa or an exemption from licensure is not required solely to testify as an expert witness in court, if the psychologist did not personally examine the examinee. A psychologist who personally examines an examinee located in Iowa for the purpose of providing an expert opinion is required to be licensed or exempt from licensure at the time of the evaluation.

b. Custody evaluations. A psychologist who performs a child custody evaluation will comply with the APA Guidelines for Child Custody Evaluations in Family Law Proceedings published December 2010.

884.2(4) *Telepsychology.* A psychologist may practice telepsychology provided the following are met:

a. The psychologist must be licensed or be exempt from licensure in the jurisdiction where the patient or examinee is located.

b. Prior to initiating telepsychology with a new patient or examinee, a psychologist will take reasonable steps to verify the identity and location of the patient or examinee.

c. A psychologist will ensure informed consent for telepsychology includes a description of any limitations of services as a result of the technology utilized.

d. A psychologist will gain competency in the use of a particular technology prior to utilizing it in practice. A psychologist shall only use technologies that are secure and functioning properly.

e. A psychologist will apply the same ethical and professional standards of care and professional practice that are required when providing in-person psychological services. If the same standard of care cannot be met with telepsychology, a psychologist will not utilize telepsychology.

884.2(5) *Records.* A psychologist will complete clinical records as soon as practicable to ensure continuity of services. All clinical records shall be completed within 30 days after the service or evaluation is complete unless there are significant extenuating circumstances. Clinical records and psychotherapy notes will be retained for at least seven years after the last date of service, or until at least three years after a minor reaches the age of 18, whichever is later. Forensic records will be completed and retained consistent with the APA Specialty Guidelines for Forensic Psychology published January 2011.

481—884.3(147) Mental health counselor and marriage and family therapist recordkeeping.

884.3(1) A mental health counselor or marriage and family therapist shall maintain sufficient, timely, and accurate documentation in client records.

884.3(2) For purposes of this rule, "client" means the individual, couple, family, or group to whom a mental health counselor or marriage and family therapist provides direct clinical services.

884.3(3) A mental health counselor's or marriage and family therapist's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

884.3(4) Clinical services. A mental health counselor or marriage and family therapist who provides clinical services in any employment setting, including private practice, shall:

a. Store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the mental health counselor's or marriage and family therapist's employer or agency, if applicable. If no other legal provisions govern record retention, a mental health counselor or marriage and family therapist shall store all client records for a minimum of seven years after the date of the client's discharge or death or, in the case of a minor, for three years after the client reaches the age of majority under state law or seven years after the date of the client's discharge or death, whichever is longer.

b. Maintain timely records that include subjective and objective data, an assessment, a treatment plan, and any revisions to the assessment or plan made during the course of treatment.

c. Provide the client with reasonable access to records concerning the client. A mental health counselor or marriage and family therapist who is concerned that a client's access to the client's records could cause serious misunderstanding or harm to the client shall provide assistance in interpreting the records and consultation with the client regarding the records. A mental health counselor or marriage and family therapist may limit a client's access to the client's records, or portions of the records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both the client's request for access and the licensee's rationale for withholding some or all of a record shall be documented in the client's records.

d. Take steps to protect the confidentiality of other individuals identified or discussed in any records to which a client is provided access.

884.3(5) Electronic recordkeeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the mental health counselor or marriage and family therapist shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

884.3(6) Correction of records.

a. Hard-copy records. Original notations shall be legible, be written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the original record, it must be crossed out with a single, nondeleting line and be initialed and dated by the mental health counselor or marriage and family therapist.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

884.3(7) Confidentiality and transfer of records. Marital and family therapists or mental health counselors shall preserve the confidentiality of client records in accordance with their respective rules of conduct and with federal and state law. Upon receipt of a written release or authorization signed by the client, the licensee shall furnish such therapy records, or copies of the records, as will be beneficial for the future treatment of that client. A fee may be charged for duplication of records, but a mental health counselor or marriage and family therapist shall not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

884.3(8) Retirement, death or discontinuance of practice.

a. If a mental health counselor or marriage and family therapist is retiring or discontinuing practice and is the owner of a practice, the mental health counselor or marriage and family therapist shall notify in writing all active clients and, upon knowledge and agreement of the clients, shall make reasonable arrangements with those clients to transfer client records, or copies of those records, to the succeeding licensee.

b. Upon a mental health counselor's or marriage and family therapist's death:

(1) The mental health counselor's or marriage and family therapist's employer or representative must ensure that all client records are transferred to another licensee or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The mental health counselor's or marriage and family therapist's employer or representative shall notify each active client that the client's records will be transferred to another licensee or entity that will retain custody of the records and that, at the client's written request, the records will be sent to the licensee or entity of the client's choice.

884.3(9) Nothing stated in this rule shall prohibit a mental health counselor or marriage and family therapist from conveying or transferring the client records to another licensed individual who is assuming a practice, provided that written notice is furnished to all clients.

481—884.4(154C) Social work rules of conduct.

884.4(1) *Informed consent.*

a. A social worker will provide services to clients only in the context of a professional relationship based, when appropriate, on valid written informed consent. A social worker will use clear and understandable language to inform clients about the nature of available services, potential benefits and risks, limits and risks of confidentiality, alternative ways of receiving assistance, applicable fees, and involvement of and sharing information with third parties.

b. If a client has difficulty communicating, a social worker will attempt to ensure the client's comprehension. This may include providing the client with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible. A social worker will provide information in a manner that is understandable and culturally appropriate for the client. Clients will be given sufficient opportunity to ask questions and receive answers about social work services, including electronic delivery of services, if appropriate.

c. If a client lacks the capacity to provide informed consent, a social worker will protect the client's interests by seeking permission from an appropriate third party and will inform the client consistent with the client's level of understanding. In such instances, a social worker will seek to ensure that the third party acts in a manner consistent with the client's wishes and interests. A social worker will take reasonable steps to enhance the client's ability to give informed consent.

d. If a client is receiving services involuntarily, a social worker will provide information about the nature and extent of services and about the extent of the client's right to refuse services.

e. The provision of social work services to an individual in this state through any electronic means, including the Internet, telephone, or the Iowa communications network or any fiberoptic media, regardless of the location of the social worker, constitutes the practice of social work in the state of Iowa and will be subject to regulation in accordance with Iowa Code chapters 147 and 154C and the administrative rules of the board. A social worker who provides services via electronic media will inform recipients of the limitations and risks associated with such services.

f. A social worker will obtain a client's informed consent before audiotaping or videotaping the client or permitting a third party to observe services provided to the client.

g. A social worker will develop policies regarding the sharing, retention, and storage of digital and other electronic communications and records and will inform clients of applicable policies.

884.4(2) *Competence.*

a. A social worker will provide services and represent oneself as competent only within the boundaries of the social worker's education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

b. A social worker will provide services in substantive areas or use intervention techniques or approaches that are new only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those areas, interventions, or techniques.

c. When generally recognized standards do not exist with respect to an emerging area of practice, a social worker will exercise careful judgment and take responsible steps, including appropriate education, research, training, consultation and supervision, to ensure competence and to protect clients from harm.

884.4(3) *Supervision.*

a. A social worker will exercise appropriate supervision over persons who practice under the supervision of the social worker.

b. A social worker who provides supervision or consultation will have the necessary knowledge and skill to supervise or consult appropriately and will do so only within the social worker's areas of knowledge and competence.

c. A social worker who provides supervision or consultation is responsible for setting clear, appropriate, and culturally sensitive boundaries.

d. A social worker will not engage in any dual or multiple relationships with supervisees if there is a risk of exploitation of or potential harm to the supervisee.

e. A social worker will not engage in sexual activities or sexual contact with a supervisee, student, trainee, or other colleague over whom the social worker exercises professional or supervisory authority.

f. A social worker will not employ, assign, or supervise an individual in the performance of services that require a license if the individual has not received a license to perform the services or if the individual has a suspended, revoked, lapsed, or inactive license.

g. A social worker will not practice without receiving supervision, as needed, given the social worker's level of practice, experience, and need.

884.4(4) *Privacy and confidentiality.*

a. A social worker will not disclose or be compelled to disclose client information unless required by law, except under the following limited circumstances:

(1) Situations in which the social worker determines that disclosure is necessary to prevent serious, foreseeable, and imminent harm to the client or another specific identifiable person.

(2) Situations in which the client waives the privilege by bringing criminal, civil, or administrative charges or action against a social worker.

(3) With the written informed consent of the client that explains to whom the client information will be disclosed or released and the purpose and time frame for the release of information. If the client is deceased or unable to provide informed consent, a social worker will obtain written consent from the client's personal representative, another person authorized to sue, or the beneficiary of an insurance policy on the client's life, health, or physical condition.

(4) To testify in a court or administrative hearing concerning matters pertaining to the welfare of children.

(5) To seek collaboration or consultation with professional colleagues or administrative superiors on behalf of the client.

(6) Pursuant to a validly issued subpoena or court order.

In the event of a disclosure of information under any of the circumstances stated above, the social worker will disclose the least amount of confidential information necessary and will reveal only that information that is directly relevant to the purpose for which the disclosure is made.

b. Before the disclosure is made, on the basis of client consent or other legal basis, a social worker will inform the client, to the extent possible, about the disclosure of confidential information and the potential consequences of the disclosure.

c. A social worker will discuss with clients and other interested parties the nature of confidentiality and limitations of a client's right to confidentiality. A social worker will review with clients the circumstances under which confidential information may be requested and when disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

d. When a social worker provides counseling or psychosocial therapy services to families, couples, or groups, the social worker will seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. A social worker will inform participants in family, couples, or group counseling or psychosocial therapy that the social worker cannot guarantee that all participants will honor such agreements.

e. A social worker will inform clients involved in family, couples, marital, or group counseling or psychosocial therapy of the policy of the social worker, the social worker's employer, and the agency concerning the social worker's disclosure of confidential information among the parties involved in the counseling or psychosocial therapy.

f. A social worker will not disclose confidential information to third-party payers unless a client has authorized such disclosure. A social worker will inform the client of the nature of the client information to be disclosed or released to the third-party payer.

g. A social worker will not discuss confidential information in any setting unless privacy can be ensured.

h. A social worker will protect the confidentiality of clients during legal proceedings to the extent permitted by law.

i. A social worker will protect the confidentiality of clients when the social worker is responding to requests from members of the media.

j. A social worker will protect the confidentiality of clients' written and electronic records and other sensitive information. A social worker will take reasonable steps to ensure that client records are stored in a secure location and that client records are not available to others who are not authorized to have access.

k. A social worker will take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones, telephone answering machines, and other electronic or computer technology.

l. A social worker will transfer or dispose of client records in a manner that protects client confidentiality and is consistent with federal and state statutes, rules and regulations and the guidelines of the social worker's employer or agency, if applicable.

m. A social worker will take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.

n. A social worker will not disclose identifying information when discussing a client for teaching or training purposes or in public presentations unless the client has consented to disclosure of confidential information.

o. A social worker will not disclose identifying information when discussing a client with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.

p. Consistent with the preceding standards, a social worker will protect the confidentiality of deceased clients.

884.4(5) *Recordkeeping.*

a. A social worker will maintain sufficient, timely, and accurate documentation in client records. A social worker's records will reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

b. A social worker who provides clinical services in any employment setting, including private practice, will maintain timely records that include subjective and objective data, assessment or diagnosis, a treatment plan, and any revisions to the assessment, diagnosis, or plan made during the course of treatment.

c. A social worker who provides clinical services will store records in accordance with state and federal statutes, rules, and regulations governing record retention and with the guidelines of the social worker's employer or agency, if applicable. If no other legal provisions govern record retention, a social worker will store all client records for a minimum of seven years following the termination of services to ensure reasonable future access.

884.4(6) *Access to records.* A social worker who provides clinical services will:

a. Provide the client with reasonable access to records concerning the client. A social worker who is concerned that a client's access to the client's records could cause serious misunderstanding or harm to the client will provide assistance in interpreting the records and consultation with the client regarding the records. A social worker may limit a client's access to the client's records, or portions of the records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both the client's request and the rationale for withholding some or all of a record should be documented in the client's records.

b. Take steps to protect the confidentiality of other individuals identified or discussed in any records to which a client is provided access.

884.4(7) *Billing and fees.*

a. A social worker will bill only for services that have been provided.

b. A social worker will not accept goods or services from the client or a third party in exchange for the social worker's services.

c. A social worker will not solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the social worker's employer or agency.

d. A social worker will not accept, give, offer or solicit a fee, commission, rebate, fee split, or other form of consideration for the referral of a client.

e. A social worker will not permit any person to share in the fees for professional services, other than a partner, an employee, an associate in a professional firm, or a consultant to the social worker.

f. A social worker who provides clinical services will, when appropriate:

(1) Establish and maintain billing practices that accurately reflect the nature and extent of services provided.

(2) Inform the client of the fee for services at the initial session or meeting with the client. A social worker will provide a written payment arrangement to a client at the commencement of the professional relationship.

884.4(8) *Dual relationships and conflicts of interest.*

a. "Dual relationship" means that a social worker develops or assumes a secondary role with a client, including but not limited to a social relationship, an emotional relationship, an employment relationship, or a business association. For purposes of these rules, "dual relationship" does not include a sexual relationship. Standards governing sexual relationships are found in subrule 884.4(9).

(1) Current clients. A social worker will not engage in a dual relationship with a client.

(2) Former clients. A social worker will not engage in a dual relationship with a client within five years of the termination of the client relationship. A social worker will not engage in a dual relationship with a former client, regardless of the length of time elapsed since termination of the client relationship, when there is a risk of exploitation or potential harm to a client or former client.

(3) Unavoidable dual relationships with current and former clients. If a dual relationship with a current or former client is unavoidable, the social worker will take steps to protect the client and will be responsible for setting clear, appropriate, and culturally sensitive boundaries. The burden will be on the social worker to show that the dual relationship was unavoidable. In determining whether a dual relationship was unavoidable, the board will consider the size of the community, the nature of the relationship, and the risk of exploitation or harm to a client or former client.

b. Conflicts of interest.

(1) A social worker will avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment.

(2) A social worker will not continue in a professional relationship with a client when the social worker has become emotionally involved with the client to the extent that objectivity is no longer possible in providing the required professional services.

(3) A social worker will inform the client when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the client's interests primary and protects the client's interests to the greatest extent possible. In some cases, protecting the client's interests may require termination of the professional relationship with proper referral of the client.

(4) A social worker will not take unfair advantage of any professional relationship or exploit others to further the social worker's personal, religious, political, or business interests.

(5) A social worker who provides services to two or more people who have a relationship with each other will clarify with all parties, when appropriate and in a manner consistent with the confidentiality standards of subrule 884.4(4), which individuals will be considered clients and the nature of the social worker's professional obligations to the various individuals who are receiving services. A social worker who anticipates a conflict of interest among the individuals receiving services or who anticipates having to perform in potentially conflicting roles will clarify, when appropriate and in a manner consistent with the confidentiality standards at subrule 884.4(4), the social worker's role with the parties involved and take appropriate action to minimize any conflict of interest.

884.4(9) *Sexual relationships.*

a. Current clients. A social worker will not engage in sexual activities or sexual contact with a client, regardless of whether such contact is consensual or nonconsensual.

b. Former clients. A social worker will not engage in sexual activities or sexual contact with a former client within the five years following termination of the client relationship. A social worker will not engage in sexual activities or sexual contact with a former client, regardless of the length of time elapsed since termination of the client relationship, if the client has a history of physical, emotional, or sexual abuse or if the client has ever been diagnosed with any form of psychosis or personality disorder or if the client is likely to remain in need of therapy due to the intensity or chronicity of a problem.

c. A social worker will not engage in sexual activities or sexual contact with a client's or former client's spouse or significant other.

d. A social worker will not engage in sexual activities or sexual contact with a client's or former client's relative within the second degree of consanguinity (client's parent, grandparent, child, grandchild, or sibling) when there is a risk of exploitation or potential harm to a client or former client.

e. A social worker will not provide clinical services to an individual with whom the social worker has had prior sexual contact.

884.4(10) *Physical contact.* A social worker will not engage in physical contact with a client when there is a possibility of psychological harm to the client as a result of the contact. A social worker who engages in appropriate physical contact with a client is responsible for setting clear, appropriate, and culturally and age-sensitive boundaries that govern such contact.

884.4(11) *Termination of services.*

a. A social worker will terminate services when such services are no longer required or no longer serve the client's needs or interests.

b. A social worker will take reasonable steps to avoid abandoning clients who are still in need of services. A social worker will assist in making appropriate arrangements for continuation of services when necessary.

c. A social worker will not terminate services to pursue a social, financial, business, romantic, or sexual relationship with a client.

d. A social worker who anticipates the termination or interruption of services to a client will notify the client promptly and seek the transfer, referral, or continuation of services in relation to the client's needs and preferences.

e. A social worker who is leaving an employment setting will inform clients, to the extent possible given the nature of the termination of the employment relationship, of appropriate options for the continuation of services and of the benefits and risks of the options.

f. If the employer who terminates a social worker is also a social worker, the employer will provide notice to clients or allow the social worker the opportunity to provide notice to clients to ensure appropriate case closure or continuation or transfer of services if continued treatment is necessary.

g. A social worker who provides clinical services will comply with the following additional standards regarding termination of the client relationship:

(1) Termination of a client relationship will be documented in the client record. Absent written documentation of termination, the professional relationship will be considered ongoing.

(2) A social worker who practices in a fee-for-service setting may terminate services to a client who is not paying an overdue balance only if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client. Prior to terminating services under this subrule, a social worker will make reasonable efforts to collect the unpaid fees and will make appropriate referrals for the client.

884.4(12) *Misrepresentations, disclosure.* A social worker will not:

a. Knowingly make a materially false statement, or fail to disclose a relevant material fact, in a letter of reference, application, referral, report or other document.

b. Knowingly allow another person to use the social worker's license or credentials.

c. Knowingly aid or abet a person who is misrepresenting the person's professional credentials or competencies.

d. Impersonate another person or misrepresent an organizational affiliation in one's professional practice.

e. Further the application or make a recommendation for professional licensure of another person who is known by the social worker to be unqualified in respect to character, education, experience, or other relevant attribute.

f. Fail to notify the appropriate licensing authority of any human services professional who is practicing or teaching in violation of the laws or rules governing that person's professional discipline.

g. Engage in professional activities, including advertising, that involve dishonesty, fraud, deceit, or misrepresentation.

h. Advertise services in a false or misleading manner or fail to indicate in the advertisement the name, highest relevant degree, and licensure status of the provider of services.

i. Fail to distinguish, or purposely mislead the reader or listener, in public announcements, addresses, letters and reports as to whether the statements are made as a private individual or whether they are made on behalf of an employer or organization.

j. Engage in direct solicitation of potential clients for pecuniary gain in a manner or in circumstances that constitute overreacting, undue influence, misrepresentation or invasion of privacy.

k. Fail to inform each client of any financial interests that might accrue to the social worker for referral to any other person or organization or for the use of tests, books, or apparatus.

l. Fail to inform each client that the client may be entitled to the same services from a public agency if the social worker is employed by that public agency and also offers services privately.

m. Make claims of professional superiority that cannot be substantiated by the social worker.

n. Guarantee that satisfaction or a cure will result from the performance of professional services.

o. Claim or use any secret or special method of treatment or techniques that the social worker refuses to divulge to professional colleagues.

p. Take credit for work not personally performed, whether by giving inaccurate information or failing to give accurate information.

q. Offer social work services or use the designation of licensed bachelor social worker, licensed master social worker, or licensed independent social worker; use the designations LBSW, LMSW, or LISW or any other designation indicating licensure status; or hold oneself out as practicing at a certain level of licensure unless the social worker is duly licensed as such.

r. Permit another person to use the social worker's license for any purpose.

s. Practice outside the scope of a license.

884.4(13) *Impairments.*

a. A social worker will not:

(1) Practice in a professional relationship while intoxicated or under the influence of alcohol or drugs not prescribed by a licensed physician.

(2) Practice in a professional relationship while experiencing a mental or physical impairment that adversely affects the ability of the social worker to perform professional duties in a competent and safe manner.

(3) Practice in a professional relationship if involuntarily committed for treatment of mental illness, drug addiction, or alcoholism.

b. A social worker who self-reports an impairment or suspected impairment to the board may be eligible for confidential monitoring by the impaired practitioner review committee. The social worker will be provided the Impaired Practitioner Report form to initiate the process. Standards governing the impaired practitioner review committee may be found in 193—Chapter 12.

884.4(14) *Research.* If engaged in research, a social worker will:

a. Consider carefully the possible consequences for human beings participating in the research.

b. Protect each participant from unwarranted physical and mental harm.

c. Ensure that the consent of the participant is voluntary and informed and that each participant executes a signed informed consent form that details the nature of the research and any known possible consequences.

d. Treat information obtained as confidential.

e. Not knowingly report distorted, erroneous, or misleading information.

884.4(15) *Organization relationships and business practices.* A social worker will not:

a. Solicit the clients of colleagues or assume professional responsibility for clients of another agency or colleague without appropriate communication with that agency or colleague.

b. Abandon an agency, organization, institution, or group practice without reasonable notice or under circumstances that seriously impair the delivery of professional care to clients.

c. Deliberately falsify client records.

d. Fail to submit required reports and documents in a timely fashion to the extent that the well-being of the client is adversely affected.

e. Delegate professional responsibilities to a person when the social worker knows, or has reason to know, that the person is not qualified by training, education, experience, or classification to perform the requested duties.

884.4(16) *Discrimination and sexual harassment.*

a. A social worker will not practice, condone, or facilitate discrimination against a client, student, or supervisee on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability, diagnosis, or social or economic status.

b. A social worker will not sexually harass a client, student, or supervisee. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

884.4(17) *General.* A social worker will not:

a. Practice without receiving supervision as needed, given the social worker's level of practice, experience, and need.

b. Practice a professional discipline without an appropriate license or after expiration of the required license.

c. Physically or verbally abuse a client or colleague.

d. Obtain, possess, or attempt to obtain or possess a controlled substance without lawful authority; or sell, prescribe, give away, or administer controlled substances.

884.4(18) *Relationship between the board's rules of conduct and the National Association of Social Workers (NASW) Code of Ethics.* The NASW Code of Ethics is one resource for practitioners with respect to practice and ethical issues, and selected sections from the NASW Code of Ethics have been incorporated into the rules of conduct. A social worker's professional conduct is governed by the board's rules of conduct, and a social worker may be disciplined for violation of these rules.

884.4(19) *Electronic social work services.* A social worker will:

a. Assess the client's suitability and capacity for online and remote services at the point of the client's first contact and use professional judgment to determine whether an initial in-person, videoconference, or telephone consultation is warranted before undertaking electronic social work services.

b. Take reasonable steps to verify the client's identity, ability to consent to services, and location. When verification of a client's identity is not feasible, social workers will inform the client of the limitations of services that can be provided.

c. Continually assess a client's suitability for electronic social work services during the course of the professional relationship.

These rules are intended to implement Iowa Code chapters 154B, 154C and 154D.

ITEM 2. Rescind and reserve **481—Chapter 888**.

ITEM 3. Rescind and reserve **481—Chapter 891**.

ITEM 4. Rescind and reserve **481—Chapter 897**.

INTERIOR DESIGN EXAMINING BOARD[193G]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193G—Chapter 1 "Description of Organization"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 544C

Public Hearing

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

October 22, 2024 3 p.m.	6200 Park Avenue Des Moines, Iowa Virtual: us02web.zoom.us/j/87157328415?pwd=MUJIuarfeYpA4aEog7FSkQfzHyXifN.1

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 Interior Design Examining Board (Board) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@dia.iowa.gov

Purpose and Summary

Proposed Chapter 1 provides basic information on the structure and function of the Board, which benefits the public and registrants by informing them about the organization and administration 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:

Chapter 1 provides organization and administrative background for the Interior Design Examining Board. The agency bears the cost of Board meetings, in the amount of $50 per diem per Board member per meeting, plus travel expenses as needed and regular staff time. Staff salaries and per diem to support the work of the Board are covered by the Licensing and Regulation Fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

The classes of persons that will benefit from the proposed rulemaking are registrants and the general public. This rulemaking establishes the structure and operations of the Board, making it easier to navigate the regulation of registered interior designers.

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 expenses of the Board (i.e., per diems and travel reimbursement) are covered by the Licensing and Regulation Fund.

- Qualitative description of impact:

Iowans are protected by the laws of professional licensing through responsible regulations. The Board ensures minimum standards for registration and resolves complaints against licensees.

3. Costs to the State:

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

Costs to the agency are staff time needed to manage Board activities and to pay the Board members $50 per diem and reimburse travel expenses.

- Anticipated effect on state revenues:

There is not a significant impact to state revenues by this chapter. Staff salaries are covered by the Licensing and Regulation Fund. Licensing fees go to the fund to cover operations of the regulated professional licensing boards.

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

No new fees are being imposed. The benefits of the rulemaking are less restrictive language and the simplification of the rules for better understanding by the public and registrants.

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

These rules are less restrictive than full licensure. The rules pertain only to those who wish to hold themselves as registered interior designers. Less restrictive alternatives would dilute the protection of the public. Reducing the nominal pay to the Board or reducing/eliminating travel expense reimbursement may serve to also reduce the interest of individuals in sitting on the Board.

This Board is part of the Professional Licensing Division within the Department of Inspections, Appeals, and Licensing (DIAL), which continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. This revised chapter supports this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

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

These rules are less restrictive than full licensure. The rules pertain only to those who wish to hold themselves as registered interior designers. These rules offer the public helpful information regarding the structure of the Board.

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

Registration and regulation are required by Iowa Code chapter 544C for those who wish to hold themselves as registered interior designers; the rules support the law.

Small Business Impact

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

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

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

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

Iowa registers interior designers, some of whom may own small businesses. The substantial impact on licensed small businesses from this chapter is negligible because there are no compliance requirements in Chapter 1. The function is solely to inform.

Text of Proposed Rulemaking

ITEM 1. Rescind 193G—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
DESCRIPTION OF ORGANIZATION

193G—1.1(544C,17A) Definitions. As used in these rules, the following definitions of words and terms apply:

"Board" means the same as in Iowa Code section 544C.1(1).

"CIDQ" means the council for interior design qualification.

"Department" means the same as in Iowa Code section 544C.1(4).

"Registered interior design" means the same as in Iowa Code section 544C.1(9).

"Registered interior designer" means the same as in Iowa Code section 544C.1(10).

193G—1.2(544C) Description.

1.2(1) The purpose of the board is to administer and enforce the provisions of Iowa Code chapter 544C. The board has promulgated these rules to clarify the board's intent and procedures.

1.2(2) The primary mission of the board is to protect the public interest. All board rules are construed as fostering the guiding policies and principles described in Iowa Code chapter 544C.

193G—1.3(544C,17A) Organization and duties. The board elects annually from its members a chairperson and a vice-chairperson. A quorum of the board is four members, and all final motions and actions must receive a majority vote. The board enforces the provisions of Iowa Code chapter 544C and maintains a roster of all registered interior designers in the state.

1.3(1) *Chairperson.* The chairperson, when present, presides at the meetings, appoints committees, and exercises all duties and powers of the chairperson.

1.3(2) *Vice chairperson.* The vice chairperson, in the absence or incapacity of the chairperson, exercises the duties and powers of the chairperson.

193G—1.4(544C,17A) Meetings. Calls for meetings are issued in accordance with Iowa Code section 21.4. The first meeting scheduled after April 30 is the annual meeting. The chairperson and vice chairperson are elected at the annual meeting. The chairperson and vice chairperson serve one-year terms. The newly elected officers assume the duties of their respective offices at the conclusion of the meeting at which they are elected.

193G—1.5(544C) Other meetings. In addition to the annual meeting and any subsequent meetings, the time and place of which may be fixed by vote of the board, a meeting may be called by the chairperson of the board or by joint call of a majority of its members.

193G—1.6(544C) Administrative committees. The board chairperson may appoint administrative committees of members of the board for the purpose of making recommendations on matters specified by the board.

193G—1.7(544C,17A) Waivers. Persons who wish to seek waivers from board rules should consult the uniform rules for the department at 481—Chapter 6.

These rules are intended to implement Iowa Code chapters 17A, 21, 22, 252J, 261, 272C and 544C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193G—Chapter 2 "Registration"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 544C

Public Hearing

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

October 22, 2024 3 p.m.	6200 Park Avenue Des Moines, Iowa Virtual: us02web.zoom.us/j/87157328415?pwd=MUJIuarfeYpA4aEog7FSkQfzHyXifN.1

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 Interior Design Examining Board (Board) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@dia.iowa.gov

Purpose and Summary

Proposed Chapter 2 establishes the minimum standards for interior design registration. The public, registrants, and applicants benefit from the chapter as it articulates the processes by which individuals apply for registration as directed in statute. This includes the processes for initial registration, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual who holds a registration has minimum competency. Requirements include the application process, minimum educational and training qualifications and examination requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is a cost to the applicant as complying with the minimum requirements to become registered in the profession is at the expense of the registrant.

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

The public and professionals benefit from the proposed chapter. Establishing minimum registration requirements ensures that practitioners are competent to practice interior design and to stamp/seal technical drawings. Without having an established threshold for those who wish to stamp and seal drawings, individuals who are not appropriately trained could cause serious harm to 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:

Estimation of the cost of education and other registration requirements to become an Iowa registered interior designer are as follows:

- Education: Fees vary as education can be earned at a community college or university.
- Experience/Training: There is not usually a cost, as interior designers are paid for their work at a firm.
- Examination fee: $225 (initial registration by examination only, paid to the Council for Interior Design Qualification)
- Iowa Registration Fee: $275

Minnesota's registration fee is $120. Nebraska enacted legislation for an interior design registry to begin in 2025.

- Qualitative description of impact:

In order to regulate and register professions as directed in statute, baseline standards for registration are critical to protecting public safety. The cost of inaction would increase the potential for injury to the public by a registrant who is not qualified to perform the work of stamping/sealing technical drawings.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities (i.e., managing applications for initial registrations, renewals and reinstatements). Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund. Registration fees go to the fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual registrants, not the State. There is no anticipated impact by this chapter to state revenues.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund. Registration fees go to the fund to cover the operations of the regulated professional licensing boards.

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

Interior design registration is voluntary. However, if a person wishes to seal/stamp technical documents, the person needs to be registered. The Board believes the current requirements assure public safety and ensure a minimum competency of service is provided to Iowans.

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

Since registration is only required of those who wish to stamp/seal technical documents, the Board believes all current requirements ensure public safety and ensure a minimum competency of service is provided to Iowans. The Board believes the cost of registration for this profession justifies the benefits achieved because it ensures that Iowans are able to safely interact with the built environment.

6. Alternative methods considered by the agency:

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

The Board has not identified another option as this registration is voluntary. Other states, including Nebraska, have recently begun registering interior designers. The Board believes the cost to voluntarily register helps to ensure that Iowans are able to safely interact with the built environment.

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

The Board believes the cost to voluntarily register justifies the benefits achieved because it ensures that Iowans are able to safely interact with the built environment. Having the Board determine minimum qualifications is a safeguard to help prevent bad actors from stamping/sealing documents.

Due to State government realignment, this Board is now part of the Department of Inspections, Appeals, and Licensing (DIAL). DIAL's Professional Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize processes across all professional licensing boards. The revised chapter supports this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

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 relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of registration requirements. While some interior designers likely are running a small business of their own, some work for large corporations and firms. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193G—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
REGISTRATION

193G—2.1(544C) Certificate of registration. All applicants for registration will complete a board-approved application and satisfy the interior design education, practical training, examination, and fee requirements established by this rule.

2.1(1) *Education and practical training.* An applicant for registration shall meet the education and training requirements set forth in Iowa Code section 544C.5.

2.1(2) *Examination.* An applicant for registration will verify successful completion of the National Council for Interior Design Qualification examination or its equivalent.

2.1(3) *Reciprocity.* The board may also grant registration by reciprocity as provided in Iowa Code section 544C.6.

2.1(4) *Military service and veteran reciprocity.* The board may grant registration for military service applicants, spouses, and veterans as provided for in 481—Chapter 7.

2.1(5) *Registration by verification.* The board may grant registration via verification as provided for in 193—Chapter 14.

193G—2.2(17A,272C,544C) Renewal of certificates of registration. Certificates of registration expire biennially on June 30. Certificates issued to registrants with last names beginning with A through K expire on June 30 of even-numbered years and certificates issued to registrants with last names beginning with L through Z expire on June 30 of odd-numbered years. However, a registration issued on or after May 1 but before June 30 will not expire until June 30 of the next renewal. For example, a license issued on May 17, 2020, would not expire until June 30, 2022. A registrant who fails to renew by the expiration date is not authorized to use the title of registered interior designer in Iowa until the certificate is reinstated as provided in rule 193G—2.3(544C,17A).

2.2(1) It is the policy of the board to send to each registrant a notice of the pending expiration date. Failure to receive this notice does not relieve the registrant of the responsibility to timely renew the certificate and pay the renewal fee.

2.2(2) If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the registrant failed to satisfy the continuing education provisions required as a condition for registration. If the basis for denial is a pending disciplinary action or disciplinary investigation that is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

2.2(3) When a registrant appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), and after or in lieu of giving the licensee an opportunity to come into compliance under rule 193G—3.3(17A,544C), offer a registrant the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between $50 and $250, depending on the severity of the violation; establish deadlines for compliance; and require that the registrant complete hours equal to double the deficiency in addition to the required hours. The consent order may impose additional educational requirements on the registrant. Any additional hours of continuing education completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A registrant is free to accept or reject the offer. If the offer of settlement is accepted, the registrant will be issued a renewed certificate of registration and will be subject to disciplinary action if the terms of the consent order are not fulfilled. If the offer of settlement is rejected, the matter will be set for hearing if timely requested by the registrant pursuant to 193—subrule 7.40(1).

2.2(4) A registrant who continues to use the title of registered interior designer in Iowa after the registration has expired may be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a registrant's application for reinstatement.

2.2(5) Registrants shall notify the board within 30 days of any change of address or business.

193G—2.3(544A,17A,272C) Grounds for denial of registration renewal. Failure of a registrant to complete the continuing education requirements as set forth in 193—Chapter 3, failure to file a report of completed continuing education, or failure to submit a written request for waiver or exemption shall be grounds for the board to deny renewal of the registration.

193G—2.4(544A,17A) Reinstatement of certificates of registration. An individual may reinstate a lapsed certificate of registration to active registration by doing the following:

1. Paying the current renewal fee;
2. Paying the reinstatement fee of $100;
3. Providing a written statement outlining the professional activities that the applicant performed in Iowa during the period of nonregistration, including a list of all projects with which the applicant had involvement and explaining the service provided by the applicant; and

4. Submitting documented evidence of completion of 10 continuing education hours, which should have been reported on the June 30 renewal date on which the applicant failed to renew, and 5 continuing education hours for each year or portion of a year of expired registration up to a maximum of 20 continuing education hours. All continuing education hours are to be completed in health, safety, and welfare subjects; be acquired in structured educational activities; and be in compliance with requirements in 193G—Chapter 3. The continuing education hours used for reinstatement may not be used again at the next renewal and may not have been earned more than four years prior to the date of the application to reinstate.

193G—2.5(544A) Applications.

2.5(1) The interior designer is responsible for verifying the accuracy of the information submitted on applications regardless of how the application is submitted or by whom it is submitted. For instance, if the office manager of an interior designer's firm submits an application for renewal on behalf of the interior designer and that information is incorrect, the interior designer will be held responsible for the information and may be subject to disciplinary action.

2.5(2) Persons applying for initial, renewal, or reciprocal registration will submit an application on a form provided by the board and pay a registration fee of $275. An applicant applying for initial, reciprocal, or reinstatement registration within 12 months from the applicant's renewal date pays half of the required fee. An applicant applying for initial, reciprocal, or reinstatement registration 12 months or more from the applicant's renewal date pays the full registration fee.

2.5(3) Fee schedule.

Type of fee	Amount
Registration fee	$275
Renewal	$275
Reinstatement of lapsed registration	$100
License predetermination fee	$25
Dishonored check, draft, order or other payment failure	$30

All fees are nonrefundable.

These rules are intended to implement Iowa Code chapter 544C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193G—Chapter 3 "Continuing Education"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 544C

Public Hearing

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

October 22, 2024 3 p.m.	6200 Park Avenue Des Moines, Iowa Virtual: us02web.zoom.us/j/87157328415?pwd=MUJIuarfeYpA4aEog7FSkQfzHyXifN.1

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 Interior Design Examining Board (Board) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@dia.iowa.gov

Purpose and Summary

Proposed Chapter 3 sets forth continuing education requirements for registered interior designers to ensure continuing competency. It includes definitions related to continuing education, the number of hours of continuing education that registrants are required to obtain, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that registered interior designers maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Registrants are responsible for the cost of continuing education. There are multiple private entities that provide continuing education courses to licensees. Some offer free continuing education. Some design firms offer free continuing education for their employees. The costs vary, but an average cost, if incurred at all, is estimated at $25 per hour, bringing the total cost to $250 every two years for a registrant to meet these requirements.

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

The intended benefit of continuing education is to ensure ongoing competency for registered interior designers to maintain up-to-date practice standards and provide quality services to Iowans, protecting public safety in the built environment.

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:

Private industry, including educational institutions, professional associations, and businesses, offers continuing education courses, so the Board is not privy to exact costs but, based on research, estimates it to be around $250 every two years for a registrant to meet these requirements. There are multiple entities that provide continuing education courses.

The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires ten hours of continuing education every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards of practice and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require continuing education.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements and performing continuing education audits. Shared staff at approximately 0.25 of a full-time equivalent position support the entirety of the work of the Board. Staff salaries are covered by the Licensing and Regulation Fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is not an anticipated impact by this chapter to state revenues. Staff salaries are covered by the Licensing and Regulation Fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

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

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. Other design professionals also have continuing education requirements. The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

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

A less restrictive alternative would be to reduce the amount of continuing education required. However, when the bill allowing registrants to stamp and seal technical documents was discussed, there was an agreement to increase the number of continuing education hours needed. The Board ultimately decided to keep the number of continuing education hours the same in order to better align with the Governor’s goal of reducing regulatory burdens. Minnesota requires 24 hours; Illinois

requires 10; Missouri requires one unit, which is 10 hours; and Wisconsin requires 9 hours. Nebraska will begin regulation in 2025 and South Dakota remains unregulated.

The Licensing Division of the Department of Inspections, Appeals, and Licensing (DIAL) continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rule edits support this effort.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
  - A less restrictive alternative would be to reduce the amount of continuing education required. However, when the bill allowing registrants to stamp and seal technical documents was discussed, there was an agreement to increase the number of continuing education hours needed. The Board ultimately decided to keep the number of continuing education hours the same in order to better align with the Governor's goal of reducing regulatory burdens. Minnesota requires 24 hours; Illinois requires 10; Missouri requires one unit, which is 10 hours; and Wisconsin requires 9 hours. Nebraska will begin regulation in 2025 and South Dakota remains unregulated.
  - DIAL's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The revised chapter supports this effort.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board's requirements are in alignment with or less than those of our neighboring states. Other design professionals also have required continuing education.

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 relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for interior designers. While some registered interior designers likely are running a small business of their own, some work for large organizations. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to the small business.

The entities that provide continuing education may experience a negative impact on their revenue due to less demand for continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 193G—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
CONTINUING EDUCATION

193G—3.1(17A,272C,544C) Definitions. As used in these rules, the following definitions apply:

"Contact hour" means one 60-minute clock hour of educational activity of which at least 50 minutes are devoted to instructional content. Where other units of credit are stated for an educational experience (e.g., continuing education units (CEUs)), they will be credited in terms of actual contact hours.

"Distance education" means any education process based on the geographical separation of student and instructor.

"Health, safety and welfare subjects" or *"HSW subjects"* means subjects that relate to the planning and designing of spaces and elements to minimize the risk of injury to persons or property. Such subjects include compliance with applicable building and safety codes, the planning and designing of spaces and elements that optimize over time the physically and mentally healthful use of those spaces and elements, and the planning and designing of spaces and elements that are durable, maintainable, cost-effective, environmentally conscientious and conservative of resources; that function properly in all relevant respects; that encourage access, functional independence and use by all relevant populations; that encourage user satisfaction, including aesthetic appeal; that promote a sense of user confidence and peace of mind; that integrate effectively with the surrounding environment; and that, in other similar ways, enhance the health, safety and well-being of the public.

"Structured activity" means a method of interior design-related learning led by a qualified individual and conducted or sponsored by a professional organization, technical organization, industry source or accredited college or university taught in person or through distance education.

193G—3.2(17A,272C,544C) Continuing education requirements.

3.2(1) Hours required. Completion of a minimum of ten contact hours in acceptable health, safety and welfare subjects satisfies the continuing education necessary for biennial registration renewal. All hours shall be in structured activity programs and must be acquired during the renewal period. A registrant may carry over up to five contact hours of continuing education credit obtained in excess of the requirements for a renewal period to the following renewal period.

3.2(2) Continuing education hours may be acquired in any state, provided that the registrant can demonstrate that the program meets the definition of structured activity as defined in this chapter.

3.2(3) A registered interior designer who holds a registration in Iowa for less than 12 months from the date of initial registration is not required to report continuing education at the first registration renewal. A registered interior designer who holds a registration in Iowa for 12 months or more, but less than 24 months from the date of initial registration, will report five contact hours of HSW subjects in a structured activity, earned in the preceding 12 months, at the first registration renewal.

3.2(4) Sources of continuing education. Credit may not be claimed for any activity required as part of a registered interior designer's routine professional responsibilities. Structured activities include the following:

a. Completion of any program or course sponsored by a professional or technical organization or industry source.

b. Instruction of a course, seminar, lecture, presentation, workshop, webinar or similar formal educational program. Credit is allowed at a maximum of three preparation hours for each class hour spent for actual presentation, valid for the initial presentation only. College and university faculty may not claim contact or preparation credit for teaching regular curriculum courses.

c. Research that is formally presented to the profession or public. Credit is allowed at a maximum of four contact hours per reporting period and shall be valid for the initial presentation only.

d. Completion of college or university credit courses dealing with interior-design-related subjects. Each semester hour equals 15 contact hours. A quarter hour equals ten contact hours.

3.2(5) Approved continuing education. The board does not preapprove continuing education activities or courses; however, acceptable HSW subjects that enhance the health, safety, and well-being of the public include the following topics:

a. Life safety, ADA, and other building and safety codes, standards and administrative regulations governing the practice of interior design.

b. Safety and security.

c. Physical and mental health issues.

d. Topics that relate to human physiology, perception, anthropometrics, ergonomics, psychology, sociology, ecology and cultural factors.

e. Energy efficiency.

f. Environmental issues.

g. Accessibility and universal design.

h. Materials and methods.

i. Building systems.

j. Statutes and rules relating to interior design regulation.

k. Professional ethics.

l. Legal aspects of professional practice.

m. Construction documents and services.

n. Project administration.

193G—3.3(17A,272C,544C) Controls and reporting.

3.3(1) An applicant for registration renewal may be requested to provide, in such manner and at such time as prescribed by the board, a signed statement, under penalty of perjury, on forms provided by the board, setting forth the continuing education in which the registrant has participated.

a. When an applicant is requested to provide a listing of the continuing education completed for structured activities, the information will include the following:

(1) The school, firm or organization conducting the course.

(2) The location of the course.

(3) The title of the course or a description of the course content.

(4) The name of the principal instructor.

(5) The dates attended.

(6) The hours claimed.

b. Reserved.

3.3(2) The board may verify information submitted by registrants. If an application for renewal is not approved, the applicant will be notified and may be granted a period of time by the board in which to correct the deficiencies noted. Any discrepancy between the number of CEUs reported and the number of CEUs actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any CEUs, or the registrant has failed to complete the required CEUs, the interior designer has 60 days from notification by the board to either provide further evidence of having completed the CEUs disallowed or remedy the discrepancy by completing the required number of CEUs (provided that such CEUs shall not again be used for the next renewal). An extension of time may be granted on an individual basis if requested by the registrant within 30 days of notification by the board. If the registrant fails to comply with the requirements of this subrule, the registrant may be subject to disciplinary action. If the board finds, after proper notice and hearing, that the interior designer willfully disregarded these requirements or falsified documentation of required CEUs, the interior designer may be subject to disciplinary action.

3.3(3) The registrant is responsible for maintaining verification of claimed credit for a minimum of five years subsequent to submission of the report to the board office. Acceptable verification may be presented with a course completion certificate or a college transcript.

193G—3.4(17A,544C) Exemptions.

3.4(1) As provided in Iowa Code section 272C.2(4), a registered interior designer is deemed to have complied with the continuing education requirements set forth in this chapter if during the continuing education compliance period the registrant:

a. Has served honorably on active duty in the military service; or

b. Is a resident of another state or district having a continuing education requirement for registered interior design and has complied with all requirements of that state or district for practice therein; or

c. Is a government employee working as a registered interior designer outside the United States.

3.4(2) The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. See 193—Chapter 5.

These rules are intended to implement Iowa Code chapter 544C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193G—Chapter 5 "Grounds for Discipline, Disciplinary Investigations, and Disciplinary Proceedings"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 544C

Public Hearing

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

October 22, 2024 3 p.m.	6200 Park Avenue Des Moines, Iowa Virtual: us02web.zoom.us/j/87157328415?pwd=MUJIuarfeYpA4aEog7FSkQfzHyXifN.1

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 Interior Design Examining Board (Board) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@dia.iowa.gov

Purpose and Summary

The purpose of proposed Chapter 5 is to provide Iowans, registrants, and their employers with information about the disciplinary process and possible actions against registered interior designers. The public knows that the Board can impose discipline for violations of the Board's rules. The public has the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against the registrant, ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Costs are not generally incurred by the public. Registrants are responsible for costs associated with disciplinary actions. Civil penalties are capped at $1,000 per instance.

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

The intended benefit of this chapter is to ensure public safety and maintain a high level of service for Iowans. The Board rarely receives complaints and takes few disciplinary actions. In fiscal year 2024, the Board did not receive any complaints.

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:

Because complaints are rare, costs are extremely low. The Board believes that the benefits achieved justify the low cost because interior design, especially having the ability to stamp/seal drawings, is a profession that requires knowledge, training, and skill.

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on registrants when requirements are not met ensures safety for the registrant and the consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a registrant who violates professional standards.

3. Costs to the State:

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

A cost to the agency is the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a registrant violates applicable rules or laws. Shared staff at approximately 0.25 of a full-time equivalent position support the entirety of the work of the Board. Staff salaries are covered by the Licensing and Regulation Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual registrants, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund.

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

Because there is only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because interior designers have been able to stamp/seal for only one year. This profession requires knowledge, training, and skill. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the new law allowing registered interior designers to stamp/seal documents can impact public safety. The Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

6. Alternative methods considered by the agency:

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

The Board has not identified any alternatives to these disciplinary rules.

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

The Board has not identified any alternatives to these disciplinary 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?

The proposed chapter relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for registered interior designers. While some registered interior designers likely are running a small business of their own, some work for large organizations. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193G—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
GROUNDS FOR DISCIPLINE, DISCIPLINARY INVESTIGATIONS, AND DISCIPLINARY PROCEEDINGS

193G—5.1(17A,272C,544C) Grounds for discipline. The board may initiate disciplinary action against a registered interior designer on any of the following grounds:

1. A violation of any of the rules of professional conduct set forth in 193G—Chapter 4.
2. A violation of Iowa Code section 272C.9(2) or 272C.9(3).
3. Failure to comply with an order of the board imposing discipline.
4. Continuing to practice as a registered interior designer without satisfying the continuing education requirement, absent express waiver granted by the board.
5. Failure to fully cooperate with a registrant disciplinary investigation or investigation against a nonregistrant, including failure to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the registrant's last address on file at the board office.
6. A violation of Iowa Code section 544C.9 or 272C.10.

193G—5.2(17A,272C,544C) Initiation of disciplinary investigations. The board may initiate a registrant disciplinary investigation upon the board's receipt of information suggesting that a registrant may have violated a law or rule enforced by the board which violation, if true, would constitute grounds for registrant discipline. The board may also review the publicly available work product of a registrant on a general or random basis to determine whether reasonable grounds exist to initiate disciplinary proceedings or to conduct a more specific investigation.

193G—5.3(17A,272C,544C) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member will abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193G—5.4(272C,544C) Complaints. Written complaints may be submitted to the board office by mail, email, website portal, or personal delivery.

5.4(1) *Contents of a written complaint.* Written complaints may be submitted on forms provided by the board that are available from the board's website. Written complaints should include as much of the following information as possible:

a. The full name, address and telephone number of the complainant (person filing the complaint).

b. The full name, address and telephone number of the respondent (registrant against whom the complaint is filed).

c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions that the complainant believes demonstrate that the respondent has violated or is violating laws or rules enforced by the board.

d. If known, citations to the laws or rules allegedly violated by the respondent.

e. Evidentiary supporting documentation.

f. Steps, if any, taken by the complainant to resolve the dispute with the respondent prior to filing a complaint.

5.4(2) *Immunity.* As provided by Iowa Code section 272C.8, a person will not be civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor will an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

5.4(3) *Role of complainant.* The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding that may be initiated by the board based in whole or in part on information provided by the complainant.

5.4(4) *Role of the board.* The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate registrant discipline to be imposed, if any.

5.4(5) *Initial complaint screening.* All written complaints received by the board are initially screened to determine whether the allegations of the complaint fall within the board's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for disciplinary action against a registrant. Complaints that are clearly outside the board's jurisdiction, that clearly do not allege facts upon which disciplinary action would be based, or that are frivolous are referred to the board for closure at the next scheduled board meeting. All other complaints are referred to the board's disciplinary committee for committee review as described in rule 193G—5.6(17A,272C,544C).

193G—5.5(272C,544C) Case numbers. Whether based on a written complaint received by the board or a complaint initiated by the board, all complaint files are tracked by a case numbering system. The board administrator maintains a case file log noting the date each case file was opened, whether disciplinary proceedings were initiated in the case, and the final disposition of the case. Once a case file number is assigned to a complaint, all persons communicating with the board regarding that complaint are encouraged to include the case file number to facilitate accurate recordkeeping and a prompt response.

193G—5.6(17A,272C,544C) Investigation procedures.

5.6(1) *Disciplinary committee.* The board chairperson may annually appoint, as needed, two to three members of the board to serve on the board's disciplinary committee to review and process disciplinary complaints. The disciplinary committee is a purely advisory body that reviews complaint

files referred by the board administrator, generally supervises the investigation of complaints, and makes recommendations to the full board on the disposition of complaints. Members of the committee may not personally investigate complaints, but they may review the investigative work product of others in formulating recommendations to the board.

5.6(2) *Committee screening of complaints.* Upon the referral of a complaint from the board administrator or from the full board, the committee determines whether the complaint presents facts that, if true, suggest that a registrant may have violated a law or rule enforced by the board. If the committee concludes that the complaint does not present facts that suggest such a violation or that the complaint does not otherwise constitute an appropriate basis for disciplinary action, the committee will refer the complaint to the full board with the recommendation that the complaint be closed with no further action. If the committee determines that the complaint does present a credible basis for disciplinary action, the committee may either immediately refer the complaint to the full board recommending that a disciplinary proceeding be commenced or initiate a disciplinary investigation.

5.6(3) *Committee procedures.* If the committee determines that additional information is necessary or desirable to evaluate the merits of a complaint, the committee may assign an investigator or expert consultant, appoint a peer-review committee, provide the registrant an opportunity to appear before the disciplinary committee for an informal discussion as described in rule 193G—6.9(17A,272C,544C) or request that board staff conduct further investigation. Upon completion of an investigation, the investigator, expert consultant and peer-review committee or board staff will present a report to the committee. The committee will review the report and determine what further action is necessary. The committee may do any of the following:

a. Request further investigation.

b. Determine there is not probable cause to believe a disciplinary violation has occurred and refer the case to the full board with the recommendation of closure.

c. Determine there is probable cause to believe that a law or rule enforced by the board has been violated but that disciplinary action is unwarranted on other grounds and refer the case to the full board with the recommendation of closure. The committee may also recommend that the registrant be informally cautioned or educated about matters which could form the basis for disciplinary action in the future.

d. Determine there is probable cause to believe a disciplinary violation has occurred and refer the case to the full board with the recommendation that the board initiate a disciplinary proceeding (contested case).

5.6(4) *Subpoena authority.* Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board is authorized in connection with a disciplinary investigation to issue subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, that the board deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision of whether to initiate a disciplinary proceeding. Board procedures concerning investigatory subpoenas are set forth in rule 481—503.5(17A,272C).

193G—5.7(17A,272C,544C) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected registrant, the committee may grant the registrant an opportunity to appear before the committee for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

5.7(1) An informal discussion is intended to provide a registrant an opportunity to share the registrant's account of a complaint in an informal setting before the board determines whether probable cause exists to initiate a disciplinary proceeding. A registrant is not required to attend an informal discussion. Because disciplinary investigations are confidential, the registrant may not bring other persons to an informal discussion, but registrants may be represented by legal counsel.

5.7(2) Unless disqualification is waived by the registrant, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. An informal discussion is a form of investigation because it is

conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, a registrant who desires to attend an informal discussion must therefore waive the right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. A registrant would not waive the right to seek disqualification on any other ground. By electing to attend an informal discussion, a registrant accordingly agrees that none of the participating board members or staff is disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision-maker.

5.7(3) Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

5.7(4) The disciplinary committee, subject to board approval, may propose a consent order at the time of the informal discussion. If the registrant agrees to a consent order, a statement of charges will be filed simultaneously with the consent order, as provided in rule 193—7.4(17A,272C).

193G—5.8(17A,272C,544C) Closing complaint files.

5.8(1) *Grounds for closing.* Upon the recommendation of the board's executive officer pursuant to subrule 5.4(5), the recommendation of the disciplinary committee pursuant to rule 193G—5.6(17A,272C,544C), or on its own motion, the board may close a complaint file, with or without prior investigation. The board's decision is final and not eligible for judicial review.

5.8(2) *Cautionary letters.* The board may issue a confidential letter of caution to a registrant when a complaint file is closed that informally cautions or educates the registrant about matters that could form the basis for disciplinary action in the future if corrective action is not taken by the registrant. Cautionary letters do not constitute disciplinary action, but the board may take such letters into consideration in the future if a registrant continues a practice about which the registrant has been cautioned.

5.8(3) *Reopening closed complaint files.* The board may reopen a closed complaint file if additional information arises after closure that provides a basis to reassess the merits of the initial complaint.

193G—5.9(17A,272C,544C) Initiation of disciplinary proceedings. Disciplinary proceedings may be initiated only by the affirmative vote of a quorum of the board at a public meeting. Board members who are disqualified shall not be included in determining whether a quorum exists. If, for example, two members of the board are disqualified, four members of the board constitute a quorum of the remaining six board members for purposes of voting on the case in which the two members are disqualified. When three or more members of the board are disqualified or otherwise unavailable for any reason, the board's executive officer may request the special appointment of one or more substitute board members pursuant to Iowa Code section 17A.11(5).

193G—5.10(17A,272C,544C) Disciplinary contested case procedures. Unless in conflict with a provision of board rules in this chapter, all of the procedures set forth in 193—Chapter 7 apply to disciplinary contested cases initiated by the board.

193G—5.11(272C,544C) Disciplinary sanctions.

5.11(1) *Types of sanctions.* The board has authority to impose the following disciplinary sanctions:

a. Revoke a registration issued by the board.

b. Suspend a registration issued by the board.

c. Revoke or suspend the privilege to engage in one or more areas of registered interior design.

d. Impose a period of probation, either with or without conditions.

e. Impose requirements regarding continuing education. The board may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The board may also specify whether that continuing education be in addition to the continuing education routinely required for registration renewal. The board may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a registration. The board may also specify that current reference materials be obtained and maintained.

f. Require reexamination, using one or more parts of the NCIDQ examination given to candidates for the registered interior design registration.

g. Impose civil penalties in an amount set by the board but not to exceed $1,000 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in rule 193G—5.2(17A,272C,544C).

h. Issue a reprimand.

5.11(2) *Imposing discipline.* Discipline may be imposed against a registrant only by the affirmative vote of a majority of the members of the board who are not disqualified.

5.11(3) *Voluntary surrender.* The board may accept the voluntary surrender of a registration to resolve a pending disciplinary investigation or contested case. The board shall not accept a voluntary surrender of a registration to resolve a pending disciplinary investigation unless a statement of charges will be filed along with the order accepting the voluntary surrender. Such a voluntary surrender is considered disciplinary action and will be published in the same manner as other disciplinary orders.

5.11(4) *Notification requirements.* Whenever a registration is revoked, suspended, restricted, or voluntarily surrendered under this chapter, the registrant shall:

a. Within 15 days of receipt of the board's final order, notify in writing all clients of the fact that the registration has been revoked, suspended or voluntarily surrendered or that the practice of the registrant has been restricted. Such notice shall advise the client to obtain alternative professional services unless the restriction at issue would not impact the registered interior design services provided for that client;

b. Within 30 days of receipt of the board's final order, file with the board copies of the notices sent pursuant to paragraph 5.11(4)*"a."* Compliance with this requirement is a condition for an application for reinstatement.

5.11(5) *Civil penalties.* Factors the board may consider when determining whether to assess the amount of civil penalties include:

a. Whether other forms of discipline are being imposed for the same violation.

b. Whether the amount imposed will be a substantial deterrent to the violation.

c. The circumstances leading to the violation.

d. The severity of the violation and the risk of harm to the public.

e. The economic benefits gained by the registrant as a result of the violation.

f. The interest of the public.

g. Evidence of reform or remedial action.

h. Time lapsed since the violation occurred.

i. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.

j. The clarity of the issues involved.

k. Whether the violation was willful and intentional.

l. Whether the registrant acted in bad faith.

m. The extent to which the registrant cooperated with the board.

193G—5.12(272C,544C) Publication of decisions.

5.12(1) The board will publish the name of each registrant disciplined by the board, along with a brief description of the underlying circumstances, regardless of the nature of the violation.

5.12(2) The board will issue a formal press release in those instances in which a registration has been suspended or revoked.

5.12(3) The board will notify other state interior design boards that have issued a similar license to an Iowa registrant of disciplinary action taken against the Iowa registrant. The board will also notify the CIDQ of disciplinary action taken against an Iowa registrant.

193G—5.13(272C,544C) Reinstatement.

5.13(1) The term "reinstatement," as used in this rule and in rule 193—7.38(17A,272C), includes the reinstatement of a suspended registration, the modification or removal of a practice restriction, the issuance of a registration following the denial of an application to renew a registration, and the issuance of a new registration following the revocation or voluntary surrender of a registration.

5.13(2) Any person whose registration has been revoked, suspended or restricted by the board or who has voluntarily surrendered a registration to conclude a disciplinary investigation or proceeding or whose application to renew a registration has been denied may apply to the board to modify or terminate the suspension, issue or reissue the registration, or modify or remove the restriction in accordance with the provisions of this rule and the terms of the order of revocation, suspension or restriction, denial of registration renewal, or acceptance of voluntary surrender of a registration.

5.13(3) If the applicable order did not establish terms upon which the registrant may apply for reinstatement, an initial application for reinstatement may not be made until one year has elapsed from the date of the order that revoked, suspended or restricted the registration, denied registration renewal, or accepted a voluntary surrender.

5.13(4) All proceedings for reinstatement will be initiated by the respondent and are subject to the procedures set forth in rule 193—7.38(17A,272C). In addition, the board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the grounds of personal investigation the board members or staff before whom the applicant appears.

5.13(5) An order granting an application for reinstatement may impose such terms and conditions as the board deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193G—5.11(272C,544C).

5.13(6) The board will not grant an application for reinstatement when the initial order that revoked, suspended or restricted the registration, denied registration renewal, or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the board's satisfaction that:

a. All terms of the sentencing or other criminal order have been fully satisfied;

b. The applicant has been released from confinement and any applicable probation or parole; and

c. Restitution has been made or is reasonably in the process of being made to any victims of the crime.

These rules are intended to implement Iowa Code chapters 17A, 272C, and 544C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193G—Chapter 6 "Disciplinary Investigations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 544C

Public Hearing

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

October 22, 2024 3 p.m.	6200 Park Avenue Des Moines, Iowa Virtual: us02web.zoom.us/j/87157328415?pwd=MUJIuarfeYpA4aEog7FSkQfzHyXifN.1

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 Interior Design Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@dia.iowa.gov

Purpose and Summary

The purpose of Chapter 6 is to provide information to the public and registrants about disciplinary investigations and how to submit a complaint to the Board. This chapter is proposed to be rescinded and combined with other rules regarding disciplinary action in Chapter 5 to perform the same intended benefit of this rule.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Costs are not generally incurred by the public.

Registrants are responsible for costs associated with disciplinary actions. Civil penalties are capped at $1,000 per instance.

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

The intended benefit of this chapter is to ensure public safety and maintain a high level of service for Iowans. The Board rarely receives complaints and takes few disciplinary actions. In fiscal year 2024, the Board did not receive any complaints.

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:

Because complaints are rare, costs are extremely low. The Board believes that the benefits achieved justify the low cost because interior design, especially having the ability to stamp/seal drawings, is a profession that requires knowledge, training, and skill.

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on registrants when requirements are not met ensures safety for the registrant and the consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a registrant who violates professional standards.

3. Costs to the State:

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

A cost to the agency is the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a registrant violates applicable rules or laws. Shared staff at approximately 0.25 of a full-time equivalent position support the entirety of the work of the Board. Staff salaries are covered by the Licensing and Regulation fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual registrants, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund.

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

Because there is only a small number of complaints submitted, costs are extremely low. The Board believes that the low cost justifies the benefits achieved because interior designers have been able to stamp/seal for only one year. This profession requires knowledge, training, and skill. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the new law allowing registered interior designers to stamp/seal documents can impact public safety. The Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

6. Alternative methods considered by the agency:

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

The Board has not identified any alternatives to these disciplinary rules.

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

The Board has not identified any alternatives to these disciplinary 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?

The proposed rulemaking relates to public safety concerns that are present whether the business is a small business or a large organization. The rulemaking is meant to ensure public safety in terms of practice standards for registered interior designers. While some registered interior designers likely are running a small business of their own, some also work for large organizations. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **193G—Chapter 6**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193G—Chapter 7 "Disciplinary Proceedings"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 544C

Public Hearing

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

October 22, 2024 3 p.m.	6200 Park Avenue Des Moines, Iowa Virtual: us02web.zoom.us/j/87157328415?pwd=MUJIuarfeYpA4aEog7FSkQfzHyXifN.1

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 Interior Design Examining Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@dia.iowa.gov

Purpose and Summary

The purpose of Chapter 7 is to provide information to the public and registrants about the disciplinary proceedings the Board can impose on a registrant.

This chapter will be rescinded and will be combined with other rules regarding disciplinary action in 193G—Chapter 5 to perform the same intended benefit of Chapter 7.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Costs are not generally incurred by the public.

Registrants are responsible for costs associated with disciplinary actions. Civil penalties are capped at $1,000 per instance.

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

The intended benefit of this rulemaking is to ensure public safety and maintain a high level of service for Iowans. The Board rarely receives complaints and takes few disciplinary actions. In fiscal year 2024, the Board did not receive any complaints.

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:

Because complaints are rare, costs are extremely low. The Board believes that the benefits achieved justify the low cost because interior design, especially having the ability to stamp/seal drawings, is a profession that requires knowledge, training, and skill.

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on registrants when requirements are not met ensures safety for the registrant and the consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a registrant who violates professional standards.

3. Costs to the State:

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

A cost to the agency is the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a registrant violates applicable rules or laws. Shared staff at approximately 0.25 of a full-time equivalent position support the entirety of the work of the Board. Staff salaries are covered by the Licensing and Regulation fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rule are paid by individual registrants, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund.

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

Because there are only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because interior designers have been able to stamp/seal for only one year. This profession requires knowledge, training, and skill. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the new law allowing registered interior designers to stamp/seal documents can impact public safety. The Board believes that regulation is necessary.

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

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

6. Alternative methods considered by the agency:

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

The Board has not identified any alternatives to these disciplinary rules.

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

The Board has not identified any alternatives to these disciplinary 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?

The proposed chapter relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for registered interior designers. While some registered interior designers likely are running a small business of their own, some work for large organizations. To exempt small businesses from adhering to this rule would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **193G—Chapter 7**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 265—Chapter 16
"Petition for Declaratory Order"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5
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 22, 2024	1963 Bell Avenue
9:30 to 9:45 a.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 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 16 and adopt a new chapter in lieu thereof. The new chapter will remove language that repeats statute or is otherwise unnecessary.

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 petition the Authority for a declaratory order may incur the costs described below.

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

The proposed rulemaking will benefit persons interested in participating in the petition for declaratory order procedures of the Authority.

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 who want to petition the Authority for a declaratory order may incur costs to draft and submit petitions.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the form, contents, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions, as well as the classes of circumstances in which the Authority will not issue a declaratory order.

3. Costs to the State:

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

Authority staff time is required to review, evaluate, and respond to petitions for declaratory orders. No additional costs are imposed by the proposed rulemaking compared to the current chapter.

- 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 participate in the petition for declaratory order process are minimal and incurred only by those who choose to participate. The proposed rulemaking will provide clarity about the Authority's procedures.

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 describing the form and procedures petitions for declaratory orders.

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.

- 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 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
PETITION FOR DECLARATORY ORDER

265—16.1(17A) Petition for declaratory order. Any person may file a petition with the authority for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the authority at Iowa Finance Authority, 1963 Bell Avenue, Suite 200, Des

Moines, Iowa 50315, Attn: Legal Counsel. Petitions may also be delivered by email to an email address supplied by the authority's legal counsel. A petition is deemed filed when it is received by the authority. The authority will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the authority an extra copy for this purpose. The authority will accept only typewritten petitions that substantially conform to the following form:

BEFORE THE
IOWA FINANCE AUTHORITY

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions 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 rule 265—16.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

265—16.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the authority shall give notice of the petition to all persons not served by the petitioner pursuant to rule 265—16.6(17A) to whom notice is required by any provision of law. The authority may give notice to any other persons.

265—16.3(17A) Intervention.

16.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order may intervene in a proceeding for a declaratory order.

16.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the authority.

16.3(3) A petition for intervention shall be filed at the address or email address indicated in rule 265—16.1(17A). A petition is deemed filed when it is received by the authority. The authority will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. The authority will accept only typewritten petitions that substantially conform to the following form:

BEFORE THE

IOWA FINANCE AUTHORITY	
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names 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 consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

265—16.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The authority may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

265—16.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the address or email address indicated in rule 265—16.1(17A).

265—16.6(17A) Service and filing of petitions and other documents.

16.6(1) 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 their filing with the authority. The party filing a document is responsible for service on all parties and other affected or interested persons.

16.6(2) All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed at the address or email address indicated in rule 265—16.1(17A). All documents are considered filed upon receipt.

265—16.7(17A) Consideration. The authority may schedule a brief and informal meeting between the original petitioner, all intervenors, and authority staff to discuss the questions raised. The authority may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the authority by any person.

265—16.8(17A) Action on petition.

16.8(1) The authority shall take action on the petition in the time frame established by Iowa Code section 17A.9(5).

16.8(2) 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 unless another date is specified in the order.

265—16.9(17A) Refusal to issue order.

16.9(1) The authority shall not issue a declaratory order if prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the form indicated in rule 265—16.1(17A).

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the authority to issue an order.

c. The authority does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rulemaking, contested case, or other authority or judicial proceeding, that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is instead based solely upon prior conduct to establish the effect of that conduct or to challenge a decision the authority has already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the authority to determine whether a statute is unconstitutional on its face.

16.9(2) If the authority refuses to issue a declaratory order, the authority must indicate the specific grounds for the refusal. Refusal to issue a declaratory order constitutes final agency action on the petition.

16.9(3) The authority's refusal to issue a declaratory order pursuant to this provision does not preclude a petitioner from filing a new petition that seeks to eliminate the grounds for the authority's refusal to issue an order.

265—16.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of 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. A declaratory order is effective on the date of issuance.

265—16.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be provided promptly to the original petitioner and all intervenors.

265—16.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the authority, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the authority. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 61
"Amusement Ride Inspections"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 88A.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 23, 2024 8:30 to 9 a.m.	Geode 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 and adopts a new Chapter 61 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 61 requires amusement rides to be inspected. It describes inspection and revocation procedures. It requires amusement ride operators to contact the agency if there is a death or serious injury associated with the ride. It requires amusement ride operators to report breakdowns and substantial modifications of the ride.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Operators of amusement rides will bear the cost of the proposed rulemaking.

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

Amusement riders will benefit from the proposed rulemaking.

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

- Quantitative description of impact:

There are fees set in Iowa Code chapter 88A and some fees associated with maintaining safe rides.

- 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 pays amusement ride inspectors who also perform other duties for the agency.

- Anticipated effect on state revenues:

The agency does not anticipate a substantial effect.

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

The costs of fees and safety measures are justified by the benefit of safety to amusement riders.

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?

It would not be feasible to have lower amusement ride standards for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 61 and adopt the following **new** chapter in lieu thereof:

CHAPTER 61
AMUSEMENT RIDE INSPECTIONS

875—61.1(88A) Scope. 875—Chapters 61 through 63 do not apply to the following:

61.1(1) A water park or water park attraction, including but not limited to a water slide, wave action pool, and lazy river. This subrule does not apply to an amusement ride that propels patrons using a power source other than gravity even though water is present.

61.1(2) A live-animal ride.

61.1(3) A vessel inspected pursuant to Iowa Code chapter 462A.

61.1(4) An amusement structure in which the patrons navigate on their own power and the patrons do not ride, climb, or walk on a mechanical component.

61.1(5) A device that meets all of the following criteria:

a. Was designed and built to be operated by a coin, card, or token;

b. Was designed and built to be operated by the patron rather than an attendant;

c. Operates on self-contained wiring that was installed by the manufacturer;

d. Operates on less than 120 volts of electrical power; and

e. Is within or is part of a structure subject to a state or local building code.

61.1(6) Playground equipment owned, maintained, and operated by any political subdivision of this state.

61.1(7) A concession booth, amusement device, or amusement ride that meets all of the following:

a. Is owned and operated by a nonprofit organization or school; and

b. Is located in a building subject to inspection by the state fire marshal or a local government.

61.1(8) Nonmechanized physical fitness and playground equipment unless a fee is charged to use the equipment.

61.1(9) Physical fitness equipment that does not meet the definition of "amusement device."

61.1(10) A tramway used as a ski lift.

61.1(11) A scenic railway operating on standard-gauge rails.

61.1(12) A zip line or climbing wall located at a camp or retreat owned or operated by a nonprofit religious, educational or charitable institution or association.

875—61.2(88A) Definitions. The definitions in this rule apply to 875—Chapters 61 through 63.

"Air-supported structure" means an amusement device that employs a high-strength fabric or film that achieves its strength, shape and stability from internal air pressure provided by a mechanical device such as an air blower or fan.

"Amusement device" means a climbing wall utilizing an auto-belay system; a bungee jump as defined in 875—Chapter 63; a device allowing a patron to jump on a trampoline while attached to one or more bungee cords; a dry slide; a mechanical bull; a zip line that does not allow the rider to touch the ground at all times; and an air-supported structure.

"ANSI" means the American National Standards Institute.

"ASTM" means the ASTM Standards on Amusement Rides and Devices published by ASTM International.

"Attendant" means a paid or volunteer person who controls patron restraints or the operation, starting, stopping, or speed of covered equipment.

"Carnival" means an enterprise offering amusement or entertainment to the public in, upon, or by means of amusement devices or rides or concession booths.

"Certificate of noncompliance" means:

1. A certificate of noncompliance issued by the child support recovery unit, department of health and human services, pursuant to Iowa Code chapter 252J; or

2. A certificate of noncompliance issued by the centralized collection unit, department of revenue, pursuant to Iowa Code chapter 272D.

"Concession booth" means a structure that is powered by electricity and offers amusements to the public at more than one fair or carnival, or at one fair or carnival for more than seven consecutive days. A structure or enclosure offering only goods, food or beverages, rather than amusements, is not a "concession booth."

"Covered equipment" means an amusement ride, amusement device, concession booth or related electrical equipment that is covered by Iowa Code chapter 88A.

"Director" means the director of the department of inspections, appeals, and licensing or the director's designee.

"Fair" means an enterprise principally devoted to the exhibition of products of agriculture or industry in connection with the operation of covered equipment.

"Inspector" means an authorized Iowa Code chapter 88A inspector of the department of inspections, appeals, and licensing.

"Major breakdown" means stoppage of operation from any cause that results in damage, failure, or breakage in a stress-bearing part of covered equipment.

"Major modification" means any change to the structure of or to an operational characteristic, capacity, classification, or mechanism of covered equipment. "Major modification" includes but is not limited to changing the mode of transportation from non-wheeled to a truck or flat-bed mount or changing the mode of assembly or other operational functions from manual to mechanical or hydraulic.

"NFPA" means the National Fire Protection Association.

"Operator" means a person, or the agent of a person, who owns or controls or has the duty to control the operation of covered equipment at a carnival or fair. "Operator" includes an agency of the state or any of its political subdivisions. "Operator" includes a person who leases covered equipment and controls or has the duty to control its operation at a carnival or fair.

"Related electrical equipment" means a portable generator, blower, or other equipment necessary to the operation of an amusement ride, amusement device, or concession booth.

"Reportable incident" means an event described by one or more of the following:

1. Damage, failure or breakage of a stress-bearing part of an amusement ride or amusement device;
2. Cessation of covered equipment for more than 20 minutes with at least one rider aboard;
3. An occurrence that nearly resulted in personal injury; or
4. An occurrence that caused the operator to cease operations unexpectedly to avoid an injury or illness.

"Rope lay" means the length along the rope in which one strand makes a complete revolution around the rope.

"Special operation" means an unusual condition, interruption in operation, injury, emergency, or evacuation.

"Walkway" means a public passage through a carnival, fair, or park.

875—61.3(88A) Owner and operator requirements. No person may operate covered equipment at a carnival or fair unless the person holds a current application certificate and the covered equipment has passed an Iowa inspection. The director reserves the right to deny inspection for any application submitted less than 60 days prior to operation at the first event.

61.3(1) *Application certificate.* No later than 60 days before operation begins each calendar year, the operator of covered equipment will apply to the director for an application certificate. Applications may be submitted in November for continuous operations. Applications are made on a form provided by the director. Each of the following are submitted with the completed application certificate:

a. The application fee;

b. A certificate of insurance issued by an insurance company authorized to do business in Iowa. The certificate of insurance will:

(1) Certify a policy in the minimum amount of $1 million for bodily injury, death, or property damage in any one occurrence;

(2) List the specific pieces of equipment that are covered and, if applicable, those that are not covered; and

(3) Include "Department of Inspections, Appeals, and Licensing—Amusements" as a certificate holder;

c. The operator's itinerary identifying the covered equipment to be operated and the dates and locations where each will be operated;

d. Certification of compliance with applicable training and maintenance requirements;

e. Separately for each bungee jump:

(1) A site operating manual;

(2) A report that is prepared and sealed by a professional engineer who is licensed in Iowa and that certifies that the design and construction of the equipment and structure are suitable for the

intended use and conform to Iowa law, recognized engineering practices, procedures, standards and specifications;

(3) Site plan drawings depicting the preparation area, the jump space, the landing area, the recovery area and other features to be included in the approved operating site;

(4) Specifications of equipment and structures; and

(5) Depictions of the location, specifications, dimensions, and type of air bag, pool or body of water where the jumper will land.

61.3(2) *Changes to information submitted with application.* The operator will immediately notify the director of any changes to the operator's itinerary or information provided with the application.

61.3(3) *Personal injuries and deaths.*

a. The operator will immediately report by telephone any accident that results in death or medical care beyond first aid.

b. Within 48 hours after an operator is notified of a claim or report to the operator's insurance provider, the operator will submit a duplicate copy of the report or claim to the director.

c. The director may require that the scene of an accident be secured and not disturbed to any greater extent than necessary for removal of the deceased or injured person. If covered equipment is removed from service by the director, the covered equipment may be returned to service only upon the director's authorization.

61.3(4) *Major breakdown report.* The operator will report a major breakdown of covered equipment to the director immediately and provide a detailed report in writing within 48 hours. The director may order the covered equipment to be withheld from operation, and in such case, the director will conduct an immediate investigation. The covered equipment may be released for repair and operation only after the director's investigation is complete.

61.3(5) *Advance notice of major modification.* The operator will notify the director in writing at least ten days prior to a major modification and, if requested by the director, provide plans, diagrams, and ride analysis documentation consistent with ASTM F2291-15.

61.3(6) *Technical data.* If requested by the director, the operator will provide an English language version of the following:

a. Data concerning constant, reversible, or eccentric forces generated by acceleration, deceleration, wind, centrifugal action, or inertia.

b. Stress analysis and other data pertinent to the structural materials, design, structure, factors of safety or performance characteristics.

875—61.4(88A) Inspection requirements. Pursuant to Iowa Code chapter 88A, covered equipment must pass an inspection at least annually. The owner must make all covered equipment safe for inspection. Inspections shall be performed according to the rules set forth and standards adopted in 875—Chapters 61 to 63.

61.4(1) *Inspection types.* In addition to the inspections listed below, an inspection may be conducted by the director at any time. No person will operate covered equipment at a fair or carnival unless the covered equipment has passed an inspection in the current calendar year.

a. Annual inspection by owner. At the discretion of the director, the owner of an air-supported structure may be designated by the director to perform the annual inspection of the owner's air-supported structure, blower, and related electrical equipment. An owner designated pursuant to this paragraph will perform the inspection according to applicable standards. The owner will submit in the format required by the director an affidavit attesting to the performance of the inspection, correction of code violations, and other required information. A designation pursuant to this paragraph terminates on December 31 of the year of issuance.

b. Annual inspection by an inspector. Unless an inspection is waived pursuant to Iowa Code section 88A.13, or the inspection is performed by the owner pursuant to paragraph 61.4(1)*"a,"* the director will inspect covered equipment prior to operation.

c. *Major modification inspection.* After covered equipment has undergone a major modification, the covered equipment must pass an inspection by the director before it is put back into use.

61.4(2) *Safety order.* If the inspector finds a code violation, the inspector will issue a safety order requiring that the condition be corrected. The deadline for correction of the code violation will be set forth in the safety order.

61.4(3) *Cessation order.* If the inspector identifies covered equipment that is hazardous or unsafe, the inspector will issue a cessation order that will be in effect until the director verifies it is corrected.

875—61.5(88A) Amusement inspection sticker requirements. Covered equipment shall not be operated without a current sticker.

61.5(1) After covered equipment has passed an annual inspection by the inspector, the inspector will affix an amusement inspection sticker to the equipment where it is readily accessible.

61.5(2) After the director receives satisfactory proof of inspection from an owner designated by the director pursuant to paragraph 61.4(1)*"a,"* the director will issue a certificate of compliance.

61.5(3) After covered equipment passes a major-modification inspection, a new amusement inspection sticker will be issued.

61.5(4) Before covered equipment is sold, the seller will remove the amusement inspection sticker. If a current amusement inspection sticker is no longer legible, the operator may request a replacement sticker.

875—61.6(88A,252J,272D) Termination, denial, suspension, or revocation of an operating permit.

61.6(1) All active application certificates terminate automatically on December 31 of the year of issuance.

61.6(2) The director may suspend or revoke an application certificate for any of the following reasons:

a. Negligence in the operation of covered equipment;

b. Repeated failure to perform or document proper daily inspections;

c. Misrepresentation of material information required as a part of the application certificate;

d. Failure to comply with a safety order or cessation order issued by the director;

e. Operation of covered equipment in disregard of public health, safety and welfare;

f. Termination of the required insurance coverage;

g. Failure to pay a liquidated debt owed to the director;

h. Receipt by the director of a certificate of noncompliance;

i. Failure of an operator to comply with the proper procedures;

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

k. Submission of a false affidavit of annual inspection by the owner of an air-supported structure.

61.6(3) The director may deny an application if the application packet is inadequate or for any reason set forth as grounds for suspension or revocation of an application certificate.

875—61.7(17A,88A,252J,272D) Procedures for revocation, suspension, or denial of an application certificate or amusement inspection sticker. The procedures set forth in this rule govern the revocation, suspension or denial of an application certificate or amusement inspection sticker.

61.7(1) In the event that immediate action is required due to imminent danger to the public health, safety or welfare, the following procedures shall apply:

a. The director will prepare a safety order describing the hazardous condition and give the operator, or the operator's representative on site, a copy of the safety order.

b. The director will remove the amusement inspection sticker or stickers from covered equipment.

c. The director will proceed as quickly as feasible to give the operator an opportunity for a hearing as set forth in subrule 61.7(2).

61.7(2) In all other cases, the following procedures shall apply:

a. The director will serve a notice by restricted certified mail to the address listed on the application or by other service as permitted by Iowa Code chapter 17A.

b. The operator will have 20 days to file a written notice of contest with the director. If the operator does not file a written notice of contest within 20 days of receipt of the notice, the action stated in the notice is automatically effective.

c. Hearing procedures of the department of inspections, appeals, and licensing will govern.

d. Within five business days of final agency action revoking or suspending an application certificate, the operator shall forfeit the application certificate to the director.

These rules are intended to implement Iowa Code chapters 17A, 88A, 252J, and 272D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 62
"Safety Rules for Amusement Rides, Amusement Devices, and Concession Booths"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 88A.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 23, 2024 8:30 to 9 a.m.	Geode 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 and adopts a new Chapter 62 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 62 requires amusement rides to comply with safety rules about design, installation, maintenance, and operation.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Operators of amusement rides will bear the cost of the proposed rulemaking.

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

Amusement riders will benefit from the proposed rulemaking.

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

- Quantitative description of impact:

There are fees set in Iowa Code chapter 88A and some costs associated with maintaining safe rides.

- 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 pays amusement ride inspectors who also perform other duties for the agency.

- Anticipated effect on state revenues:

The agency does not anticipate a substantial effect on state revenues.

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

The costs of fees and safety measures are justified by the benefit of safety to amusement riders.

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?

It would not be feasible to have lower amusement ride standards for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 62 and adopt the following **new** chapter in lieu thereof:

CHAPTER 62
SAFETY RULES FOR AMUSEMENT RIDES, AMUSEMENT DEVICES, AND CONCESSION BOOTHS

875—62.1(88A) Scope. Rule 875—62.2(88A) applies to all covered equipment. The remaining rules of this chapter apply to all covered equipment, except a bungee jump covered by 875—Chapter 63.

875—62.2(88A) Other codes.

62.2(1) Nothing in 875—Chapters 61 through 63 provide an exemption, waiver, or variance from any otherwise applicable regulation or statute.

62.2(2) State fire marshal rules set forth in 661—Chapter 201 are adopted by reference.

875—62.3(88A) Site requirements.

62.3(1) *Design.* The grounds of a fair or carnival shall be designed according to the following criteria:

a. Clearance around covered equipment will meet or exceed the manufacturer's recommendations.

b. Clearance between covered equipment and a facility for cooking will be at least 10 feet.

c. Walkways will be wide, unobstructed, and open at each end.

d. Walkways through concession booth backyards and over water lines and electrical lines will be avoided.

e. Intermingling of water lines and electrical lines will be avoided.

f. Guy wires, braces and ropes used for support:

(1) Will not be placed in walkways or in the entrances or exits for covered equipment; and

(2) Will be clearly marked with streamers or other devices when located adjacent to walkways.

g. Stakes will be covered.

62.3(2) *Housekeeping.* Adequate containers for refuse will be provided. Accumulations of trash will be removed promptly.

62.3(3) *Lighting.* Entrances and exits for covered equipment will be provided with at least 5 foot-candles of light measured at grade level. No less than 10 foot-candles of light will be provided at all work levels for assembly and disassembly of covered equipment.

62.3(4) *Internal combustion engines.* Internal combustion engines will be a minimum of 5 feet from an air-supported structure and will be guarded or fenced to prevent patron exposure or access. An internal combustion engine operated in an enclosed area will be provided with fresh-air intake and an exhaust discharge flue.

62.3(5) *Flammable waste and materials.* An operator will provide identified covered and labeled metal containers for flammable waste. The containers will be available to staff and attendants but will not be accessible to patrons.

62.3(6) *Storage of hazardous or flammable materials.* Storage of more than 50 gallons of fuel, other flammable material, or hazardous gas is not permitted in any area accessible to the public.

62.3(7) *Walking surfaces.* Entrances and exits for covered equipment will be adequate, unobstructed, and in accordance with the manufacturer's instructions. Hazards, such as protruding nails, splinters, holes, loose boards, debris, obstructions, and projections, are prohibited. Stairways, ramps and railings that meet the requirements of 29 CFR 1910.23 will be provided where patrons enter or exit covered equipment above or below grade.

62.3(8) *Fences.* Fences or other barriers will be maintained to prevent movement. Placement of fences will be consistent with the recommendations of the manufacturer. If the manufacturer's recommendation regarding fences is not available, fences will meet ASTM standards.

62.3(9) *Queue line.* Lines will be designed to meet or exceed manufacture specifications.

62.3(10) *Setup.* Operators will follow the manufacturer's instructions to ensure that covered equipment is level and stable. If the manufacturer's instructions are not available, the setup will meet ASTM standards.

875—62.4(88A) Design and manufacture of covered equipment. This rule sets forth requirements for the design and manufacture of all covered equipment, except a bungee jump covered by 875—Chapter 63.

62.4(1) *Codes adopted by reference.* ASTM F2374-10 applies to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10.

a. All covered equipment. Equipment will comply with National Electric Code, NFPA 70-2014.

b. Tramways. All tramways subject to the rules of this chapter will be designed and tested in accordance with the ANSI B77.1 standard in effect at the time of installation.

c. New covered equipment. New covered equipment and covered equipment undergoing a major modification will be designed and tested in accordance with ANSI B77.1-2011 and ANSI B77.1A-2012 and ASTM F1159-15a, F1193-14, F1957-99(2011), F2007-12, F2137-15, F2291-15, F2374-10, F2375-09, F2376-13, F2460-11, F2959-14, and F2960-15, as applicable.

d. Existing covered equipment. Covered equipment manufactured before July 1, 2016, must comply with the applicable design criteria of subrule 62.4(2) through July 1, 2021. After July 1, 2021, covered equipment, except tramways, will meet the criteria for service-proven equipment set forth in ASTM F2291-15.

62.4(2) *Design criteria.* Structural materials and construction of covered equipment will conform to recognized engineering practices, procedures, standards and specifications. The design, materials and construction features will incorporate a safety factor of 5 or alternative safety factors recommended by the original manufacturer or by a professional engineer with credentials and experience acceptable to the director.

62.4(3) *Front openings and awnings.* Front openings and awnings will be stabilized with safety latches, safety pins, or other devices.

62.4(4) *Shooting galleries.* A shooting gallery will use only equipment, shells, pellets, and bullets designed for shooting galleries. Means will be provided to prevent turning the weapon away from the intended target.

62.4(5) *Flying objects.* Where flying objects, such as darts, balls, pellets, shot, and bullets, are a potential hazard:

a. Ricocheting will be prevented by absorbent wings or panels; and

b. Absorbing walls, sandbags, or other mechanisms will be installed along the bottom, back, and sides of the booth to protect passersby.

875—62.5(88A) Maintenance of covered equipment—requirements. An operator will conduct periodic inspections, repairs, tests, and maintenance as set forth in this rule and the manufacturer's recommendations, as applicable. An operator will make a written record of all inspections, maintenance, tests, and repairs of covered equipment, and the records will be available to the director.

62.5(1) *Nondestructive testing.* The operator will ensure that appropriate nondestructive testing (NDT) is conducted and that documentation is available for review. NDT will be performed at the following times:

a. At intervals recommended by the manufacturer;

b. When required by the director due to a welded repair;

c. When required by the director due to a visual indication of a potentially hazardous condition; and

d. When recommended by a bulletin prepared according to ASTM F1193-14.

62.5(2) *Wood components.* The operator will remove a sufficient amount of soil around piling or wood members embedded in dirt to check for deterioration. When a wood piling requires replacement, the operator will install a concrete pier. The top of the pier will be installed so that the attached wood member is not exposed to dirt or water accumulation.

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

62.6(1) *Attendants.* The operator will provide a sufficient number of attendants in accordance with manufacturer specifications who will be recognizable by their uniforms. Attendants will have control of the ride through the complete ride cycle.

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

b. Each attendant will be trained according to ANSI B77.1 and ANSI B77.1A-2012 and ASTM F770-15, F2007-12, F2460-11, and F2959-14, as applicable. Training documentation will be available to the director.

c. When the covered equipment is shut down, provision will be made to prevent unauthorized operation.

62.6(2) *Signal systems.* When an attendant does not have a clear view of the point where passengers are loaded or unloaded, signal systems will be provided and utilized for controlling, starting and stopping covered equipment.

62.6(3) *Overspeeding and overloading.* An attendant will not load covered equipment beyond its rated capacity nor operate the covered equipment at a speed other than that prescribed by the design engineer or manufacturer.

62.6(4) *Refueling.* Fuel tanks for internal combustion engines should be large enough to run without interruption during normal operating hours. Where it is impossible to provide tanks of proper capacity for a complete day's operation, the covered equipment will be shut down and evacuated during refueling.

62.6(5) *Safety stop device.* After actuation of a safety stop device, the cause of the actuation will be determined and corrected before operation of covered equipment is resumed. No person will operate covered equipment if a safety stop device has been bypassed.

875—62.7(88A) Patrons.

62.7(1) *Emergency procedure.* Will meet or exceed manufacturer specifications. If manufacturer specifications are not available, the emergency procedure will meet ASTM standards.

62.7(2) *Medical and first aid.* The operator shall make available to patrons the same medical and first-aid provisions that are available to employees pursuant to 29 CFR 1910.151.

62.7(3) *Evacuation plan.* Evacuation plans shall meet or exceed manufacturer specifications. If manufacturer specifications are not available, evacuation plans shall meet ASTM standards.

These rules are intended to implement Iowa Code chapter 88A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 63
"Safety Rules for Bungee Jumps"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 88A.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 23, 2024 8:30 to 9 a.m.	Geode 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 and adopts a new Chapter 63 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 63 requires amusement ride operators to comply with safety requirements related to the design, operation and maintenance of bungee jumps.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Operators of bungee jumps will bear the costs of the proposed rulemaking.

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

Patrons of bungee jumps will benefit from the proposed rulemaking.

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

- Quantitative description of impact:

There are fees set in Iowa Code chapter 88A and some costs associated with maintaining safe bungee jumps.

- 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 employs bungee jump inspectors who also perform other duties for the agency.

- Anticipated effect on state revenues:

The agency does not anticipate a substantial effect on state revenues.

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

The costs of fees and safety measures are justified by the benefit of safety to bungee jump patrons.

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?

It would not be feasible to have lower bungee jump standards for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 63 and adopt the following **new** chapter in lieu thereof:

CHAPTER 63
SAFETY RULES FOR BUNGEE JUMPS

875—63.1(88A) Definitions.

"Air bag" means a device that cradles the body by using an air release breather system to dissipate the energy due to a fall, thereby allowing the jumper to land without an abrupt stop or bounce.

"Approved operating site" means the area, including the preparation area, the jump space, the landing area and the recovery area, reflected on the site plan drawings submitted to the director by the operator.

"Bungee catapulting" means the action by which a jumper is held on the ground while the bungee cord is stretched causing the jumper to fly up when the jumper is released.

"Bungee cord" means the elastic rope to which the jumper is attached.

"Bungee jump" means the covered amusement device. "Bungee jump" does not mean a device allowing a patron to jump on a trampoline while attached to one or more bungee cords.

"Bungee jumping" means the action by which a jumper free falls from a height and the jumper's descent is limited by attachment to the bungee cord.

"Bungee jump operation" means a site at which bungee jumping is conducted.

"Carabiner" means a shaped metal or alloy device used to connect sections of the jump rigging, equipment or safety gear.

"Cord" means a bungee cord.

"Dynamic load" means the load placed on the rigging and attachments by the initial free fall of the jumper and the bouncing movements of the jumper.

"Equipment" means each component that is utilized in a bungee jump operation, including devices used to raise, lower, and hold loads.

"Fence" means a structure designed and constructed to restrict people, animals and objects from entering the jump area.

"G-force" means acceleration felt as weight.

"Jump area" means the ground level area of the jump space.

"Jump direction" means the direction a jumper jumps when leaving the platform from the jump point. Jump direction is not affected by whether the jumper faces forward, backward or sideways.

"Jumper" means the person who, while attached to a bungee cord, falls or jumps from a platform or structure.

"Jump harness" means an assembly worn by a jumper and attached to a bungee cord.

"Jump height" means the distance from the jump point to the position on the ground where an object dropped from the jump point would impact in the absence of an air bag or other impediment.

"Jump master" means the person who is responsible for the bungee jump operation and who takes a jumper through the final stages to the actual jump or release.

"Jump point" means the location on the platform from which the jumper leaves the platform.

"Jump space" means the cylinder-shaped space with a center line extending downward from the jump point along the line of the jump height. The top of the jump space cylinder is at least 10 feet above the jump point. For jumps over land, the bottom of the jump space cylinder is the air bag. For jumps over water, the bottom of the jump space cylinder is the water surface. The distance from the jump point to the bottom of the jump space must be the maximum system length plus at least 30 feet. The radius of the cylinder must be at least 70 percent of the jump height.

"Landing area" means the surface where the jumper lands. If a lifting device moves the jumper so that landing occurs away from the jump area, the area covered by the movement of the lifting device is considered part of the landing area.

"Loaded length" means the length of the bungee cord when the cord is extended to its fullest designed length.

"Lowering system" means manual or mechanical equipment capable of lowering a jumper to the designated landing area.

"Maximum system length" means the maximum extended length of a bungee cord system including all attachments.

"Mechanically powered lowering system" means a system that utilizes a machine, rather than a human or other power source, to lower the jumper to the landing area.

"Platform" means the apparatus that is attached to a structure and from which a jumper falls or jumps.

"Preparation area" means the area where the jumper is registered, weighed, notified of potential risks, and otherwise prepared for the jump.

"Recovery area" means the area next to the landing area where the jumper may recover from the jump before exiting the bungee jump operation site.

"Rigging system" means the bungee cord plus any combination of components that connect the jumper through the bungee cord to an attachment point on the structure, lifting device or platform.

"Rigging system attachment point" means a device on the structure, lifting device or platform to which the rigging system is connected.

"Safety line" means a line used to connect a safety harness or belt to an anchor point.

"Sandbagging" means the practice of loading excess weight to a jumper in order to gain extra momentum on the rebound.

"Site operating manual" means the document containing the procedures and forms for the operation of bungee jumping activities and equipment.

"Structure" means a tower or similar structure used for bungee jumping.

"Tandem jumping" means the practice of having two or more people harnessed together while they jump or fall simultaneously from the same jump platform.

875—63.2(88A) Prohibited activities. The following activities are prohibited:

1. Bungee catapulting where an overhead obstruction exists;
2. Sandbagging;
3. Tandem jumping; and
4. Jumping from a bridge, television tower, crane, grain bin, hot air balloon or any height not designed for the purpose of bungee jumping.

875—63.3(88A) Site requirements.

63.3(1) *Storage.* Adequate storage will be provided to protect equipment from physical, chemical and ultraviolet-ray damage. The storage area will be secured against unauthorized entry.

63.3(2) *Communications.* There will be:

a. A public address system in operation during the hours of business.

b. A radio communication link between the platform and the staff responsible for jumper registration, landing, and recovery.

c. A means on site to communicate with local emergency responders.

d. A clearly visible sign at the entrance to the operating site setting forth medical restrictions for jumpers, the minimum-age requirement of 18 years of age, and instructions for jumpers.

63.3(3) *Wind meter.* An anemometer will be installed in accordance with the manufacturer's recommendations and in a location easily visible to the staff.

63.3(4) *Lighting.* Adequate lighting will be provided at a site that operates at any time during the period of one-half hour prior to sunset until one-half hour after sunrise. At a minimum, the lighting system will be capable of lighting the jump platform, the jump space and the landing area.

63.3(5) *Fences.* The operator will use fences in compliance with ASTM 2291-14, Part 14, to limit access to the site.

875—63.4(88A) Design requirements.

63.4(1) *Platform.* A platform shall:

a. Be capable of supporting at least five times the rated capacity or maximum intended load of the platform. If the jump equipment is attached to the platform as distinct from the structure, the dynamic load factor is added to the rated capacity or maximum intended load;

b. Be attached with devices and to a part of the structure that is able to support at least five times the weight of the platform plus the rated capacity or maximum intended load;

c. Have a slip-resistant floor surface;

d. Have safety harness anchor points that are designed and located to facilitate ease of movement on the platform;

e. Have a permanent enclosure, separate from the jump point, to contain the jumper during preparations such as fitting the jumper with a jump harness;

f. Be equipped with a gate across the jump point. The gate will open to the inside of the platform and will have a safety lock or restraining device to prevent accidental opening;

g. Be permanently marked with the maximum capacity of the platform and the rated capacity or maximum intended load; and

h. Be configured to ensure that a jumper will not come into contact with the supporting structure or tower during the jump.

63.4(2) *Lowering system.*

a. The system for lowering the jumper to the landing area will be capable of supporting at least five times the rated capacity or maximum intended load of the system. The lowering system will be mechanically powered and will not be capable of free fall.

b. There will be, under the control of site personnel and described in the site emergency plan, an alternative method for jumper recovery.

63.4(3) *Bungee cord specifications.*

a. The bungee cords will be designed and tested to perform within the prescribed limits of stretch and load as stated in this subrule. The cord will be made from natural or synthetic rubber or rubber blend. The extended length of the cord will be consistent each time the same load is applied.

b. The G-force on a jumper using a waist and chest harness will not exceed 4.5. The G-force on a jumper using an ankle harness will not exceed 3.5.

c. The cord configuration's minimum breaking strength divided by the maximum dynamic load possible for a jumper will be equal to or greater than 5.

d. The design, manufacturing and testing of the bungee cords will meet the following specifications:

(1) In a single-cord system, the binding will hold the cord threads in the designed positions. The binding will have the same characteristics as the cord itself. In a multiple-cord system, the cords will be bound together in a manner that prevents potential entanglement of the jumper. The binding will not damage or affect the performance of the cords.

(2) A load-versus-elongation curve will be used to calculate the maximum G-force and factor of safety of the lot of bungee cords tested. These test results will be readily available to the director upon request.

(3) The end connections will have a minimum safety factor of five times the maximum dynamic load for the bungee cord configuration. End connections will be of a size and shape to allow easy attachment to the jumper harnesses and to the rigging. On multiple-cord systems, each cord will meet its own independent end connection. On multiple-cord systems, end attachment points will be bound together in a protective sheath that allows the individual ends to move with respect to each other.

(4) The operator will ensure that the manufacturer of a bungee cord performs conclusive minimum break strength testing on a representative sample of all manufactured bungee cords. Construction of bungee cord samples will be consistent with the manufacturer's standard methods, including bungee cord loop end connections that meet the specifications in this rule. The tests will be performed or supervised by an independent certified testing authority or an independent licensed professional engineer. The testing authority will determine the ultimate tensile strength of each test specimen and use the lowest failure value recorded as the ultimate tensile strength value for the corresponding lot of bungee cords. The ultimate tensile strength is reached when the applied load reaches a maximum before failure. Test results will be readily available to the director upon request.

63.4(4) *Jump harness and hardware.*

a. The harnesses, webbing, bindings, ropes and hardware will be capable of supporting at least five times the rated capacity or maximum intended load.

b. A jumper will be secured to the bungee cord at two separate points on the jumper's body. The jump harness system will be one of the following:

(1) A full body harness with two different and separate attachment points.

(2) A waist harness used with a shoulder harness.

(3) An ankle harness system with a safety line to a waist harness or a full body harness.

c. Harnesses will be available to fit the range of patron sizes accepted for jumping.

d. Harnesses will be specifically designed and manufactured for mountaineering or bungee jumping.

e. The load-supporting slings or webbing will be flat or tubular mountaineering webbing or its equivalent. Minimum breaking strength will be 6,000 pounds. Slings or webbings will be formed by sewing or will be tied properly with a water knot with taped ends.

f. Carabiners will be the steel screw, gate type with a minimum breaking strength of 6,000 pounds. The carabiners will be designed and constructed using the standards for mountaineering gear.

g. The ropes, pulleys and shackles used to raise, lower or hold the jumper will have a minimum breaking strength of 6,000 pounds. The pulleys will be compatible with the rope.

h. The rigging system will be attached to at least two rigging system attachment points. Each rigging system attachment point will meet or exceed the following:

(1) Each rigging system attachment point will have a safety factor of 5 and will be capable of bearing a weight of at least 8,000 pounds.

(2) If a rigging system attachment point is made of wire rope, it will have swaged ends with the thimble eyes.

(3) If a rigging system attachment point is made of webbing, it will be manufactured by a company that manufactures the devices for crane and rigging companies.

63.4(5) *Landing area, recovery area and jump area.*

a. A jump over land requires the use of an air bag certified by the manufacturer to be capable of protecting a body falling from the height of the jump point.

(1) The minimum impact surface area of the air bag will be as follows:

Jump Height	**Minimum Impact Surface Area**
0 - 99 feet	20 feet by 25 feet
100 - 149 feet	23 feet by 35 feet
150 - 200 feet	25 feet by 40 feet

(2) The air bag will be in position before jumper preparation begins on the platform.

(3) Upon completion of a jump, the jumper will be lowered into the landing area.

(4) The landing area will be free of spectators at all times.

(5) The jump space will be free of equipment and people when a jumper is being prepared on the jump platform and until the jumper lands in the landing area.

(6) A place for the jumper to sit and recover will be provided close to but outside the landing area.

b. The following requirements apply where a body of water is used instead of an air bag:

(1) The size of the body of water will meet the requirements for the minimum impact surface area set forth in this subrule for air bags.

(2) The minimum water depth of the minimum impact surface area will be 10 feet.

(3) A vessel with at least two staff members will be positioned nearby to recover jumpers. The recovery vessel's crew will wear U.S. Coast Guard-approved life jackets. The recovery vessel will be equipped with U.S. Coast Guard-approved life jackets for jumpers and with rescue equipment.

(4) The jump area will be free of other vessels, floating or submerged objects, the public, and spectators. When the landing area is in open waters, it will be defined by the deployment of buoys. Signs of appropriate size stating "BUNGEE JUMPING—KEEP CLEAR" will be displayed.

c. The following requirements apply where a pool of water is used instead of an air bag:

(1) The pool size will meet the requirements for the minimum impact surface area set forth in this subrule for air bags.

(2) The minimum water depth will be 10 feet.

(3) Rescue equipment will be available.

(4) Only the operators and participants of the bungee jump will be within the landing area.

(5) The landing area will be enclosed by a fence of adequate height and design to prevent persons other than operators and jumpers from entering.

(6) The pool will conform to any applicable requirements enforced by the department of public health.

875—63.5(88A) Maintenance requirements. The operator will follow the inspection and testing recommendations of the equipment manufacturers. When those recommendations conflict with the testing and inspection provisions of this rule, the provisions affording the higher degree of safety will be followed. Inspections, findings and corrective action will be recorded in the site log.

63.5(1) *Tests and inspections by the operator.*

a. The jump rigging, harness, lowering system and safety gear will be regularly inspected and tested as set forth in the site operating manual.

b. In accordance with the site operating manual, the ropes, webbing and bindings will be inspected visually and by feel for signs of wear, fraying or damage.

c. The cord ends will be inspected as often as the manufacturer specifies or no less than daily for wear, slippage or other abnormalities.

63.5(2) *Replacement of rigging and equipment.*

a. Hardware that displays surface damage will be replaced immediately.

b. Hardware that has been subjected to an abnormal loading or impact against hard surfaces will be replaced immediately.

c. Substandard equipment, rigging or personal protective equipment will be replaced immediately.

d. Bungee cords will be replaced when they have been subjected to the maximum number of jumps recommended by the manufacturer, when they exhibit deterioration or damage, or when they do not react according to specifications. Retired bungee cords will be cut into lengths of not more than 75 inches. The attachment points will be retired when the cord is retired.

63.5(3) *Replacement equipment.* Replacement equipment will be stored in a secure area to prevent tampering or vandalism. Replacement equipment for the following will always be available on the approved operating site:

a. Bungee cords;

b. Rigging ropes;

c. Binding and ankle straps for jumpers;

d. Jump harnesses; and

e. Lifelines and clips.

63.5(4) *Identification of equipment.*

a. Each bungee cord will have its own permanent identification number.

b. The form of identification may not damage or detract from the integrity of the material.

c. The identification will be clearly visible to the operators during daily operations.

d. The identification of each piece of equipment will be recorded in the site operating manual.

875—63.6(88A) Operations requirements.

63.6(1) *Site operating manual.* The operator will ensure that the site has an operating manual that includes the following elements:

a. A site plan showing the fencing, the site furniture, the preparation area, the jump space, the jump area, the jump direction, the landing area and the recovery area.

b. A site plan showing a profile of the site and defining the jump platform and its supporting structure, the maximum system length of the bungee cord, the jump space and the jump area.

c. A complete description of each of the following:

(1) The system of operation;

(2) The components in the rigging system, including the manufacturer’s specification or a laboratory test certificate of each component;

(3) All safety and rescue equipment;

(4) A job description for the personnel employed on the site and the minimum qualifications for each person;

(5) Emergency procedures for all foreseeable scenarios;

(6) Standard operating procedures for every person employed in processing the jumper;

(7) The procedure for reporting accidents and reportable incidents to the director;

(8) Equipment inspection procedures, including inspection recordkeeping;

(9) Maintenance procedures; and

(10) The method of verifying and recording each jump master's qualifications.

63.6(2) *Emergency provisions and procedures.*

a. Each approved operating site will have a written emergency plan. The plan will be made available to any local emergency service responsible for providing emergency rescue service.

b. At least one member of a bungee jump operation staff will have current first-aid and cardiopulmonary resuscitation certification and will complete an annual refresher course that includes evaluation of hands-on skills from the American Red Cross or equivalent.

c. For a jump over water, the jump master and at least one landing assistant will have current lifeguarding certification from the American Red Cross or equivalent.

d. Emergency lighting will be available in case of power failure at a site that operates at any time during the period of one-half hour prior to sunset until one-half hour after sunrise. The emergency lighting system will be capable of lighting the jump platform, the jump space and the landing area. The emergency lighting system will have its own power source.

e. A backup means of communication will be available in case of a power failure.

f. The jump master or operator will cease jumping operations if wind speed exceeds 25 miles per hour or thunder is audible.

63.6(3) *Minimum staff.*

a. Prior to the opening of a bungee jump operation, the operator will train site personnel to be familiar with the boundaries of the jump space, the jump area, the site operating manual and the emergency plan.

b. A bungee jump operation will have at least one jump master, one jump assistant, one landing assistant, and one registration assistant present at all times during which jumping is being conducted.

c. The staff will be easily identifiable by their clothing.

d. Staff will be briefed for each day's operations. This briefing will include assignment of the designated jump master.

e. Each jump will be directly controlled by a jump master.

63.6(4) *Jump master.*

a. A jump master will be at least 18 years of age, will have assisted at least 25 jumpers, and will have received a minimum of 30 hours of jump training.

b. A jump master will have a thorough knowledge of the bungee jump site, its equipment, operating manual, procedures, emergency plan and staff duties.

c. A jump master will:

(1) With the jump assistant, escort the jumper from the preparation area to the jump point;

(2) Select the appropriate bungee cord and adjust the rigging for each jump;

(3) Brief each jumper on the procedures for jumping, landing, lowering and recovery;

(4) Take the jumper through the final stages before the jump;

(5) Securely attach to the platform rigging bar or to the rigging the top end of the bungee cords before preparing the jumper;

(6) Be present at the jump point during each jump;

(7) Close the platform gate while no jumper is present;

(8) Direct the operation of the lowering system;

(9) Train other bungee jump operation staff; and

(10) Ensure that the procedures set out in the site operating manual are followed.

63.6(5) *Jump assistant.* The operator or jump master will designate at least one individual to act as a jump assistant. The jump assistant will:

a. With the jump master, escort the jumper from the preparation area to the jump point;

b. Assist the jump master in preparing the jumper;

c. Assist in attaching the jumper to the harness and rigging;

d. Perform check procedures;

e. Operate the lowering system; and

f. Assist in controlling the public.

63.6(6) *Landing assistant.* The operator or jump master will designate at least one individual to act as a landing assistant. The landing assistant's duties include the following:

a. Assisting the jumper to the landing pad;

b. Assisting the jumper to the recovery area;

c. Overseeing the recovery of the jumper; and

d. Assisting in controlling the public.

63.6(7) *Registration assistant.* The operator or jump master will designate at least one individual to act as a registration assistant at each bungee jump operation site. The registration assistant will:

a. Register the jumper;

b. Inform each jumper that there are medical conditions that could be adversely affected by bungee jumping and that prior to jumping, the jumper should consult with a physician for more specific information regarding the medical risks;

c. Weigh the jumper and mark the jumper's weight on the jumper;

d. Control the movement of the jumper to the jump platform; and

e. Assist in controlling the public.

63.6(8) *Jumper restrictions.*

a. The minimum age for jumping is 18 years of age.

b. A person who is visibly intoxicated or who is otherwise impaired will not be allowed to jump.

63.6(9) *Jumper registration.* The operator will ensure that a jumper provides the following information on the operator's registration form:

a. The jumper's contact information, including name, address, and telephone number.

b. The jumper's age and weight.

63.6(10) *Equipment replacement.*

a. Jumping will cease immediately when substandard equipment is identified.

b. The operator will obtain from the bungee cord manufacturer a written verification of the maximum number of jumps for which a particular cord may be used. The written verification will be kept on site and will be available to the director.

c. The operator will keep a current, written record of each bungee cord used at the site. The bungee cord records will be organized by permanent, unique identification number and will include the number of jumps for each cord by date. The bungee cord records will be available to the director.

63.6(11) *Jump space and jump area.*

a. Persons other than a jumper and objects other than the jumper's equipment will not be in the jump space at any time during jump operations.

b. Persons other than site personnel and objects other than air bags and similar safety devices will not be in the jump area at any time during jump operations.

c. The jump space and jump area will be identical to the jump space and jump area that the director approved.

d. The preparation area will be separate from the jump area.

These rules are intended to implement Iowa Code chapter 88A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 150
"Construction Contractor Registration"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91C.1
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 23, 2024 9 to 9:30 a.m.	Geode 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 repromulgates Chapter 150 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 150 requires the registration of construction contractors. The chapter provides procedures for applications, fees, investigations, and sanctions.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
- Classes of persons that will bear the costs of the proposed rulemaking:

Employers engaged in construction will bear the costs.
- Classes of persons that will benefit from the proposed rulemaking:

Employees will more likely be covered by workers compensation and unemployment insurance.

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

Employers pay a $50 fee for registration.
- 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 specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspections, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- Anticipated effect on state revenues:

Contractor registration fees add to state revenues.

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

Inaction would result in more contractors being unaccounted for and consequently better able to avoid employer obligations under Iowa law.

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?

Certain small businesses are exempt from the registration fee pursuant to subrule 150.4(9).

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 150 and adopt the following **new** chapter in lieu thereof:

CONSTRUCTION—REGISTRATION AND BONDING

CHAPTER 150
CONSTRUCTION CONTRACTOR REGISTRATION

875—150.1(91C) Scope. This chapter implements Iowa Code chapter 91C. The rules in this chapter apply to all construction contractors, except for a person who earns less than $2,000 annually or who performs work or has work performed on the person's own property.

875—150.2(91C) Definitions.

"Construction" means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites that may be dispersed geographically. Examples of construction activities, adopted by reference, are in rule 871—23.82(96) for purposes of the Iowa employment security law.

"Contractor" means a person who engages in the business of construction as the term is defined in rule 871—23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors.

"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.

"File" means deliver to the department.

"Out-of-state contractor" means a contractor whose principal place of business is in another state, and who contracts to perform construction in this state.

"Principal place of business" means the state in which a substantial part of the contractor's business is transacted and from which the centralized supervision is exercised. Factors to be reviewed include:

1. State designated as home office on documents filed with governmental agencies.
2. State where payroll is prepared.
3. State where business transactions are performed.
4. State where officers, owners, or partners reside and work.
5. State in which bank accounts are located.
6. State in which fixed business property is located.
7. State where management decisions are made.

"Same phase of construction" means in the same type of construction operations or trade, such as but not limited to electrical work; masonry, stonework, tile setting and plastering; roofing; sheet metal work; excavation work; concrete work; glasswork; painting, paper hanging and decorating; plumbing, heating and air conditioning work; carpentry work; and miscellaneous special trade contractors.

"Working days" means Mondays through Fridays but not Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice is not to be included, and the last day of the 15 working days is included.

875—150.3(91C) Registration required. Before performing any construction work in this state, a contractor shall be registered with the department. A joint venture is an independent entity and is registered independently.

875—150.4(91C) Application. A contractor that is covered by the license requirements of Iowa Code chapter 105 applies for a contractor registration number by using the application system of the Iowa plumbing and mechanical systems board. All other contractors file an application with the department on forms provided by the department. The application contains the applicable information and documents specified in this rule.

150.4(1) *Name.* The name of the contractor.

150.4(2) *Place of business.* The complete mailing address of the principal place of business of the contractor.

150.4(3) *Telephone number.* The business telephone number of the contractor.

150.4(4) *Business classification.* The type of business entity of the contractor (e.g., corporation, partnership, sole proprietorship, trust, etc.).

150.4(5) *Ownership information.*

a. If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation.

b. If the contractor is other than a corporation, the name, address, and telephone number of each owner.

150.4(6) *Workers' compensation coverage information.*

a. A certificate of insurance from the insurer showing proof of workers' compensation insurance, the effective dates of coverage, and listing the department of inspections, appeals, and licensing as a certificate holder;

b. Employer's release from the insurance requirements under workers' compensation law form provided to self-insured employers by the commissioner of insurance under Iowa Code section 87.11; or

c. A statement that the contractor is not required to carry workers' compensation coverage.

150.4(7) *Account number.* The employer account number issued by the unemployment insurance services division of the workforce development department before the contractor applies for a contractor registration number.

150.4(8) *Business description.* A description of the business to include:

a. The employer's North American Industry Classification System (NAICS) code; or

b. The principal products and services provided.

150.4(9) *Fee or fee exemption.* A contractor who is eligible to register without paying a fee shall submit a completed fee exemption form. All other contractors must submit the nonrefundable fee as set forth below.

a. The standard fee is $50 per year or $150 for a three-year registration.

b. Contractors who apply for a contractor registration number through the Iowa plumbing and mechanical systems board must pay a fee that is prorated in accordance with the length of the registration period.

150.4(10) *Social security number.* The contractor, if a natural person, shall include the contractor's social security number.

150.4(11) *Out-of-state contractor bond.* An out-of-state contractor shall:

a. File a $25,000 surety bond that is prepared using the bond form provided by the department, or

b. Provide a copy of a letter from the department of transportation stating that the contractor is prequalified to bid on projects for the department of transportation pursuant to Iowa Code section 314.1.

875—150.5(91C) Amendments to application.

150.5(1) A contractor shall report to the director any change in the information originally reported on or with the application within 15 working days of the change, except that the contractor shall notify the director of changes to workers' compensation coverage within ten days prior to any change in coverage.

150.5(2) After the time specified in subrule 150.5(1), with good cause shown, the director may determine that an amendment may be made to correct an application.

150.5(3) Amendments to applications are not permitted where a change occurs in the business classification, such as but not limited to a change from a sole proprietorship to a corporation.

875—150.6(91C) Fee.

150.6(1) *New applications.* A new application deposited in the U.S. mail must include the fee effective on the date the application is postmarked. A new application delivered in any other manner must include the fee effective on the date the application is received by the department.

150.6(2) *Renewal applications.* A timely renewal application shall include the fee effective on the expiration date of the contractor's expiring registration. An application for renewal deposited in the U.S. mail after the expiration date of the contractor's expiring registration shall include the fee effective on the date the application is postmarked. An application for renewal delivered to the

department in a manner other than U.S. mail and after the expiration date of the contractor's expiring registration shall include the fee effective on the date the application is received by the department.

150.6(3) *Amendments to applications.* A fee is not required for a permissible amendment to an application.

875—150.7(91C) Registration number issuance. Within 30 days of receipt of a completed application, the director will issue to the contractor a registration number. The registration number will consist of the letter "C" followed by six unique digits.

875—150.8(91C) Workers' compensation insurance cancellation notifications.

150.8(1) *Insurance company coverage.* The department shall be notified by the insurance company carrying the contractor's workers' compensation insurance at the time of cancellation. The notice shall contain:

a. The name of the insurance carrier;

b. The name of the insured contractor; and

c. The date the workers' compensation coverage cancellation is effective.

150.8(2) *Self-insured contractors.* The contractor shall notify the department ten days prior to any cessation in self-insurance.

150.8(3) *Noninsured contractors.* The contractor shall notify the department whenever the required notice is not posted or in any change in insurance status.

875—150.9(91C) Investigations and complaints.

150.9(1) *Investigations.* The conduct of the investigation will be such as to preclude unreasonable disruption of the operations of the work site. Investigations may be conducted without prior notice by correspondence, telephone conversations, or review of materials submitted to the department. At the initiation of an investigation at the contractor's establishment, the investigator shall present credentials, explain the nature and purpose of the investigation, and seek the consent of the owner, operator or agent in charge of the establishment. In the event the investigator is not permitted to fully conduct an investigation, the director may seek an administrative warrant.

150.9(2) *Complaints.* A complainant's name and other identifying information shall not be released if the complaint was included as a part of another complaint where the complainant's identity would be protected under other statutes or rules (e.g., a complaint filed under both Iowa Code chapters 88 and 91C).

875—150.10(91C) Citations/penalties and appeal hearings.

150.10(1) *Citations.* The director will issue a citation to a contractor where an investigation reveals the contractor has violated:

a. The requirement that the contractor be registered;

b. The requirement that the contractor's registration information be substantially complete and accurate; or

c. The requirement that an out-of-state contractor file a bond with the department.

150.10(2) *Penalties.* If a citation is issued, the director shall notify the contractor by certified mail of the proposed administrative penalty, if any. The administrative penalties shall be not more than $500 in the case of the first violation and not more than $5,000 per violation in the case of a second or subsequent violation. In proposing a penalty, due consideration will be given to knowledge of the alleged violation, knowledge of requirements of the law, and nature and extent of the alleged violation.

150.10(3) *Appeal.* The contractor has 15 working days within which to file a notice of contest of the citation or proposed penalty. The notice of contest is filed with the director who will forward it to the employment appeal board.

150.10(4) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to administrative hearings on citations and penalties.

875—150.11(91C) Revocation of registrations and appeal hearings.

150.11(1) *Reason for revocation.* The director shall seek revocation of a contractor's registration where an investigation reveals the contractor failed to meet the conditions of registration at the time of issuance or no longer meets the conditions.

150.11(2) *Notice of revocation.* The director shall serve a notice of intent to revoke on the contractor by personal service or by restricted certified mail to the address listed in the application or by other service as permitted in the Iowa Rules of Civil Procedure. The notice shall set the time for a fact-finding interview.

150.11(3) *Fact-finding interview.* The purpose of the fact-finding interview is to ensure the contractor is not in compliance before the registration is revoked. The contractor may notify the fact finder of a telephone number to use at least 24 hours before the fact-finding interview is scheduled to begin. Otherwise, the fact finder will call the number on file for the contractor. The fact-finding interview may be conducted via videoconference or in person if the fact finder and the contractor make arrangements in advance.

150.11(4) *Decision.* The director serves the decision of the fact-finding interview on the contractor by certified mail to the address listed on the application or to another address provided by the contractor. If the certified mail is returned unclaimed or undelivered, the director will serve the decision by other service as permitted in the Iowa Rules of Civil Procedure.

150.11(5) *Effective date of revocation.* Revocations are effective 21 days after certified mailing of the decision.

150.11(6) *Notice of contest.* The contractor has 15 working days from receipt of the decision to file a notice of contest. The notice of contest shall be filed with the director, who will forward it to the employment appeal board.

150.11(7) *Notice of contest procedures.* The rules of procedure of the employment appeal board apply to notices of contest.

150.11(8) *Effect of revocation.* A contractor whose registration is revoked may reapply for a new registration number if all requirements for registration eligibility are met.

150.11(9) *Relinquishing registration certificate.* A contractor shall return the original registration certificate to the department when a revocation or suspension becomes final.

875—150.12(91C) Concurrent actions. Actions under rules 875—150.10(91C) and 150.11(91C) may proceed at the same time against a contractor.

875—150.13(91C) Bond release.

150.13(1) *Notifications.* Prior to releasing a bond, the director will notify the department of revenue, the unemployment insurance services division of the workforce development department, and applicable state subdivisions of the intent to release the bond. The director shall provide ten days for the filing of objections to the release of the bond. The director may deem any failure to respond to the notice within the time provided as an approval of the release.

150.13(2) *Conditions for release.* A bond shall not be released until the contractor has made payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and fees, that may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract or approval for the release is obtained from the appropriate agencies.

These rules are intended to implement Iowa Code chapter 91C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 155
"Asbestos Removal and Encapsulation"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 88B.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 23, 2024 9 to 9:30 a.m.	Geode 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 repromulgates Chapter 155 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 155 requires permitting, training, licensing of asbestos contractors and provides procedures for sanctions.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Employers engaged in asbestos removal will bear the costs.

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

Employees of asbestos removal contractors and the public will benefit from safe asbestos removal.

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:

Asbestos removal contractors pay a $500 fee for an annual permit.

- 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 specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspection, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- Anticipated effect on state revenues:

There is an insubstantial 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 increased hazards from improper asbestos removal.

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?

Due to the gravity of asbestos hazards, requirements are the same for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 155 and adopt the following **new** chapter in lieu thereof:

CHAPTER 155
ASBESTOS REMOVAL AND ENCAPSULATION

875—155.1(88B) Definitions.

"Business entity" means a partnership, firm, association, corporation, sole proprietorship, or other business concern. A business entity that uses its own employees in removing or encapsulating asbestos for the purpose of renovating, maintaining or repairing its own facilities is not included.

"Contractor/supervisor" means a person who supervises workers on asbestos projects or a person who enters into contracts to perform asbestos projects and personally completes the work.

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

"Director" means the director of the department or the director's designee.

"Friable asbestos material" means any material containing more than 1 percent asbestos by weight and that can be crumbled, pulverized, or reduced to powder by hand pressure when dry.

"Inspector" means a person who inspects for asbestos-containing building materials in a school or a public or commercial building.

"License" means an authorization issued by the department permitting an individual to be employed as a worker, contractor/supervisor, inspector, management planner, or project designer.

"Management planner" means a person who prepares asbestos management plans for a school building.

"Permit" means an authorization issued by the department permitting a business entity to remove or encapsulate asbestos.

"Project designer" means a person who designs asbestos response or maintenance projects for a school or a public or commercial building.

"Worker" means a person who performs response or maintenance activities on one or more asbestos projects.

"Working days" means Monday through Friday including holidays that fall on Monday through Friday. The first working day shall be the date of actual delivery or the postmark date, whichever is earlier. However, documents with Saturday or Sunday postmark dates will be treated as though postmarked on the following Monday.

875—155.2(88B) Permit application procedures.

155.2(1) *Application.* To apply for or to renew a permit, a business entity shall complete and submit the form provided by the department. All requested applicable information and attachments must be provided. A $500 nonrefundable application fee shall accompany each permit application.

155.2(2) *Action on application.* A new permit is valid for one year from the date of issuance. A renewal permit is valid for one year from the expiration date of the applicant's prior permit. A permit may be denied for the reasons set forth in rule 875—155.8(17A,88B,252J,272D) or if the application package is incomplete. Within 60 days of receiving a completed application package for a new permit, the department will issue a permit or deny the application. Within 30 days of receiving a completed application package for a permit renewal, the department will issue a permit or deny the application. Applications received after expiration of a prior permit will be considered applications for new permits rather than renewals.

875—155.3(88B) Other asbestos regulations. Regulation of encapsulation, removal and abatement procedures are found in 875—Chapters 10 and 26 and 567—Chapter 23. Nothing in this chapter provides an exemption, waiver, or variance from any otherwise applicable regulation or statute.

875—155.4(88B) Asbestos project records. The permittee shall keep a record of each asbestos project it performs and make the record available to the department at any reasonable time. Records required by this rule shall be kept for at least six years. These records include:

155.4(1) The name, address, and license number of the individual who supervised the asbestos project and of each employee or agent who worked on the project.

155.4(2) The location and a description of the project and the amount of asbestos material that was removed.

155.4(3) The start and completion dates of each instance of removal or encapsulation.

155.4(4) A summary of the procedures that were used to comply with all applicable standards.

155.4(5) The name and address of each asbestos disposal site where the asbestos-containing waste was deposited.

155.4(6) A receipt from the asbestos disposal site indicating the amount of asbestos and disposal date.

875—155.5(88B) Ten-day notices.

155.5(1) *General.* Permittees shall notify the department at least ten working days before an asbestos project begins. A project begins when site preparations for asbestos abatement, encapsulation, or removal begin; when asbestos abatement, encapsulation, or removal begins; or when any demolition begins, whichever is soonest. Legible electronic transmissions of ten-day notices in the proper format will be accepted. If work on the asbestos-removal project does not commence within 30 calendar days of the original start date identified in the ten-day notice given by permittees to the department, a revised ten-day notice shall be submitted to the department.

155.5(2) *Emergency.* When there is an immediate danger to life, health or property, the permittee may file the notice within five days after beginning the project. An explanation of the emergency must be included.

155.5(3) *Format.* The notice shall be submitted online or be on an 8½″ by 11″ sheet of paper and contain the following information:

a. The name, address, and telephone number of a contact person for the permittee performing the project.

b. The name, address, and telephone number of the project.

c. A description of the structure and work to be performed, including type and quantity of asbestos-containing material.

d. The scheduled dates of the project's start and end.

e. Designation of the asbestos disposal site.

f. The signature and printed name of the person who completed the form.

g. The shift or work schedule on which the project will be performed.

155.5(4) *Disaster emergency proclamations.* For structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, the permittee shall file the notice described by this rule as early as possible, but not later than the working day following the initiation of the project. A description of the disaster and the disaster emergency proclamation shall be included in the notice.

875—155.6(88B) License application procedures.

155.6(1) *Application form.* Except as noted in this subrule, the applicant must complete and submit the entire form provided by the department with the necessary attachments. Respirator fit tests and medical examinations must have occurred within the past 12 months. Only worker and contractor/supervisor license applicants must submit the respiratory protection and physician's or physician assistant's certification forms.

155.6(2) *Training.* A certificate of appropriate training as established by the U.S. Environmental Protection Agency must accompany all applications. Applicants for a license must be trained by training providers other than themselves. Applicants who completed initial training under a prior set of applicable rules will not be required to take another initial training course if they complete all annual refresher courses.

155.6(3) *Photograph.* A photograph clearly showing the applicant's face shall accompany all license applications.

155.6(4) *Worker licenses.* All persons seeking a license as an asbestos abatement worker shall complete an initial four-day training course and thereafter complete an annual one-day asbestos abatement worker refresher training course. A nonrefundable fee of $20 shall accompany the application.

155.6(5) *Contractor/supervisor licenses.* All persons seeking a license as an asbestos abatement contractor/supervisor shall complete an initial five-day training course and thereafter complete an annual one-day asbestos abatement contractor/supervisor refresher training course. A nonrefundable fee of $50 shall accompany the application.

155.6(6) *Inspector licenses.* All persons seeking a license as an asbestos inspector shall complete an initial three-day training course and thereafter complete an annual one-half-day asbestos inspector refresher training course. A nonrefundable fee of $20 shall accompany the application.

155.6(7) *Management planner licenses.* All persons seeking a license as an asbestos management planner shall complete an initial three-day inspector training course and an initial two-day management planning training course. Thereafter, an annual one-half-day asbestos inspector refresher training course plus an additional one-half-day course on management planning are required. A nonrefundable fee of $20 shall accompany the application.

155.6(8) *Abatement project designer licenses.* All persons seeking a license as an asbestos abatement project designer shall complete an initial three-day abatement project designer training course. Thereafter, an annual one-day asbestos abatement project designer refresher training course is required. A nonrefundable fee of $50 shall accompany the application.

155.6(9) *Action on application.* Within 30 days of receiving a completed application, the department will issue a license or deny the application. If a license is issued, it will expire one year from the date the training was completed. An application may be denied for the reasons set forth in rule 875—155.8(17A,88B,252J,272D) or if the application package is incomplete.

155.6(10) *License on job site.* While conducting asbestos work that requires a license, the license or a legible copy of the license shall be in the licensee's possession at the work site. However, if the department's website reflects that a license has been issued to a particular person, that person may perform work consistent with the type of license issued without the license or a copy of the license for up to 14 days from the issuance date.

155.6(11) *Disaster emergency proclamations.* For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, the director deems an individual to be licensed and authorized for asbestos abatement if all of the criteria in either paragraph 155.6(11)*"a"* or *"b"* are met:

a. The individual contractor, supervisor, or worker makes the following immediately available on the work site:

(1) A copy of a certificate for training that was provided within the past 12 months as established by the U.S. Environmental Protection Agency and that pertains to the work being performed;

(2) A copy of a physician's or physician assistant's statement indicating that a licensed physician or physician assistant has examined the individual within the past 12 months and approved the individual to work while wearing a respirator;

(3) For a worker wearing or intending to wear a tight-fitting respirator, documentation of a respirator fit test within the past 12 months;

(4) A valid, current asbestos license issued by another state that pertains to the type of work being performed; and

(5) A photo identification card; or

b. The individual working as a project designer, inspector, or management planner makes the following immediately available on the work site:

(1) A copy of a certificate for training as established by the U.S. Environmental Protection Agency and that pertains to the work being performed;

(2) A valid, current asbestos license issued by another state that pertains to the type of work being performed; and

(3) A photo identification card.

875—155.7(88B) Duplicate permits and licenses. Duplicate original permits and licenses are available from the department for a $10 fee.

875—155.8(17A,88B,252J,272D) Denial, suspension and revocation.

155.8(1) *Grounds.* In addition to the grounds in Iowa Code section 88B.8, the department may deny an application or suspend or revoke a permit or license when an investigation reasonably determines any of the following:

a. The department received a certificate of noncompliance from the centralized collection unit of the department of revenue or the child support recovery unit of the department of health and human services.

b. Penalties or other debts are owed by the applicant to the department and are 30 days or more in arrears.

155.8(2) *Relinquishing license or permit.* A licensee or permittee must return the original license or permit to the department when a revocation or suspension becomes final.

155.8(3) *Suspension period.* Unless ordered otherwise, a suspension lasts for 12 months.

875—155.9(17A,88B) Contested cases.

155.9(1) *Scope.* This rule applies to civil penalty assessments and to denials, revocations and suspensions of asbestos licenses and permits.

155.9(2) *Procedures.* The director shall serve a notice of intended action by restricted certified mail, return receipt requested, or by other service as permitted by Iowa Code section 17A.18. A notice of contest must be received by the director within 20 days after service of the notice of intended action. If a notice of contest is not timely filed, the action stated in the notice of intended action shall automatically be effective. Hearing procedures for asbestos contested cases are set forth in 875—Chapter 1, Division V. However, if a contested case is based on receipt by the department of a certificate of noncompliance, procedures outlined in Iowa Code chapter 252J or 272D apply.

These rules are intended to implement Iowa Code chapters 17A, 88B, 252J, and 272D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 169
"General Requirements for Athletic Commission Events"

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 to 10:30 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 repromulgates Chapter 169 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 169 primarily regulates professional boxing, mixed martial arts, and professional wrestling. It sets forth procedures for event licenses, promoter responsibilities, and conduct for participants.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Promoters of professional boxing, mixed martial arts, and professional wrestling bear the costs.

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

Participants of the covered contests 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 event license fees of $450 for boxing and mixed martial arts. There are costs associated with various safety measures. The chapter imposes a tax based on ticket sales.

- 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 specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspections, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- 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 safety in the covered events.

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?

There is no special allowance for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 169 and adopt the following **new** chapter in lieu thereof:

ATHLETICS COMMISSIONER

CHAPTER 169
GENERAL REQUIREMENTS FOR ATHLETIC COMMISSION EVENTS

875—169.1(90A) Scope and application. Unless otherwise noted, this chapter applies to each event covered by Iowa Code chapter 90A.

875—169.2(92) Definitions. The following definitions apply to 875—Chapters 169 through 177:

"Commissioner" means the state commissioner of athletics, who is also the director of the department of inspections, appeals, and licensing, or the director's designee.

"Physician" includes a physician assistant unless otherwise noted.

"Professional wrestling" is an exhibition in which the participants display their skills in a physical struggle against each other for entertainment and does not comprise a bona fide athletic contest or competition.

875—169.3(90A) Prohibited events. No promoter shall arrange or advertise:

169.3(1) A match between persons of the opposite sex;

169.3(2) A match between more than two contestants; or

169.3(3) A match with a contestant who is younger than 18 years of age.

875—169.4(90A) Advance notice of event. A promoter shall submit advance notice of an event, other than a professional wrestling event, to the commissioner on the form provided by the commissioner at least 60 days prior to the event but not more than six months prior to the event. The advance notice includes:

169.4(1) The date, time, type, and location of the event;

169.4(2) The promoter's name and contact information;

169.4(3) One-half of the required event license fee;

169.4(4) Whether the event is indoors or outdoors; and

169.4(5) Other relevant information requested by the commissioner on the form.

875—169.5(90A) Event license. A promoter may hold a mixed martial arts match, professional boxing match, or wrestling match only if the commissioner has issued an event license.

169.5(1) *Application.* The promoter shall submit a completed application for a license on the form provided by the commissioner.

a. For a professional wrestling event, the application shall be submitted at least seven days prior to the event and include each of the following:

(1) The promoter's name, address, telephone number and other contact information as requested by the commissioner;

(2) The event date, venue name, and venue address;

(3) A nonrefundable $100 event license fee; and

(4) The promoter's signature.

b. For any other covered event, the application shall be submitted at least 60 days prior to the event and include each of the following:

(1) The date, time, type, and location of the event;

(2) The promoter's name, address, and contact information;

(3) One-half of the required event license fee;

(4) A copy of the medical license of the ringside physician or physician assistant;

(5) The date, time, and location for the weighing of the contestants;

(6) The emergency medical services company, and the security company;

(7) The name and contact information for the certified law enforcement officer who will attend the event;

(8) The date, time, and location of the ringside physician's or physician assistant's examination of the contestants;

(9) Certificates of insurance;

(10) A bond in the sum of $5,000, payable to the State of Iowa, conditioned upon the payment of the tax and penalties imposed by Iowa Code chapter 90A, unless the promoter has a current valid bond on file with the department;

(11) The name and telephone number of the person designated to clean between rounds; and

(12) Other information requested by the commissioner.

169.5(2) *Event license fees.* The nonrefundable event license fee is $100 for a professional wrestling event and $450 for all other covered events. A professional wrestling promoter shall submit

the event license fee with the event license application at least 7 days prior to the event. For all other covered events, the promoter shall submit one-half of the event license fee with the advance notice of the event at least 60 days prior to the event, and one-half of the event license fee with the event license application at least 7 days prior to the event.

169.5(3) *Issuance.* The decision to issue an event license is solely within the discretion of the commissioner. The following factors will be considered by the commissioner when deciding whether to issue an event license:

a. Date the promoter filed advance notice of event.

b. The promoter's prior compliance with Iowa Code chapter 90A and applicable rules.

c. Applications for conflicting events.

d. Ability of the commissioner to provide staff.

e. The promoter's history of canceling events.

f. Anticipated tax revenue.

g. Completeness of application package.

h. Whether the event is indoors or outdoors.

169.5(4) *Revocation.* When the commissioner finds that failure to provide adequate security to maintain public safety requires emergency action, the commissioner may immediately suspend the event license, pending license revocation procedures pursuant to Iowa Code chapter 17A.

875—169.6(90A) Promoter responsibilities. The promoter of a professional wrestling event is responsible for subrules 169.5(1) through 169.5(6). All other promoters are responsible for each of the following:

169.6(1) Ensure compliance with Iowa Code chapter 90A and applicable rules.

169.6(2) Ensure that the referees are familiar with and enforce the rules.

169.6(3) Be responsible for the conduct and attendance of all officials and participants.

169.6(4) Ensure that adequate public safety is maintained at all events. Adequate personnel provided by a private security company and at least one certified law enforcement officer shall be furnished by the promoter.

169.6(5) Ensure that a referee inspects the gloves, bandages, and body of each contestant for foreign substances that might be detrimental to an opponent.

169.6(6) Ensure that contestants have closely trimmed fingernails.

169.6(7) Provide officials and participants who are subject to approval by the commissioner.

169.6(8) Be available to the commissioner throughout an event or identify a designee who will be:

a. Available to the commissioner throughout an event; and

b. Authorized by the promoter to address issues that may arise.

169.6(9) Enter into a written contract with each contestant using the form furnished by the commissioner. Other adequate proof of acceptance of terms will be considered an agreement between a contestant, the contestant's manager and the promoter, pending the actual signing of the contract.

169.6(10) Provide appropriate gloves.

169.6(11) Provide and maintain a container with a solution able to clean bodily fluids from any part of the cage, cage enclosure, or floor.

169.6(12) Ensure that an ambulance and ambulance service authorized at the EMT-B, EMT-I, EMT-P or paramedic specialist level are present at the event. A promoter is fully responsible for all charges assessed by the ambulance service related to the event except:

a. Charges covered by insurance.

b. Charges for services provided to persons other than participants and officials.

169.6(13) Ensure that contestants are wearing appropriate attire, gloves, and other necessary equipment.

169.6(14) Provide a suitable, clean, and private space for contestants to change clothes.

169.6(15) Submit to the ringside physician or physician assistant no later than at the time of the physicals test results showing that each contestant scheduled for the event tested negative for the human immunodeficiency, hepatitis B, and hepatitis C viruses within 12 months prior to the event. The contestant shall not participate and the physician or physician assistant shall notify the promoter that the contestant is prohibited from participating for medical reasons if any of the following occurs:

a. The promoter does not produce timely proof of testing;

b. The test results are positive;

c. The laboratory is not properly certified;

d. The test was performed more than 12 months prior to the event; or

e. The test results are otherwise deficient.

169.6(16) Obtain from a company authorized to do business in the state of Iowa $10,000 of health insurance coverage on each contestant to provide for medical, surgical and hospital care for injuries sustained and illnesses contracted during the event. If there is a deductible, it shall not exceed $1,500. If the contestant pays for covered care, the insurance proceeds shall be paid to the contestant or the contestant's beneficiaries as reimbursement for payment. In the event of a claim, payment of the deductible is the sole responsibility of the promoter.

169.6(17) Obtain from a company authorized to do business in the state of Iowa no less than $10,000 of life insurance coverage on each contestant to cover death caused by injuries sustained or illnesses contracted during the event.

169.6(18) No later than the day of the event, ensure that each contestant makes available to the commissioner's representative suitable proof of age consisting of one of the following documents:

a. A certified birth certificate;

b. A passport;

c. A certified baptismal record;

d. A U.S. visa;

e. An identification card issued to the contestant by a governmental entity and that includes the contestant's photograph and birth date; or

f. A U.S. resident alien card.

169.6(19) Ensure that participants and officials behave in a professional manner at all times.

169.6(20) Ensure that participants and officials refrain from:

a. Fighting with anyone other than a scheduled opponent;

b. Fighting outside the ring;

c. Throwing objects; and

d. Making obscene gestures.

169.6(21) Establish through mixedmartialarts.com that no contestant on an amateur card has participated in a reported professional mixed martial arts match.

875—169.7(90A) Taxes. No later than 20 days after an event, a promoter shall file with the commissioner a report and pay all taxes due from the event. The report is submitted on the form provided by the commissioner and includes the promoter's business name, name of a contact for the promoter, date of the event, event license number, location of the event, each price for which tickets were offered or sold, number of tickets sold at each price, total gate receipts, and signatures of the licensee and the person who completed the report. The promoter shall submit with the report:

169.7(1) Proof of the number of tickets sold and the price of each ticket, which includes appropriate documentation from a ticketing service, if applicable.

169.7(2) Payment to the Iowa department of inspections, appeals, and licensing for the amount calculated using the report.

These rules are intended to implement Iowa Code chapter 90A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 171
"Grant Applications and Awards"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 90A.10
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 of 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 repromulgates Chapter 171 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 171 requires an application and process for the commissioner of athletics to award grants for amateur boxing.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Applicants for amateur boxing grants will bear the costs.

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

Recipients of amateur boxing grants 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:

No quantitative impact is discerned.

- 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 specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspections, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- 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 be counter to the requirement of Iowa Code section 90A.10 to adopt rules for this process.

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?

There is no special allowance for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 171 and adopt the following **new** chapter in lieu thereof:

CHAPTER 171
GRANT APPLICATIONS AND AWARDS

875—171.1(90A) Scope. This chapter establishes rules of the commissioner of athletics (commissioner) for the distribution of revenues collected from a professional boxing event pursuant to Iowa Code section 90A.9.

875—171.2(90A) Application process.

171.2(1) The commissioner shall announce the opening of the application process by public notice.

171.2(2) All amateur boxing organizations seeking grant funds must submit an application to the commissioner on forms provided by the commissioner.

171.2(3) Contents. Each application shall contain:

a. A plan of action that details how the awarded funds will be spent and what results and benefits are expected. The action plan includes:

(1) Grant goals, objectives, timeliness, responsible individuals, and evaluation.

(2) Establishing an end result that is beneficial to the sport of amateur boxing.

(3) Number of projected amateur boxing matches to be promoted by the applicant.

b. A budget detailing how the grant funds will be expended.

c. Assurances the applicant will comply with the conditions and procedures for grant administration.

d. A plan for evaluation.

e. Assurances the funds will not be used to retire preexisting financial obligations.

f. Assurances the applicant will comply with the conditions for financial management.

875—171.3(90A) Grant process.

171.3(1) The commissioner shall notify successful applicants and provide to each of them a contract for signature. This contract shall be signed by an official with authority to bind the applicant and be returned to the commissioner prior to the award of any funds under this program.

171.3(2) If the applicant and the commissioner are unable to successfully negotiate a contract, the commissioner may withdraw the award offer.

171.3(3) Applications shall be received by May 1 of each calendar year for an award the following fiscal year. Payment will be processed within 60 days of a grant award by the commissioner.

171.3(4) Grants are awarded for a 12-month period and may be renewed for a second year.

875—171.4(90A) Evaluation. The grantee shall cooperate with the commissioner and periodically provide requested information to determine how the goals and objectives of the project are being met.

These rules are intended to implement Iowa Code section 90A.7.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 172
"Professional Wrestling"

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 of 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 repromulgates Chapter 172 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 172 requires certain safety measures for professional wrestling events.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Promoters of professional wrestling bear the costs.

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

Participants and spectators of the covered contests 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:

No quantitative impact is discerned.

- 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 specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspections, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- 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 safety in the covered events.

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?

There is no special allowance for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 172 and adopt the following **new** chapter in lieu thereof:

CHAPTER 172
PROFESSIONAL WRESTLING

875—172.1(90A) General requirements. Applications for event licenses and promoter responsibilities for professional wrestling are in 875—Chapter 169.

875—172.2(90A) Separation of boxing and wrestling. No boxing bouts shall be permitted in any professional wrestling show, nor shall any wrestling bouts be permitted in any boxing show.

875—172.3(90A) Safety.

172.3(1) The promoter shall ensure that no one is permitted to wrestle who has any illness or disability that interferes with or prevents the participant from giving a full, complete and satisfactory exhibition of ability and skill, or endangers the wrestler's health or the health of the participant's opponent.

172.3(2) A promoter shall not permit participants to intentionally cut their own skin or the skin of another during the exhibition.

172.3(3) A promoter shall ensure that all areas in which wrestling takes place are matted, equipped, separated from spectators, and otherwise maintained in such a manner as necessary to assure a reasonable degree of safety to the participants and spectators.

172.3(4) In no event shall a participant be permitted to engage in any conduct endangering the health, safety, or well-being of any spectator.

172.3(5) A wrestler may not possess inherently dangerous accessories.

These rules are intended to implement Iowa Code chapter 90A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 173
"Professional Boxing"

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 to 10:30 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 of 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 repromulgates Chapter 173 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 173 regulates professional boxing by requiring certain conduct within contests, contest rules, equipment standards, personnel related to contests, and boxer registration.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Promoters of professional boxing bear the costs.

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

Participants and spectators of the covered contests 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:

No quantitative impact is discerned.

- 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 specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspections, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- 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 safety in the covered events.

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?

There is no special allowance for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 173 and adopt the following **new** chapter in lieu thereof:

CHAPTER 173
PROFESSIONAL BOXING

875—173.1(90A) Limitation of rounds. Ten rounds is the maximum number of rounds for a boxing bout, except for a championship match that may not exceed 15 rounds. Three minutes of boxing will constitute a round, or, by special permission of the commissioner, two minutes. There will be a rest period of one minute between rounds.

875—173.2(90A) Weight restrictions. Permission must be received from the commissioner before a contestant will be permitted to box an opponent 18 pounds heavier than the boxer in the welterweight or middleweight classes or 6 pounds heavier than the boxer in or under the lightweight class.

875—173.3(90A) Injury. If a contestant claims to be injured during the bout, the referee shall stop the bout and request that the attending physician make an examination. If the physician decides that the contestant has been injured as the result of a foul, the physician shall advise the referee of the injury. If the physician is of the opinion that the injured contestant may be able to continue, the physician shall order a five-minute intermission, after which the physician shall make another examination and again advise the referee of the injured contestant's condition. It is the duty of the promoter to have an approved physician in attendance during the entire duration of all bouts.

875—173.4(90A) Knockdown. If a contestant falls due to fatigue or is knocked down by the opponent, the contestant shall be allowed ten seconds in which to rise unassisted. When a contestant falls, the opponent shall go to the farthest neutral corner and remain there during the ten-second count. The referee shall stop counting should the opponent fail to go to a neutral corner.

875—173.5(90A) Limitation on number of bouts. Any boxing contestant who has agreed to take part in a bout of five rounds or more is not permitted to participate in any other bout in Iowa or elsewhere five days prior to the date of the bout unless given permission by the commissioner.

875—173.6(90A) Contestants' arrival. All main event contestants shall be in the city or locale at least 24 hours before the scheduled time of the bout or contest. The promoter shall advise the commissioner of the arrival time. Any exception to this rule shall be approved by the commissioner.

875—173.7(90A) Persons allowed in the ring. No person other than the contestants and the referee may enter the ring during the bout, excepting the seconds between the rounds or the attending physician if asked by the referee to examine an injury to a contestant.

875—173.8(90A) Protection of hands. Only one roll of cotton gauze surgical bandage, not to exceed 2 inches in width and 10 yards in length, shall be used for the protection of each hand. Only one winding of surgeons' adhesive tape not more than 1½ inches in width may be placed directly on the hand to protect that part of the hand near the wrist. Said tape may cross the back of the hand twice, but not extend within 1 inch of the knuckles when the hand is clenched to make a fist.

875—173.9(90A) Scoring. Twenty points will be the maximum number to be scored in any round. The contestant winning the round will receive ten points and the opponent proportionately less. If the round is even, each contestant will receive ten points.

875—173.10(90A) Gloves. The gloves must not be twisted or manipulated in any way by the contestants or their handlers. If a glove breaks or a string becomes untied during the bout, the referee will instruct the timekeeper to take time out while the glove is being adjusted.

875—173.11(90A) Proper attire. Contestants must wear proper athletic attire. Athletic attire of opposing contestants shall be of contrasting colors. Male contestants shall wear a foul proof protective cup. Female contestants shall wear foul proof pelvic area protection and breast protection.

875—173.12(90A) Use of substances. Excessive use of cocoa butter, petroleum jelly, grease, ointments or strong-smelling liniment by a contestant in a bout will not be permitted.

875—173.13(90A) "Down." A boxer will be deemed down when:

1. Any part of the boxer's body other than the boxer's feet is on the ring floor or while rising from a down position.
2. The boxer is hanging helplessly over the ring ropes, but then is not officially down until so pronounced by the referee, who may count the boxer out either on the ropes or on the floor.

875—173.14(90A) Foul. The following activities will be deemed a foul:

1. Hitting below the belt or after the bell has ended the round.
2. Hitting an opponent who is down or who is getting up after being down.
3. Holding an opponent or deliberately maintaining a clinch.
4. Holding an opponent with one hand and hitting with the other hand.
5. Butting with head or shoulders or using the knee.
6. Hitting with inside or butt of the hand, the wrist or the elbow and all backhand blows.
7. Hitting or "flicking" with the open glove or thumbing.
8. Wrestling or roughing at the ropes.
9. Purposely going down without being hit.
10. Striking deliberately at that part of the body over the kidneys.
11. Use of the pivot blow or rabbit punch.
12. Use of abusive or profane language.
13. Failure to obey the referee, or any physical actions that may injure a contestant, except by fair sportsmanlike boxing.

875—173.15(90A) Penalties. The referee will penalize a contestant who commits any foul by deducting points from the contestant's score for the round in which the foul is committed. If, in the referee's judgment, the foul is of a serious nature or intentionally inflicted, the referee may award the bout to the contestant who was fouled.

875—173.16(90A) Weight classes. Scale of weights:

	[Pounds]
Flyweight	112
Bantamweight	118
Featherweight	126
Lightweight	135
Welterweight	147
Middleweight	160
Light heavyweight	175
Heavyweight	Over 175

875—173.17(90A) Attendance of commissioner. At each boxing card, the commissioner or the commissioner's designee shall be in attendance.

875—173.18(90A) Weighing of contestants. Contestants shall be weighed and examined on the day of the scheduled match by the attending ring physician, at a time and place as allowed by the commissioner. Preliminary boxers may be allowed to weigh in and be examined not later than one hour before the scheduled time of the first match on the card. All weigh-ins will be conducted with the boxer stripped.

875—173.19(90A) General requirements. The commissioner will not approve bout permits for bouts on Christmas Day. "Battles royal" or bouts in which more than two boxing contestants are to appear in the ring at the same time will not be approved. In programs where both amateur and professional contestants appear on the same card, there shall be no more than four amateur bouts of three rounds each. The amateur contests will be under the complete control and supervision of the United States of America Amateur Boxing Federation authority. On each card containing amateur and professional contests, there shall be at least an equal or greater number of bouts of professional boxing. The amateur section of the card shall be held first with at least a 15-minute intermission between the amateur and professional events.

875—173.20(90A) Excessive coaching. Excessive coaching and other detracting activities by seconds, managers or trainers while the bouts are in progress are prohibited. Offenders will be warned and if the violation continues, the offending contestant may be charged with a foul and a loss of points.

875—173.21(90A) Abusive language. The use of foul or abusive language or mannerisms by any person associated with any bout will not be tolerated.

875—173.22 to **173.24** Reserved.

875—173.25(90A) Ring requirements. The ring is not less than 16 nor more than 22 feet square within the ropes, elevated 3½ feet above the floor and has suitable access by steps.

875—173.26(90A) Ring posts. The ring posts will be constructed of metal not more than 4 inches in diameter, extend from the floor of the building to the height of 58 inches above the ring floor and be fastened securely to the floor or to the other posts.

875—173.27(90A) Ropes. The ropes will be a minimum of 3 in number, extending in a triple line 18 inches, 35 inches and 52 inches from the floor of the ring; at least 1 inch in diameter; and wrapped in soft materials. The ropes may not be closer to the ring posts than 18 inches. If 4 ropes are used, they will be proportionately spaced.

875—173.28(90A) Ring floor. The ring floor will extend beyond the lower rope for a distance of at least 18 inches. The entire floor will be padded to the thickness of at least 1 inch with felt, corrugated paper, matting or other soft materials to be approved by the commissioner. A canvas covering stretched tightly and laced to the ring platform will cover the padding.

875—173.29(90A) Bell. A suitable bell or gong shall be provided and used.

875—173.30(90A) Gloves. Gloves shall not weigh less than 8 ounces for professional bouts and must be new for all main events and bouts of ten rounds or greater. All gloves shall be furnished by the promoter.

875—173.31(90A) Referee's duties. The referee is charged with the enforcement of all rules of the commissioner that apply to the performance and conduct of contestants and their seconds while in the ring.

875—173.32(90A) Chief second. Before starting each bout the referee shall ascertain the name of the chief second in each corner and will hold the chief second responsible for all conduct in the corner.

875—173.33(90A) Naming referee. The promoters will be permitted to name a referee subject to approval by the commissioner.

875—173.34(90A) Reasons for stopping bout. The referee shall stop a bout when the referee deems it advisable because of the physical condition of one or both of the contestants, when one of the contestants is clearly outclassed by an opponent, when the referee decides that the best effort is not being made by a contestant, or for any other reason the referee deems sufficient.

875—173.35(90A) Forfeit of purse. The referee has the power to declare forfeited all or any part of a contestant's purse whenever in the referee's judgment the contestant is not performing in good faith.

875—173.36(90A) Shaking hands. The contestants in all boxing bouts will be instructed by the referee to shake hands after the referee's final instructions and not to do so again until the start of the last scheduled round.

875—173.37(90A) Assessing fouls. The referee will instruct the judges to mark their scorecards accordingly when the referee has assessed a foul and deduct a point from one of the contestants.

875—173.38(90A) Delaying prohibited. The referee shall ensure that a bout is not delayed except to handle damaging fouls. A contestant who employs delay and avoiding tactics will be penalized in the scoring.

875—173.39(90A) Count. When a fallen contestant rises and falls again, without being hit again, the referee shall continue the original count rather than starting a new count.

875—173.40(90A) Intentional foul. In assessing fouls, the referee will weigh the cause as well as the act. A contestant who intentionally receives a foul will be penalized as if they committed the foul.

875—173.41(90A) Use of the ropes. The referee shall penalize a contestant who uses the ropes to gain advantage. The penalty is the deduction of points, and a warning to the contestant against continued use of the ropes to gain advantage.

875—173.42(90A) Attending ring physician. When a boxer has been injured seriously, knocked out or technically knocked out, the referee shall immediately summon the attending ring physician to aid the stricken boxer. Managers, handlers and seconds shall not attend to the stricken boxer, except at the request of the physician.

875—173.43(90A) Technical knockout. Except for championship fights of national recognition, the referee shall stop the fight after a fighter is knocked down three times in one round and declare the opponent a winner on a technical knockout (TKO).

875—173.44(90A) Timekeeper. The timekeeper shall provide a stopwatch and maintain an accurate time of all bouts. The timekeeper will keep an exact record of time taken out at the request of a referee for an examination of a contestant by the physician, replacing a glove or adjusting any equipment during a round. The timekeeper shall provide a whistle and sound the whistle ten seconds before the start of each round of boxing bouts. The timekeeper shall be impartial.

875—173.45(90A) Seconds. Unless special permission is given by the commissioner, there will not be more than two seconds. Before the start of the bout, each corner shall notify the referee the of name of the chief second.

875—173.46(90A) Requirements for seconds. Seconds shall not enter the ring until the timekeeper indicates the end of the round and they must leave at the sound of the timekeeper's whistle before the beginning of each round. If the chief second or anyone for whom the promoter is responsible, such as a manager, enters the ring before the bell ending the round has sounded, the fight shall be ended and the decision awarded to the opponent. Seconds shall not smoke in the ring or corners.

875—173.47 to **173.49** Reserved.

875—173.50(90A) Use of water. Seconds shall not throw or splash water upon a contestant. A wet sponge may be used between rounds to refresh the contestant. Excess water on the floor of the ring shall be wiped up immediately by the seconds. Water discharged from the mouth of a contestant shall be caught in a bucket.

875—173.51(90A) Stopping the fight. The throwing of a towel into the ring to indicate the defeat of a contestant will not be recognized by the referee. The fight will be stopped when the second or manager appears on the ring apron.

875—173.52(90A) Removing objects from ring. Before leaving the ring at the start of each round the seconds shall remove all obstructions, buckets, stools, bottles, towels and robes from the ring floor and ropes.

875—173.53(90A) Decision. Each judge shall reach a decision without conferring in any manner with any other official or person. Each judge will make out a scorecard in accordance with the rules governing boxing. At the end of the bout the decision shall be written on the scorecard and the card shall be given to the commissioner or designee for verification who will then hand the cards to the referee who will then announce the decision. The winner is determined on the majority vote of the three judges and each judge selects a choice based on the highest number of points.

875—173.54(90A) Boxer registration. The commissioner participates in the Association of Boxing Commissions (ABC) national boxer registration system that allows authorities from different states to share information concerning boxers. The issuance of a registration card to a boxer does not guarantee the right to participate in a match.

173.54(1) *Application.* A boxer applies for registration in the state where the boxer resides, unless the state where the boxer resides does not participate in the ABC registration system. A person applying for a new or renewal boxer registration completes, signs, and submits to the commission the ABC Boxer's Federal Identification Card Application.

173.54(2) *Attachments.* With the application, the applicant submits a $25 fee, two 1″ × 1.5″ color photographs of the applicant's head, and a copy of a photo identification issued to the applicant by a governmental entity and containing the applicant's photograph and social security number or similar foreign identification number. The applicant must be recognizable in the photographs.

173.54(3) *Expiration.* The registration expires two years from the date of issuance.

173.54(4) *Changes.* The boxer shall notify the commission at the time any of the information on the form changes.

173.54(5) *Denials.* The commissioner may refuse to issue or renew a boxer registration for failure to complete an application package properly.

These rules are intended to implement Iowa Code chapter 90A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 174
"Elimination Tournaments"

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 of 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 repromulgates Chapter 174 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 174 regulates boxing tournaments in which participants may fight more than once during the event. It limits the length of bouts, requires certain protective equipment, provides rules for the bout, and governs the conduct of officials.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Promoters of boxing elimination tournaments bear the costs.

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

Participants in the covered contests 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:

No quantitative impact is discerned.

- 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 specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspections, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- 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 safety in the covered events.

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?

There is no special allowance for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 174 and adopt the following **new** chapter in lieu thereof:

CHAPTER 174
ELIMINATION TOURNAMENTS

875—174.1(90A) Purpose and scope. These rules apply to elimination tournaments, which are boxing matches where contestants box one another, two at a time, with one contestant eliminated from the tournament. The elimination continues with winners from the various bouts competing until only one contestant remains undefeated in the weight division. Elimination tournaments are governed by the rules in 875—Chapter 173 and this chapter. Any conflicts between 875—Chapter 173 and this chapter will be resolved in favor of this chapter.

875—174.2(90A) Bouts, rounds and rest periods.

174.2(1) Each bout consists of no more than three rounds. Each round is two minutes in length. A rest period of 90 seconds shall be provided between rounds. No contestant shall be permitted to compete in more than three bouts in any 20-hour period.

174.2(2) In national elimination tournaments, when the ability and conditioning of the contestants are assured, the athletics commissioner may authorize two contestants to participate in a fourth bout that determines the championship, provided all bouts are comprised of three 90-second rounds. Under no circumstances will any participant be permitted to compete more minutes in any one 20-hour period than is authorized under the rule allowing three bouts consisting of three two-minute rounds as set forth in this rule.

875—174.3(90A) Required protective equipment.

174.3(1) *Hand protection.* Practice wraps (training hand wraps) may be used in lieu of compliance with 875—Chapter 173. Gloves weighing 16 ounces shall be worn by both contestants.

174.3(2) *Body protection.* All male contestants shall wear a foul proof protective cup. All female contestants shall wear foul proof pelvic area protection and breast protection.

174.3(3) *Head protection.* The promoter shall provide and the contestants shall wear protective headgear unless the contestant signs a waiver from it.

174.3(4) *Mouth protection.* A mouthpiece shall be worn by all contestants throughout the bout. If the mouthpiece is knocked from a contestant's mouth, it shall be replaced with no penalty. Any contestant who deliberately spits out a mouthpiece shall be cautioned the first time, the referee shall deduct one point from each judge's scorecard the second time and the contestant will be disqualified the third time. Before being replaced, the mouthpiece will be washed.

174.3(5) *Hair protection.* Where necessary, hair will be secured in a manner that it will not interfere with the vision or safety of either contestant.

875—174.4(90A) Weight restrictions. Permission must be received from the commissioner before any contestant will be permitted to box an opponent with a weight differential greater than the following:

Contestants	Weight Differential
Under 135 pounds	6 pounds
135-160 pounds	12 pounds
160-190 pounds	18 pounds
Over 190 pounds	No restriction

875—174.5(90A) Down. In determining a technical knockout (TKO) under 875—Chapter 173, a down includes a standing eight count where a contestant is still standing but is in a semiconscious state and cannot, in the opinion of the referee, continue the bout.

875—174.6(90A) Suspension. A contestant who suffers a knockout or where the referee stops a fight on a technical knockout (TKO) shall not be permitted to box in the state for a period of 30 days. Before being permitted to fight again, the contestant shall be examined by a physician or physician assistant approved by the commissioner.

875—174.7(90A) Training requirements. Each contestant will have been involved in conditioning for at least 30 days prior to competing in any elimination tournament. Conditioning means a combination of roadwork or jogging and usual training center conditioning exercises. The promoter shall obtain from each contestant prior to the physical examination a written declaration from the contestant, witnessed by at least one other person, that the contestant has met these training requirements.

875—174.8(90A) Judges. Three judges, each located on different sides of the ring, will separately score bouts. The referee will not be permitted to act as a judge in scoring a bout.

875—174.9(90A) Impartiality of timekeeper. The use of lights on each ring post to indicate the final seconds of a round shall not be considered as signals to interested parties. Corner lights may be used only if consistently activated throughout the elimination tournament and all contestants and officials are informed prior to the start of the tournament about the information conveyed by the round lights.

875—174.10(90A) Ringside. No person may sit or stand at ringside unless authorized by the commissioner.

These rules are intended to implement Iowa Code sections 90A.2 and 90A.5.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 175
"Amateur Boxing"

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 of 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 175 in accordance with the goals and directives of Executive Order 10. Chapter 175 is being rescinded because any necessary oversight of amateur boxing is in Iowa Code chapter 90A.

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.

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 175**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 176
"Professional Kickboxing"

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 of 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 repromulgates Chapter 176 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 176 primarily adopts GLORY kickboxing rules and describes the authority of the athletic commissioner.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Promoters of professional kickboxing bear the costs.

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

Participants and spectators of the covered contests 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:

No quantitative impact is discerned.

- 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 specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspections, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- 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 safety in the covered events.

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?

There is no special allowance for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 176 and adopt the following **new** chapter in lieu thereof:

CHAPTER 176
PROFESSIONAL KICKBOXING

875—176.1(90A) Scope and purpose. Professional kickboxing is a contest within the scope of Iowa Code chapter 90A. The commissioner shall have final decision-making authority concerning the enforcement, implementation, and interpretation of the rules in this chapter.

875—176.2(90A) GLORY rules adopted by reference. The commissioner adopts by reference the kickboxing rules and regulations of GLORY Kickboxing as of January 1, 2023. The GLORY Kickboxing rules shall be used for all GLORY Kickboxing matches and events.

875—176.3(90A) Professional boxing rules followed. Professional kickboxing will conform to the rules in 875—Chapter 173 on:

1. Limitations on number of bouts;
2. Contestants' arrival; and
3. Attendance of commissioner.

875—176.4(90A) Additional provisions.

176.4(1) Officials. The designation of officials, referees, physicians, physician assistants, timekeepers, judges, kick counters, scorekeepers, contestants, seconds, and managers is subject to the approval of the commissioner or designee.

176.4(2) "Battles royal" or bouts in which more than two kickboxing contestants are to appear in the ring at the same time shall not be approved.

These rules are intended to implement Iowa Code chapter 90A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 177
"Mixed Martial Arts"

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 to 10:30 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 of 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 repromulgates Chapter 177 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 177 requires certain conduct, contest rules, equipment standards and crowd safety for mixed martial arts. Proposed Chapter 177 also adds professional mixed martial artist registration consistent with professional boxer registration.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Promoters of mixed martial arts bear the costs.

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

Participants and spectators of the covered contests 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:

No quantitative impact is discerned.

- 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 specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspections, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- 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 safety in the covered events.

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?

There is no special allowance for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 177 and adopt the following **new** chapter in lieu thereof:

CHAPTER 177
MIXED MARTIAL ARTS

875—177.1(90A) Definitions. The definitions contained in Iowa Code chapter 90A and the definitions in this rule apply to this chapter.

"Complimentary tickets," as used in Iowa Code section 90A.9, means tickets that are sold for less than 50 percent of the minimum price available to the general public and tickets for which no fee is charged.

"Contestant" means a person who fights or is scheduled to fight in a match.

"Event" means a program or card of one or more matches covered by Iowa Code chapter 90A.

"Match" means a mixed martial arts match.

"Mixed martial arts" means a style of athletic contest that includes a combination of combative skills from different disciplines of the martial arts, including, without limitation, grappling, kicking and striking.

"MMA" means mixed martial arts.

875—177.2(90A) Equipment specifications.

177.2(1) *Ring requirements.*

a. Size. The cage will not be less than 16 nor more than 36 feet square.

b. Enclosure. The ring will be equipped with an enclosure to limit persons from being tossed from the ring. The enclosure will be at least 6 feet high. The enclosure will consist of supports and enclosing material. The supports will be constructed of rigid material not more than 4 inches in diameter. The supports will be fastened securely to the floor or to the other supports. The supports will be protected by padding to avoid injury to any contestants striking the supports. The enclosing material will have openings not to exceed 4 inches in any direction. The enclosing material will not be rigid and will deflect at least ½ inch when ten pounds of pressure are exerted upon any point. All sharp objects or protrusions will be protected with padding.

c. Height. The ring will not be elevated more than 3½ feet above the floor. Suitable steps for the use of contestants will be provided.

d. Ring floor. The ring floor will be padded to the thickness of at least 1 inch with insulite or other soft materials to be approved by the commissioner. A canvas covering stretched tightly and laced to the ring platform will cover the padding.

e. Ring approval. The promoter shall make the ring and ring enclosure system available in the state of Iowa for inspection by the commissioner at least ten days prior to any event. The specifications in this rule are general, and so actual inspection will be necessary to verify adequate contestant safety prior to the event. If the commissioner has previously inspected the ring used by the promoter, the commissioner may waive the ten-day advance inspection.

177.2(2) *Bell.* A suitable bell or gong shall be provided and used.

177.2(3) *Time keeping.* The timekeeper shall be provided with a stopwatch and whistle.

875—177.3(90A) Event requirements.

177.3(1) *Officials.* Officials consist of three judges, two referees, the physician, and the timekeeper.

177.3(2) *Referee.* The referee is charged with the enforcement of all rules of the commissioner that apply to the performance and conduct of contestants and their seconds while in the ring. The referee shall wear latex gloves at all times while in the ring.

177.3(3) *Timekeeper.* The timekeeper will keep an exact record of time taken out at the request of a referee for an examination of a contestant by the physician, replacing a glove or adjusting any equipment during a round. The timekeeper will notify contestants at the beginning and end of each round. The timekeeper shall be impartial.

177.3(4) *Participants.* The contestants, seconds and managers are subject to approval by the commissioner.

177.3(5) *Scoring.* Three judges will score each match by evaluating striking, grappling, control of the cage, aggressiveness, and defense. The significance and number of legal strikes shall receive the greatest weight. The number of legal takedowns and reversals shall receive the second greatest weight. Control of the cage shall receive the third greatest weight. Aggression shall receive the fourth greatest weight. Defense shall receive the least weight. The winner of a round shall always receive a score of 10. The score for each round shall be one of the following:

a. If the contestants were evenly matched and neither dominated the round, the score shall be 10-10.

b. If a contestant won a round by a close margin, the score shall be 10-9.

c. If a contestant overwhelmingly dominated a round, the score shall be 10-8.

d. If a contestant totally dominated a round, the score shall be 10-7.

177.3(6) *Length of match.* Each match shall consist of no more than three rounds with no more than five minutes per round. However, the commissioner may authorize experienced contestants to compete in up to five rounds of up to five minutes each. There shall be a one-minute rest period between rounds. An overtime round shall not be allowed.

177.3(7) *Persons allowed in the cage.* No person other than the two contestants and the referee shall enter the cage during the match. However, the physician may enter the cage to examine a contestant upon the request of the referee.

177.3(8) *Seconds.*

a. Unless special permission is granted by the commissioner, there shall be no more than two seconds. Before the start of the match, each corner shall notify the referee of the name of the chief second.

b. Seconds shall not enter the cage except as authorized by this paragraph. The chief second may enter the cage after the timekeeper indicates the end of the round, and the chief second must leave before the beginning of a round.

c. Before leaving the ring at the start of the round, the seconds shall remove all obstructions, buckets, stools, bottles, towels and robes from the ring floor and ring enclosure.

d. Seconds shall not smoke in the ring or corners.

e. Seconds shall wear latex gloves at all times while attending any contestant.

f. Seconds shall not throw or splash water upon a contestant. Excess water on the floor of the cage shall be wiped up immediately. Water discharged from the mouth of a contestant shall be caught in a bucket.

177.3(9) *Decorum of officials and participants.*

a. Except as allowed in this subrule, a promoter, official, or participant shall not:

(1) Intentionally or recklessly strike or injure a person;

(2) Speak or act in a threatening manner toward a person; or

(3) Damage, destroy, or attempt to damage or destroy property.

b. The commissioner may immediately suspend the promoter's license if the promoter does not comply with paragraph 177.3(9)*"a"* or if the promoter does not take appropriate action to curtail activities in violation of paragraph 177.3(9)*"a"* by an official or a participant.

c. The commissioner may immediately suspend the authorization to participate in the event of an official or a participant who does not comply with paragraph 177.3(9)*"a."*

d. A contestant is exempt from subparagraphs 177.3(9)*"a"*(1) and 177.3(9)*"a"*(2) while interacting with the contestant's opponent during a round. However, if the round is stopped by the physician or referee for a time out, subparagraphs 177.4(9)*"a"*(1) and 177.4(9)*"a"*(2) shall apply to a contestant.

875—177.4(90A) Contestants.

177.4(1) *Time between matches.* No contestant shall be permitted to compete if the contestant participated in a boxing, wrestling, kickboxing, judo, or mixed martial arts event within the previous five-day period.

177.4(2) *Age restrictions.* No contestant under the age of 18 years shall be permitted to participate in any event except by special permission of the commissioner.

177.4(3) *Proper attire.* Contestants must wear proper athletic attire. Athletic attire of opposing contestants shall be of contrasting colors.

177.4(4) *Body protection.* All male contestants shall wear a foul proof protective cup. All female contestants shall wear foul proof pelvic area protection and breast protection.

177.4(5) *Mouth protection.* Each contestant shall wear a mouthpiece throughout each match. If the mouthpiece is knocked from a contestant's mouth, it shall be washed and then replaced.

177.4(6) *Gloves.* Gloves shall be approved martial arts gloves. All gloves shall be approved by the commissioner.

177.4(7) *Hand protection.* Only one roll of cotton gauze surgical bandage, not to exceed 2 inches in width and 10 yards in length, shall be used for the protection of each hand. Only one winding of surgeons' adhesive tape, not more than 1½ inches in width, may be placed directly on the hand to protect that part of the hand near the wrist. The tape may cross the back of the hand twice, but shall not extend within 1 inch of the knuckles when the hand is clenched to make a fist. Practice wraps (training hand wraps) may be used in lieu of gauze and tape.

177.4(8) *Hair protection.* Where necessary, hair shall be secured in a manner that it will not interfere with the vision or safety of either contestant.

177.4(9) *Weighing contestants.*

a. The promoter shall arrange for each contestant to be weighed in Iowa during the 24-hour period prior to the event.

b. Accurate scales shall be furnished by the promoter.

c. An official who has been approved by the commissioner shall weigh each contestant and accurately record the contestant's name and weight and the date and time. The weight records shall be submitted to the commissioner on the date of the event.

d. All contestants scheduled for an event shall be weighed on the same date.

e. Contestants shall be weighed in the presence of their opponents and without shoes, clothes or equipment.

f. Unless both contestants weigh more than 205 pounds, there shall not be a weight difference of more than 20 pounds between opponents without the commissioner's consent.

g. No less than two weeks before the event, the promoter shall notify the commissioner when and where contestants will be weighed.

177.4(10) *Examination of contestants.* On the day of the event, at a time and place to be approved by the commissioner, the ringside physician shall conduct a rigorous physical examination to determine the contestant's fitness to participate in an MMA match. A contestant deemed not fit by the physician shall not participate in the event.

875—177.5(90A) Procedural rules.

177.5(1) *Prohibited materials in ring.* Contestants shall not take anything not permitted or prohibited by these rules into the ring or pick up anything thrown into the ring and use the material or object in any way to gain an advantage over an opponent.

177.5(2) *Fouls.* As set forth in this subrule, the referee may penalize a contestant for fouls by disqualifying the contestant or by deducting points. The referee shall immediately determine if each foul is flagrant or accidental. "Flagrant" means the foul was intentional or reckless. "Accidental" means the foul was unintentional or incidental.

a. Disqualification. If the referee determines that the foul was flagrant and the contestant who was fouled is unable to continue due to an injury resulting from the foul, the contestant who committed the foul shall be disqualified.

b. Deduction of points. In determining the number of points to be deducted, the referee shall consider the nature and severity of the foul and its effect upon the opponent. As soon as practical after the foul, the referee shall notify the judges, contestants, and the commissioner of the number of points, if any, to be deducted from the score of the offender and whether the foul was flagrant or accidental. Points shall be deducted in the round in which the foul occurred.

c. Continuation of match. This paragraph governs how a match shall be continued if a foul that does not result in disqualification occurs.

(1) If a foul occurred but did not cause a serious injury, the referee may order the match to continue after a five-minute delay for recuperation. If subsequent fair blows aggravate the injury inflicted by a foul and the referee orders the contest stopped because of the injury, the outcome will be determined by scoring the completed rounds and the round during which the referee stopped the match.

(2) If an accidental foul results in a concussive impact to the head, if a contestant's chance of winning has been seriously jeopardized as a result of an accidental foul, or if a contestant is not able to continue the match due to an injury caused by an accidental foul, "no contest" will be declared or the winner will be determined based on points as set forth below.

1. "No contest" will be declared if:

- The foul occurs during the first two rounds of a match scheduled for three rounds or fewer.
- The foul occurs during the first three rounds of a match scheduled for four or five rounds.

2. The winner will be determined by scoring the completed rounds and the round during which the referee stopped the match if:

- The foul occurs during the third round of a match scheduled for three rounds.
- The foul occurs during the fourth or fifth round of a match scheduled for four or five rounds.

d. *Prohibited acts.* Each of the following actions is a foul:

(1) Butting with the head.
(2) Eye gouging of any kind.
(3) Biting.
(4) Hair pulling.
(5) Fishhooking.
(6) Groin attacks of any kind.
(7) Putting a finger into any orifice, cut, or laceration on an opponent.
(8) Small joint manipulation.
(9) Striking to the spine or behind the ears.
(10) Throat strikes of any kind, including, without limitation, grabbing the trachea.
(11) Clawing, pinching or twisting the flesh.
(12) Grabbing the clavicle.
(13) Kicking the head of a grounded opponent.
(14) Kneeing the head of a grounded opponent.
(15) Stomping a grounded opponent.
(16) Striking the kidney.
(17) Dropping or slamming an opponent on an opponent's head or neck.
(18) Throwing an opponent out of the cage or fenced area.
(19) Holding the shorts or gloves of an opponent.
(20) Spitting at an opponent.
(21) Engaging in any unsportsmanlike conduct that causes an injury to an opponent.
(22) Holding the ropes or the fence.
(23) Using abusive language in the cage or fenced area.
(24) Attacking an opponent during a break.
(25) Attacking an opponent who is under the care of the referee.
(26) Attacking an opponent after the bell has ended the round.
(27) Flagrantly disregarding the instructions of the referee.
(28) Timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.
(29) Interference by a second.
(30) Throwing in the towel during competition.
(31) Threatening or intentionally striking or injuring any person other than the contestant's opponent.

177.5(3) *Mouth protection ejected.* If the mouth protection is knocked from a contestant's mouth, it shall be replaced with no penalty.

177.5(4) *Spitting mouth protection.* The referee shall caution a contestant who deliberately spits out a mouthpiece the first time and disqualify the contestant the second time.

177.5(5) *Gloves.* The gloves shall not be damaged or manipulated in any way by the contestants or their handlers. If a glove breaks or becomes undone during a match, the referee will instruct the timekeeper to take time out while the glove is being adjusted or replaced.

177.5(6) *Injury.* If a contestant claims to be injured or when a contestant has been injured seriously or knocked out, the referee shall immediately stop the fight and summon the attending ring physician to make an examination of the stricken fighter. If the physician decides that the contestant has been injured, the physician shall advise the referee of the severity of the injury. If the physician is of the opinion the injured contestant may be able to continue, the physician shall order a five-minute intermission, after which the physician shall make another examination and again advise the referee of the injured contestant's condition. Managers, handlers and seconds shall not attend to the stricken fighter, except at the request of the physician.

875—177.6(90A) Decision. A professional match ends when:

177.6(1) A contestant submits.

177.6(2) The timekeeper indicates that time has expired in the final round of the match. The win will be awarded based on the judges' scores.

177.6(3) The referee stops the match.

177.6(4) The referee disqualifies a contestant for committing a foul pursuant to rule 875—177.5(90A).

177.6(5) A second or manager throws a towel into the cage to indicate the defeat of a contestant. The referee shall stop the match and award the win to the opponent.

177.6(6) A second or manager is in the cage when prohibited. The referee shall stop the match and award the win to the opponent.

875—177.7(90A) Forfeit of purse. The commissioner, in consultation with the referee, has the power to declare forfeited all or any part of a contestant's purse whenever in the commissioner's judgment the contestant was not performing in good faith.

875—177.8(90A) Professional fighter registration. Each professional MMA fighter residing in Iowa shall register with the commissioner consistent with 875—subrules 173.54(2) through 173.54(4).

These rules are intended to implement Iowa Code sections 90A.2 and 90A.5.

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 286—Chapters 1, 2, 3, 6, 7, 10, 11, and 12
"Agency Realignment"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8A.104(5) and 8A.203(3) as amended by 2024 Iowa Acts, Senate File 2385

State or federal law(s) implemented by the rulemaking: Iowa Code sections 8A.104 and 8A.201 through 8A.234

Public Hearing

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

October 24, 2024	Room 310—Library Conference Room
1 p.m.	Ola Babcock Miller Building

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

Tami Wiencek
Iowa Department of Administrative Services
1305 East Walnut Street, Third Floor
Des Moines, Iowa 50319
Email: tami.wiencek@iowa.gov

Purpose and Summary

This proposed rulemaking is intended to rescind redundant and outdated Uniform Rules on Agency Procedure from the State Library of Iowa's rules (agency number [286]). In addition, the rulemaking rescinds State Library chapters regarding statewide programs, the Library Services and Technology Act Program, and the library's Internet Use Policy. Iowa Code section 8A.202 lists the Iowa Department of Administrative Services' duties and responsibilities pertaining to library services. These duties were moved to the Department through state government alignment in 2023. The State Library of Iowa's Uniform Rules on Agency Procedure are now redundant because the Department has the same set of rules. The other chapters under agency number [286] are also being rescinded as part of Executive Order 10 because of redundant and outdated language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No group of people will bear the cost because the uniform rules are being rescinded and will be shifted to the Department's existing rules (agency number [11]). Under the Department's rules, members of the public who interface with public records, waivers, declaratory orders, or petitions for rulemaking would potentially bear some cost. This would depend upon whether appropriate public records fees would be involved or whether members of the public would retain legal services.

No group of people will bear the cost of shifting rules addressing the State Library of Iowa's organization to the Department's rules.

The same can be said for rescinding program-related chapters and for the Internet Use Policy. Rules addressing these topics are proposed to be repromulgated under agency number [11].

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

All members of the public will benefit from the rescission of these Uniform Rules of Procedure chapters because this action will lead to a streamlined Iowa Administrative Code. The same can be said for the rescission of the State Library of Iowa rules addressing organization, programs, and its Internet Use Policy.

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 have been no waiver requests, declaratory order requests, or petition for rulemaking requests for the State Library of Iowa within at least the last ten years. Public record requests have also been minimal. For these reasons, the quantitative impact can only be described as de minimis. The impact is also minimal regarding organization, programs, and the Internet Use Policy.

- Qualitative description of impact:

This impact is de minimis for all chapters proposed to be rescinded.

3. Costs to the State:

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

There are no costs associated with rescinding the Uniform Rules of Procedure. Costs associated with the Department once all chapters under [286] are rescinded will include personnel costs. The tasks of administering these rules, should those tasks become necessary, are built into already existing personnel positions. There are no costs associated with rescinding any of the other chapters from [286].

- 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:

This rulemaking involves a shift of Uniform Rules of Procedure from one Iowa Administrative Code chapter to another so the costs remain the same. In addition, benefits include rescinding unnecessary duplication of rules and redundant or unnecessary language as that pertains to organization, programs, and Internet use.

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

This method involving rescission is the least costly and intrusive.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Rescinding unnecessary chapters because of Iowa state government realignment is the optimal method under Executive Order 10. Rescinding rules with outdated language so those can be repromulgated under agency number [11] is also preferred.

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 chapters addressing uniform rules apply to all executive branch agencies, so a method of reducing an impact would not be practicable. These rules are necessary across all agencies. The rules covering organization, programs, and Internet use have no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **286—Chapter 1**.

ITEM 2. Rescind and reserve **286—Chapter 2**.

ITEM 3. Rescind and reserve **286—Chapter 3**.

ITEM 4. Rescind and reserve **286—Chapter 6**.

ITEM 5. Rescind and reserve **286—Chapter 7**.

ITEM 6. Rescind and reserve **286—Chapter 10**.

ITEM 7. Rescind and reserve **286—Chapter 11**.

ITEM 8. Rescind and reserve **286—Chapter 12**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapters 504, 550 to 553, 559
"Standards for Electrical Work; Electrical Inspection Program—Organization and Administration; Electrical Inspection Program—Definitions; Electrical Inspection Program—Permits and Inspections; Civil Penalties; Utility Notifications and Responsibilities of Utilities"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103.6

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 103 and 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 9:30 a.m.	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa

Information on virtual participation will be available on the Department's website prior to the hearing.

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

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: Ashleigh.Hackel@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapters 504, "Standards for Electrical Work"; 550, "Electrical Inspection Program—Organization and Administration"; 551, "Electrical Inspection Program—Definitions"; 552, "Electrical Inspection Program—Permits and Inspections"; 553, "Civil Penalties"; and 559, "Utility Notifications and Responsibilities of Utilities" and repromulgates pertinent rules in a new streamlined and combined chapter under Chapter 550, "Electrical Inspection Program." This proposed rulemaking implements Iowa Code section 103.6 in accordance with the goals and directives of Executive Order 10.

Iowa Code section 103.6 provides that the Electrical Board will adopt rules pursuant to Iowa Code chapter 17A and those rules will be governed by the minimum standards set forth in the most current publication of the National Electrical Code issued and adopted by the National Fire Protection Association (NFPA) and amendments to the Code. The Board will also adopt rules establishing wiring standards that protect public safety and health and property. Those standards will apply to all electrical wiring installed pursuant to Iowa Code chapter 103. Iowa Code section 103.6 also requires

that the Board establish and provide for the collection of fees for inspection and other services, with maximum fees set forth in Iowa Code chapter 103.

This rulemaking implements the aforementioned Iowa Code sections by establishing the Electrical Inspection Program, which enforces electrical installation requirements as set forth by the Electrical Examining Board. The rulemaking establishes the organization and hierarchy of the program and sets forth uniform qualifications of inspectors. The rulemaking also sets universal fees for services provided by the Electrical Inspection Program.

Substantive changes to these rules include the adoption of a more recent edition of NFPA's National Electrical Code—from the 2020 edition through the 2023 edition—in order to appropriately implement Iowa Code section 103.6(1)"a." It also includes updating inspector qualifications to include additional certification options provided by the NFPA and International Code Council. Finally, it corrects language related to the point at which failure to properly submit a request for permit and inspection subjects an individual to potential civil penalty in accordance with Iowa Code section 103.25. Other changes to these rules include nonsubstantive editorial revisions, including deleting language that is duplicative of 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:

Members of the electrical industry will bear the costs of the proposed rulemaking by paying fees associated with the rulemaking and operating in compliance with the pertinent edition of the NFPA National Electrical Code adopted therein.

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

Uniformity in permitting and inspections, achieved through consistent processes and adoption of the NFPA National Electrical Code, benefits both the general public, and members of the regulated industry. The public will benefit by the proposed rulemaking which protects safety, health, and property. The members of the industry will benefit by having clear standards, consistent with other jurisdictions, within which to work.

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:

With respect to the adoption of the 2023 NFPA National Electrical Code, there appears to be a net neutral regulatory burden between the 2020 and 2023 editions. Substantively, the costs of projects, whether governed by the 2020 or 2023 edition of NFPA's National Electrical Code, vary greatly depending on factors such as the type of work being done, the size of the project, and the condition of any existing electrical work, among other factors. A comparison of the primary differences between the 2020 and 2023 editions, however, demonstrates minimal anticipated differences in costs of mandatory items overall. For example, removal of a requirement related to kitchen island or peninsula receptacles could result in a reduced cost of approximately $70 under the 2023 edition. Ground-fault circuit interrupter (GFCI) protection for hardwired or cord-and-plug-connection kitchen appliances under the 2020 edition was required for kitchen appliances within six feet of the sink and under the 2023 edition is applicable to all kitchen appliances. If a particular project utilizes appliances that are all beyond the prior distance requirement, a cost of approximately $119 could be incurred under the 2023 edition as compared to the 2020 edition.

With respect to fees and civil penalties, this rulemaking proposes no substantive changes to the fee structure presently in operation. All changes related to fees are nonsubstantive in that the proposed rules merely adopt by reference the fee schedule set forth in Iowa Code section 103.32, rather than restating all fees in the Iowa Administrative Code. Notably, Iowa's fees match the fees in the state of Nebraska.

- Qualitative description of impact:

With respect to the adoption of the 2023 NFPA National Electrical Code, there is a benefit to both the public and the regulated industry in maintaining industry standards that are modern and in line with other jurisdictions. Notably, many other states, including the surrounding states of Minnesota, Nebraska, South Dakota, and North Dakota, have adopted or are in the process of adopting the 2023 NFPA National Electrical Code.

3. Costs to the State:

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

There are no costs to the Department specifically associated with this rulemaking. Any costs associated with implementation and enforcement of the proposed chapter are directly associated with the Board's statutory duties pursuant to Iowa Code chapter 103. Costs to the Department include staff salaries to support the work of the Board and administer the program in totality, including application review, response to licensing inquiries, managing complaints, conducting investigations, and enforcing discipline. Costs to the Department in administering the program are covered by the licensing and inspection fees required by Iowa Code sections 103.19, 103.25, and 103.32.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. As set forth above, this rulemaking proposes no substantive changes to the fee structure presently in operation. The only changes related to fees are nonsubstantive revisions in that the proposed rules merely adopt by reference the fee schedule set forth in Iowa Code rather than restating all fees in the Iowa Administrative Code. Costs to the Department in administering the program are covered by the licensing and inspection fees required by Iowa Code sections 103.19, 103.25, and 103.32.

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

As described above, Iowa Code section 103.6 requires that the Electrical Examining Board adopt rules as governed by the minimum standards set forth in the most current publication of the National Electrical Code issued and adopted by the National Fire Protection Association, establishing wiring standards that protect public safety and health and property and that apply to all electrical wiring that is installed pursuant to Iowa Code chapter 103, and establishing amounts and providing for the collection of fees for inspection and other services.

There are no specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Board and the Department's statutory duties identified. The costs of this rulemaking are directly associated with the Department's general functions, and this rulemaking does not add excess costs. The benefits of uniformity in permitting and inspections, achieved through consistent processes and adoption of the NFPA National Electrical Code consistent with neighboring jurisdictions, and statutory compliance are paramount.

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

As described above, there appears to be an overall net neutral regulatory burden between the 2020 and 2023 editions of the 2023 NFPA National Electrical Code. There are no other substantive changes proposed in this rulemaking affecting costs. As the Electrical Inspection Program is statutorily required, including adoption of the minimum standards set forth in the most current publication of the National Electrical Code issued and adopted by the NFPA, no less costly or less intrusive method for achieving the purpose of the proposed rulemaking has been identified.

6. Alternative methods considered by the agency:

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

See response to Question 5 above.

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

See response to Question 5 above.

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 provides for consistency and uniformity in electrical inspections and standards and does not make accommodations for size of business performing the installation work. If a small business identified a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Board's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **661—Chapter 504**.

ITEM 2. Rescind and reserve **661—Chapter 551**.

ITEM 3. Rescind and reserve **661—Chapter 552**.

ITEM 4. Rescind and reserve **661—Chapter 553**.

ITEM 5. Rescind and reserve **661—Chapter 559**.

ITEM 6. Rescind 661—Chapter 550 and adopt the following **new** chapter in lieu thereof:

CHAPTER 550
ELECTRICAL INSPECTION PROGRAM

661—550.1(103) Electrical inspection program. The electrical inspection program is created within the department of inspections, appeals, and licensing and may be contacted as provided in 481—Chapter 1 and on the department's website: dial.iowa.gov. The program is under the supervision of the director, is headed by a chief electrical inspector, and enforces requirements for electrical installations adopted by the electrical examining board.

661—550.2(103) Definitions. The definitions set forth in Iowa Code sections 103.1 and 103.1A are incorporated herein by reference. The following definitions also apply:

"Emergency installation" means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or manmade disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work and may be performed prior to submission of a request for permit or request for inspection.

"Residential electrical work" means electrical work in a residence in which there are no more than four living units within the same building and includes work to connect and work within accessory structures, which are structures no greater than 3,000 square feet in floor area, not more than two

stories in height, the use of which is incidental to the use of the dwelling unit or units, and located on the same lot as the dwelling unit or units.

"Volunteer emergency service provider" means a volunteer fire fighter as defined in Iowa Code section 85.61, a volunteer emergency rescue technician as defined in Iowa Code section 147A.1 or a reserve peace officer as defined in Iowa Code section 85.61.

661—550.3(103) Installation requirements. The provisions of the National Electrical Code, 2023 edition, published by the National Fire Protection Association, are incorporated herein by reference as the requirements for electrical installations performed by persons subject to licensing and inspection pursuant to Iowa Code chapter 103 and rules promulgated thereunder.

661—550.4(103) Qualifications of inspectors.

550.4(1) *State inspectors.* Electrical inspectors will be certified as commercial and residential electrical inspectors no later than one year after starting employment in any of these positions. Certification will be obtained from the International Association of Electrical Inspectors as both a certified residential electrical inspector and as a certified master electrical inspector; from the National Fire Protection Association as a certified electrical inspector; or from the International Code Council as both a residential electrical inspector (E1) and a commercial electrical inspector (E2), or as an electrical inspector (E5).

550.4(2) *Political subdivision inspectors.* A political subdivision that performs its own inspections as provided in Iowa Code section 103.24 must require certification of its inspectors. A person employed or appointed as an electrical inspector must obtain certification within one year of the appointment date. The board may act to enforce statutory compliance by the individual or by the political subdivision if a person employed or appointed as an inspector fails to obtain certification within one year of employment or appointment or fails to maintain the required certification while employed as an inspector. Certification of electrical inspectors for political subdivisions shall be obtained as set forth in subrule 550.4(1), except that a political subdivision has the authority to limit an inspector's duties to only residential inspections or only commercial inspections provided the inspector assigned to those duties obtains and maintains the proper certification to conduct the inspections assigned.

661—550.5(103) Fees. Fees are adopted in the amounts set forth in Iowa Code section 103.32. When an installation has been commenced with no Permit and Inspection Request form having been filed, twice the fees that would have been applicable if a timely request for permit and inspection had been filed shall be paid.

661—550.6(103) Required permits and inspections.

550.6(1) Permits and inspections are required for any electrical installations set forth in Iowa Code section 103.23, with the following exceptions:

a. Exception 1: Installations in political subdivisions that perform electrical inspections and that are inspected by the political subdivision are not required to be inspected by the state electrical inspection program. Any installation that is subject to inspection and is on property owned by the state or an agency of the state shall be inspected by the state electrical inspection program. An electrical installation on a farm that is located outside the corporate limits of any municipal corporation (city) shall not be inspected by a political subdivision.

b. Exception 2: Neither a permit nor an inspection is required for an electrical installation that meets all of the following criteria:

(1) The installation is legally performed by a master electrician, journeyman electrician, or apprentice electrician working under the direct supervision of a master or journeyman electrician.

(2) The installation to be performed does not in any way involve work within an existing or new switchboard or panel board.

(3) The installation to be performed does not involve over-current protection of more than 30 amperes.

(4) The installation to be performed does not involve any electrical-line-to-ground circuit of more than 277 volts, single phase.

c. Exception 3: Neither a permit nor an inspection is required for any electrical installation on a farm or a farm building if the farm building is not regularly open to the public as a place of business for the retail sale of goods, wares, services, or merchandise. This exception does not apply to a residential installation located on a farm.

550.6(2) The owner of a property on which multiple electrical installations may be performed during a 12-month period may apply for an annual permit to cover all such installations. The holder of an annual permit shall maintain a log of all installations performed pursuant to the annual permit and make the log available to an electrical inspector upon request. The owner shall cause the electrical inspection program to be notified of any such installation requiring an inspection and shall be subject to fees for such inspections as though an individual permit had been issued for each installation requiring an inspection. The fee for an annual permit is $100.

661—550.7(103) Request for inspection.

550.7(1) Prior to commencement of any electrical installation requiring an inspection, the person making such installation shall notify the electrical inspection program of the installation by applying for a permit unless the installation is covered by an annual permit issued pursuant to subrule 550.6(2) or is an emergency installation. For emergency installations that would otherwise require a request for permit and inspection under rule 661—550.6(103), the request shall be made as soon as practicable and no later than 72 hours after the installation is completed. An inspection may be requested:

a. By completing and electronically submitting a Request for Permit form and submitting permit and inspection fees through the department's website.

b. By completing a Request for Inspection form and mailing it and the inspection fees to the department at least seven days prior to the commencement of the installation. The Request for Inspection form may be obtained through the department's website or upon request to the department.

550.7(2) Inspection fees will normally be paid at the time a permit is obtained. However, additional fees may apply if a permit is modified by an inspector, based upon inspection of the electrical installation. The person who obtained the original permit will be notified immediately by the inspector of the modification and of the amount of any additional fees due. Any additional fees will be due at the time the person responsible for payment receives notification of modification of the permit.

a. If an additional fee or portion of the fee is more than 60 days past due, the board or its delegee will notify the person responsible for payment of the fee of the necessity of promptly making the payment.

b. If an additional fee or portion of the fee is more than 120 days past due, the board or its delegee may suspend the ability of the person responsible for the payment to obtain inspection permits. The person's ability to obtain permits will be restored when payment of the past due amount has been received. Suspension of a person's ability to obtain permits may be appealed to the board as provided in rule 661—503.4(103).

c. If payment of a fee or portion of a fee is more than 180 days past due, the board may refer the debt for collection pursuant to Iowa Code chapter 272D.

661—550.8(103) Scheduling of inspections. Pursuant to Iowa Code section 103.31, electrical inspections will be scheduled within three business days of the receipt of the request. If an inspection for which a timely request has been made is not completed within three business days of the completion of the installation, a licensee who completed the installation may energize any new circuits included in the installation, although the installation remains subject to condemnation and disconnection if found to be out of compliance with any applicable provision of rule 661—550.3(103) when inspected.

661—550.9(103) Report of inspection. After the completion of an inspection, the inspector will issue an inspection report indicating the results of the inspection and provide any necessary notice to the utility providing electrical service pursuant to Iowa Code section 103.28. The results of the inspection may be any of the following:

550.9(1) *Approval.* If the inspector finds that the installation is in compliance with applicable requirements, the inspector will issue a report indicating that the installation is approved.

550.9(2) *Order of correction.* If the inspector finds that the installation is not in compliance with applicable requirements but does not present an imminent threat to the health or safety of any person, the inspector will issue an order of correction, prescribing a time frame during which corrective action shall be taken by the licensee responsible for the installation to bring the installation fully into compliance.

550.9(3) *Order of disconnection.* If the inspector finds that the installation is not in compliance with applicable requirements and presents an imminent threat to the health or safety of any person, the inspector will issue an order of disconnection, requiring that the installation be disconnected until corrective action has brought the installation into full compliance with applicable requirements. The installation shall not be reconnected until the corrected installation has been approved by an inspector as in compliance with all applicable requirements. The inspector issuing an order of disconnection will notify the utility providing electrical service to the location of the order and will notify the utility when the order of disconnection is no longer effective.

661—550.10(103) Appeals. An order of correction or an order of disconnection may be appealed. However, an order of disconnection shall be complied with immediately and the installation not reconnected pending the outcome of the appeal.

550.10(1) A person who has received an order of correction or disconnection may request an informal appeal to the chief electrical inspector within 14 days of receiving the order by contacting the electrical inspection section by telephone, email or mail. The informal appeal may be heard in any manner agreed to by the person filing the appeal and the chief electrical inspector. If the order is upheld by the chief electrical inspector, the person receiving the order may file a formal appeal pursuant to 661—subrule 552.5(2).

550.10(2) A person who has received an order of correction or disconnection may file a request for a formal appeal to the board within 30 days of receiving the order or, if the person has filed a request for an informal appeal, within 30 days of having been notified that the chief electrical inspector has upheld the order. Formal appeals will be processed as provided in 481—Chapter 506, except that "electrical examining board" is substituted therein as appropriate.

661—550.11(103) Civil penalty. Any person who commences an electrical installation subject to inspection pursuant to Iowa Code chapter 103 and who fails to file a Request for Permit and Inspection form within 14 days of notification as prescribed by Iowa Code section 103.25 may be subject to a civil penalty. The amount of the civil penalty will not exceed $750 as determined by the board. Notice will be provided by certified mail to any person on whom a civil penalty is imposed.

661—550.12(103) Civil penalty—appeal. Any person on whom a civil penalty has been imposed may appeal the imposition of the civil penalty to the board within 14 days of the date on which notice of the civil penalty was mailed by notifying the board in writing that the person wishes to appeal the civil penalty. An appeal of a civil penalty is to be subject to the provisions of 481—Chapter 506, which apply to contested cases, except that "electrical examining board" is substituted therein as appropriate.

These rules are intended to implement Iowa Code chapter 103.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 27
"Interest on Retained Funds"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)"j" and 573.12
State or federal law(s) implemented by the rulemaking: Iowa Code section 573.12

Public Hearing

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

October 28, 2024 10 to 10:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID : 912 076 967

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:

Traci Springer
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1338
Email: traci.springer@iowadot.us

Purpose and Summary

This chapter is intended to implement Iowa Code section 573.12 regarding interest payments on retained funds.

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 classes of persons that will bear costs of the proposed rule.

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

The contractors and subcontractors will benefit from this rule since they will receive interest on their retained funds.

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 rule allows the Department to pay its construction contractors interest on the funds the Department holds as retainage on the contractor's work.

- Qualitative description of impact:

This rule allows the Department to provide interest to the contractors on the retention the Department holds on the funds due to the contractor to ensure the contractor completes the job, performs the labor, provides the materials, etc., according to the contract signed between the Department and the contractor.

3. Costs to the State:

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

There are no costs to the Department to implement or enforce this rule.

- Anticipated effect on state revenues:

No revenues are affected.

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

This allows the Department to pay interest on the funds the Department is holding as retainage from the contractors.

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

There is no less costly or less intrusive method to achieve the purpose of the proposed rule. Establishing procedures that the Department will follow ensures the process is clear to the Department's contractors and is consistently applied.

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 rule.

- 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 rule would not have a substantial impact on small businesses since they would be eligible for the same interest as other larger businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27
INTEREST ON RETAINED FUNDS

761—27.1(573) Interest on retained funds.

27.1(1) *Scope.* This rule implements Iowa Code section 573.12, regarding payment to a contractor of interest earned on retained funds. This rule does not address payment of interest under Iowa Code section 573.14.

27.1(2) *General requirements.*

a. Interest is paid on retained funds of a contract only if the accrued interest on those funds is at least $25. This dollar threshold reflects the cost to the department of processing an interest payment on retained funds.

b. Interest is not to be paid on retained funds of a contract declared in default.

27.1(3) *Procedures.*

a. Interest begins to accrue on retained funds on the date the first progress payment is issued. An interest rate is established on this date in accordance with Iowa Code section 12C.6. This interest rate applies for the duration of the contract.

b. In general, interest continues to accrue on retained funds until the date the final payment is issued.

(1) Final payment is payment of retained funds less assessed liquidated damages, if applicable.

(2) The final payment and the interest payment are paid by separate warrants. The interest payment is issued within two weeks after issuance of final payment.

c. Notwithstanding paragraph 27.1(3)*"b,"* interest is to cease to accrue on retained funds:

(1) Upon the expiration of 90 days following field acceptance of a project if the contractor has failed to submit to the department the documentation necessary for final payment as specified in the contract provisions.

(2) Upon payment of retained funds via a retention release voucher. A retention release voucher releases the retained funds and the interest accrued on those funds less assessed liquidated damages, twice the amount of claims on file, and the amount of possible overpayments or adjustments to contract items and change orders. A retention release voucher may be paid at any time after 30 days have expired following completion and final acceptance of the project if the contractor has submitted the necessary documentation.

(3) Upon the court's obtaining jurisdiction of the retained funds pursuant to Iowa Code section 573.16. Retained funds turned over to the court will include the interest accrued on those funds to the date the action was filed if the interest has not been paid to the contractor.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 573.12.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 40
"Recovery of Damages to Highways or Highway Structures"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.475
State or federal law(s) implemented by the rulemaking: Iowa Code section 321.475

Public Hearing

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

October 28, 2024 11 to 11:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 611 359 34

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:

Traci Springer
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1338
Email: traci.springer@iowadot.us

Purpose and Summary

This chapter's intended benefit is to recover damages to highway or highway structures because of illegal and/or overweight operations.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The public and any party that is operating in an illegal and/or overweight operation that causes damage to highway or highway structures will bear the costs of these rules.

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

The public and any party that is operating in an illegal and/or overweight operation that causes damage to highway or highway structures will benefit by having clear Department procedures on how the Department recovers damages.

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 Department will be able to recover the costs of any damages incurred from a simple sign repair to bridge damage rather than using budget dollars for the repairs.

- Qualitative description of impact:

This chapter should increase the quality of our highways and highway structures, making them safer for motorists.

3. Costs to the State:

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

There are no costs to the Department to implement or enforce these rules.

- Anticipated effect on state revenues:

The revenue generated from this chapter will balance out the expenses incurred with the damage.

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 a defined process. The Department would be responsible for the repairs to the highway and/or highway structures if Iowa Code section 321.475 and this chapter did not exist.

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. Establishing procedures that the Department will follow ensures the process is clear and is consistently applied.

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 for the proposed rules. The Department is required by Iowa Code to adopt this chapter.

- 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?

Small businesses may be impacted by this chapter. However, there is no small business impact beyond what was already anticipated under the statute.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 40 and adopt the following **new** chapter in lieu thereof:

CHAPTER 40
RECOVERY OF DAMAGES TO HIGHWAYS OR HIGHWAY STRUCTURES

761—40.1(321) General.

40.1(1) This chapter is limited to recovery of damages to highways or highway structures in accordance with Iowa Code section 321.475, Iowa Code chapter 321E and 761—Chapter 511.

40.1(2) Information about this chapter may be obtained from the Finance Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or the department's website at www.iowadot.gov/claimsmanagement.

761—40.2(321) Definitions.

"Highway" means any segment of the primary road system or a municipal extension and includes but is not limited to the pavement surface, shoulder, median, earth fill, ditches and vegetation.

"Highway structure" means all the appurtenances of a highway, including but not limited to guardrails, culverts, bridges, signs, light poles, attenuators, traffic control devices, or buildings at rest areas, information sites, commercial vehicle inspection and enforcement sites, or other appurtenances adjacent to the highway.

761—40.3(321) Recovery of damages. The department:

40.3(1) Will investigate to determine the person(s) responsible for the damages.

40.3(2) Will summarize the repair or replacement costs and submit the claim to the person(s) responsible for the damage.

40.3(3) May seek recovery through civil court action.

40.3(4) Will deposit the collections for recovery of damages in the primary road fund.

These rules are intended to implement Iowa Code section 321.475.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 103
"Secondary Road Fund Distribution Methodology"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 312.3

State or federal law(s) implemented by the rulemaking: Iowa Code sections 7E.3(3) as amended by 2024 Iowa Acts, Senate File 2385, section 69; 312.2; 312.3 as amended by 2024 Iowa Acts, Senate File 2385, section 303; 312.3B as amended by 2024 Iowa Acts, Senate File 2385, section 304; 312.5 as amended by 2024 Iowa Acts, Senate File 2385, section 305; and 312.16 as amended by 2024 Iowa Acts, Senate File 2385, section 306

Public Hearing

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

October 24, 2024 1 to 1:30 p.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 255 254 876

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:

Garrett Pedersen
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1027
Email: garrett.pedersen@iowadot.us

Purpose and Summary

This chapter sets forth requirements for the adoption of the formulas to be used for distribution of moneys in the Secondary Road Fund and the Farm-to-Market Road Fund and to formalize the process by which the Transportation Commission (Commission) will administer its duties.

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 direct costs of rules to any classes of persons.

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

The traveling public along the secondary road system in Iowa, including people who live and/or work along the roadway, and those who travel the roadway 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:

In fiscal year 2024, the Secondary Road Fund amounted to $421.2 million, and the Farm-to-Market Road Fund had $118.8 million. These figures amount to 98 percent of the total

nonappropriated funds in the county road fund. With this high percentage, the process to propose new or modified formulas is very impactful to the overall effective use of the funds.

- Qualitative description of impact:

The Commission would be advised by an ad hoc committee composed of Iowa county engineers and Iowa county supervisors that possess great institutional and professional knowledge to help manage distribution formulas that are beneficial to the State.

3. Costs to the State:

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

Costs to the State directly associated with the rule chapter include the staff time associated with the preparation of materials and administration of activities for the Commission and Committee.

- Anticipated effect on state revenues:

The costs to the State are negligible and, when incurred, allow the ad hoc committee to maximize its time serving as subject matter experts.

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

The cost of inaction would be inefficiencies in how collected State revenues are distributed. Without the functions defined in the rules, there would be no mechanism/governing body employed to ensure the maximum effectiveness of the affected state revenues.

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

No alternatives have been identified that are less costly or intrusive.

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 alternative methods. This chapter is required by statute.

- 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 chapter does not have a substantial impact on small businesses.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 761—Chapter 103:

CHAPTER 103
SECONDARY ROAD FUND DISTRIBUTION METHODOLOGY

761—103.1(312) General.

103.1(1) *Purpose.* The purpose of these rules is to adopt the formulas to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund and to formalize the process by which the commission will administer its duties in accordance with Iowa Code section 312.3 as amended by 2024 Iowa Acts, Senate File 2385, section 303.

103.1(2) *Contact information.* Questions regarding this chapter may be directed to the Systems Planning Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone, 515.239.1664.

103.1(3) *Definitions.* As used in this chapter:

"Bridges" means those structures under the jurisdiction of a county secondary roads department that are included in the National Bridge Inventory System.

"Commission" means the same as defined in Iowa Code section 312.16 as amended by 2024 Iowa Acts, Senate File 2385, section 306.

"Committee" means an ad hoc committee as described in rule 761—103.2(7E,312).

"Daily vehicle miles of travel" means the product of a road segment's length, in miles, multiplied by the daily traffic count thereon, in vehicles per day, reported for that segment by department, based on the most recent counts available.

"Earth surfaced" means roads under the jurisdiction of a county secondary roads department that are not surfaced.

"Formula" means the appropriate secondary road fund distribution formula or farm-to-market road fund distribution formula as described in subrules 103.3(1) and 103.3(2).

"Granular surfaced" means roads under the jurisdiction of a county secondary roads department that have crushed rock, gravel, or oiled earth surfaces.

"Paved surfaced" means roads under the jurisdiction of a county secondary roads department with hot mix asphalt, Portland cement concrete, or stabilized base with waterproof surfacing.

"Rural population" means the count, taken from the most recently certified decennial federal census, of persons who reside in the unincorporated areas of a county.

761—103.2(7E,312) Composition and membership of the ad hoc secondary road fund distribution committee.

103.2(1) The committee is composed of six county engineers, six county supervisors, two representatives of the department, and the executive director of the Iowa County Engineers Association Service Bureau.

103.2(2) The county engineers are appointed by the president of the Iowa County Engineers Association, the county supervisors are appointed by the president of the Iowa State Association of County Supervisors, and the department representatives are appointed by the department.

103.2(3) The county engineer members and the county supervisor members are selected according to the population of their counties, as follows:

a. Two county engineers and two county supervisors from large counties.

b. Two county engineers and two county supervisors from medium counties.

c. Two county engineers and two county supervisors from small counties.

103.2(4) To the extent possible, the committee is geographically diverse, and no county will have both an engineer and a supervisor as members simultaneously.

103.2(5) All county members are voting members. The department representatives and the executive director of the Iowa County Engineers Association Service Bureau are nonvoting members.

103.2(6) The committee selects from its membership a chair and a vice-chair. The vice-chair presides at a meeting in the absence of the chair.

761—103.3(312) Formulas.

103.3(1) *Formula for determining secondary road fund allocation factors.* The Iowa County Engineers Association Service Bureau annually computes percentage allocation factors for the allocation of secondary road fund revenues among the counties by using the methodology determined by the commission and calculating and summing the following percentage subtotals for each county:

a. Thirty percent times the ratio that the total area of each county bears to the total area of the state.

b. Ten percent times the ratio that the rural population of each county bears to the total rural population of the state.

c. Twelve and one-half percent times the ratio that the total daily vehicle miles of travel on each county's secondary roads bears to the total daily vehicle miles of travel on all secondary roads in the state.

d. One-half percent times the ratio that the earth-surfaced miles of secondary roads of each county bears to the total miles of earth-surfaced secondary roads in the state.

e. Twenty percent times the ratio that the granular-surfaced miles of secondary roads of each county bears to the total miles of granular-surfaced secondary roads in the state.

f. Thirteen percent times the ratio that the paved-surfaced miles of secondary roads of each county bears to the total miles of paved-surfaced secondary roads in the state.

g. Fourteen percent times the ratio that the length, in lineal feet, of secondary road bridges of each county bears to the total length of secondary road bridges in the state.

103.3(2) *Formula for determining farm-to-market road fund allocation factors.* The Iowa County Engineers Association Service Bureau annually computes percentage allocation factors for the allocation of farm-to-market road fund revenues among the counties by using the methodology determined by the commission and calculating and summing the following percentage subtotals for each county:

a. Thirty percent times the ratio that the total area of each county bears to the total area of the state.

b. Fifteen percent times the ratio that the rural population of each county bears to the total rural population of the state.

c. Ten percent times the ratio that the total daily vehicle miles of travel on each county's farm-to-market roads bears to the total daily vehicle miles of travel on all farm-to-market roads in the state.

d. Nine percent times the ratio that the granular-surfaced miles of farm-to-market roads of each county bears to the total miles of granular-surfaced farm-to-market roads in the state.

e. Twenty-three percent times the ratio that the paved-surfaced miles of farm-to-market roads of each county bears to the total miles of paved-surfaced farm-to-market roads in the state.

f. Thirteen percent times the ratio that the length, in lineal feet, of farm-to-market road bridges of each county bears to the total length of farm-to-market road bridges in the state.

103.3(3) *Considerations for a new or modified distribution formula.* A distribution formula that is proposed in accordance with rule 761—103.4(312) should substantially meet the following objectives:

a. Funding levels to counties should be relatively stable, with only small changes occurring from year to year.

b. The formula should be able to factor in changes in population, mileages, the centerline lineal feet of bridges, and traffic levels as they occur over time, without needing to be revised.

761—103.4(312) Process for approval of a new or modified distribution formula.

103.4(1) Proposals to adopt a new or modified distribution formula may be initiated by the executive board of either the Iowa County Engineers Association or the Iowa State Association of County Supervisors upon request to the commission.

103.4(2) When a formula change has been initiated or requested, the commission directs the committee to develop a work plan and set up a work schedule.

103.4(3) The committee is to evaluate the proposal and, within 18 months after initiation or receipt of the proposal, publish an official report outlining the committee's findings and recommendations.

103.4(4) If the official report recommends adoption of a new or modified distribution formula, the chair communicates the details of the committee's recommendations to all county engineers, all county supervisors and the department in such a manner as the committee deems appropriate. This communication solicits comments on the committee's recommendations.

103.4(5) After receipt and consideration of comments from counties, the committee may adopt a resolution that formally proposes a distribution formula and places it into official consideration.

103.4(6) The chair forwards the resolution to the executive boards of both the Iowa County Engineers Association and the Iowa State Association of County Supervisors, with a request for endorsement of the proposed distribution formula.

103.4(7) If both executive boards endorse the proposed distribution formula, the chair requests each individual county to consider and adopt a resolution in favor of or in opposition to the proposed distribution formula.

103.4(8) If at least 66 counties adopt resolutions in favor of the proposed distribution formula, the chair forwards the distribution formula to the commission for action.

103.4(9) If adopted by the commission, the committee chair notifies the following organizations and groups when the distribution formula has been approved:

a. The executive board of the Iowa County Engineers Association.
b. The executive board of the Iowa State Association of County Supervisors.
c. The systems planning and local systems bureaus of the department.
d. The office of the treasurer of state.
e. All county engineers and county supervisors.
f. The Iowa County Engineers Association Service Bureau.

761—103.5(312) Judicial review. Any county that is aggrieved or adversely affected by a decision of the commission may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

761—103.6(312) Severability clause. If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication shall not affect the validity of these rules as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

These rules are intended to implement Iowa Code sections 7E.3(3) as amended by 2024 Iowa Acts, Senate File 2385, section 69; 312.2; 312.3 as amended by 2024 Iowa Acts, Senate File 2385, section 303; 312.3B as amended by 2024 Iowa Acts, Senate File 2385, section 304; 312.5 as amended by 2024 Iowa Acts, Senate File 2385, section 305; and 312.16 as amended by 2024 Iowa Acts, Senate File 2385, section 306.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 115
"Utility Accommodation"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 306A.3(2)

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 306A and 318, and sections 306.3, 306.47, 314.20, 320.4 through 320.8 and 321.1

Public Hearing

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

October 28, 2024 1 to 1:30 p.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 826 453 498

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:

Deanne Popp
Project Development Division
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1014
Email: deanne.popp@iowadot.us

Purpose and Summary

The purpose of proposed Chapter 115 is to establish standards and conditions for the placement of utility facilities within the public rights-of-way on primary and interstate roads allowing the Department to safely and efficiently manage the public rights-of-way in terms of utility installations in a manner that minimizes disruptions to traffic and public services; facilitates better coordination between utility companies; minimizes impacts to utility facilities before and during highway construction; and protects the integrity and environmental and visual qualities of the highway facility.

The proposed repromulgated chapter omits unnecessarily restrictive language and redundancies and retains the essential elements needed for delivering a successful program to the traveling public and the participating utility companies.

There are minor and significant changes included in the proposed repromulgated chapter as follows.

Minor changes include:

1. Updating references to specific sections of Iowa Code, including Iowa Code section 318.5 (noncompliance and removal of obstructions).
2. Updating references to specific Department divisions and bureaus.
3. Adding and updating links to web pages.
4. Consolidating duplicate rules related to encasement requirements and clear zone requirements.

Significant changes include:

1. Adding a requirement for performance bonds for utility permit requests for installations related to Department highway projects.

2. Amending a requirement to have utilities submit as-built plans to the Department in an electronic format that conforms to Department standards.

3. Adding a requirement to provide a ten-day notice to 511 of any lane restrictions or traffic closures.

4. Adding language to address unacceptable work and to require rework (or removal).

5. Amending a requirement to have utilities notify a district representative upon completion of work. This will allow the district to inspect the work and notify a utility if any work was noncompliant and to seek a remedy within a specified time frame established by the Department.

6. Amending a requirement to allow underground electric installations longitudinally with interstate and freeway rights-of-way.

7. Adding that if the Department determines that an aboveground installation longitudinally with interstate and freeway rights-of-way is necessary to advance the state's priorities, can be installed safely with minimal impact on the traveling public, can be safely accommodated within an existing right-of-way, is along a roadway that is not anticipated to require an additional right-of-way for future improvements in the foreseeable future, and extends for a relatively short distance, the Department may permit installation with proper justification.

8. Improving utility investigation to identify utilities within the project footprints that will allow the Department to analyze design conflicts with existing utility facilities and to make better design decisions that avoid or minimize impacts and reduce construction delays and costs.

9. Requiring utility companies to provide the location of their facilities within the project footprints. This will allow the Department and utility companies to collaborate on highway design to avoid conflicting with utility facilities when feasible, minimize the remaining impacts to existing facilities, and then work together to resolve and mitigate those facilities that cannot be avoided.

10. Requiring utility companies to make final review of design conflicts with utility facilities earlier in the project timeline and provide one relocation work plan instead of two, which should streamline the work plan review and approval process.

11. Updating the noncompliance rule to allow the Department to determine a noncomplying utility facility to be an obstruction in accordance with Iowa Code section 318.5.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The proposed rules do not create additional costs for any classes of persons.

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

The proposed rules do not affect any classes 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 rules extend the longitudinal use of interstate rights-of-way to electric transmission facilities, including the annual occupancy fee for such facilities. The fee is based on the number of cables per mile and will increase 3 percent per year for as long as the facility is in place. These fees will be deposited in the Living Roadway Trust Fund.

- Qualitative description of impact:

The proposed rules allow for limited longitudinal installations of overhead utilities within interstate rights-of-way. This may result in reduced utility siting costs for such facilities but also could result in increased costs if these facilities must be relocated to accommodate highway construction.

The proposed rules also provide for modernized collection of utility location data and as-builts from utility companies in a manner that supports data sharing for better decision-making during the

project development and right-of-way management processes. These changes may increase costs for utilities to provide the data but could also result in reduced costs through reductions in delays and claims associated with unanticipated utility conflicts encountered during construction.

3. Costs to the State:

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

There are no anticipated costs nor additional staff hours for the Department or any other agency to implement or enforce this chapter.

- Anticipated effect on state revenues:

The fees collected from longitudinal occupancy of the interstate rights-of-way by electric transmission facilities will increase revenues for the Living Roadway Trust Fund. Allowing high-voltage electric facilities to occupy interstate rights-of-way supports the National Electric Vehicle Infrastructure deployment. This could increase the revenues generated from the fees and charges associated with electric vehicles and charging, which are deposited in the Road Use Tax Fund.

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

The proposed chapter extends the opportunity for longitudinal occupancy of the interstate rights-of-way to electric utility facilities at the utility owners' election, which requires the utility owner to pay a fee based on the length of installation. The fees are set out in the rules. The occupancy of interstate rights-of-way is not required; therefore, the increase of costs and benefits is dependent on whether utility owners take advantage of the opportunity. Given the uncertainty regarding these costs and benefits, as well as those mentioned in the preceding questions, the net cost/benefit of the changes associated with the proposed rules cannot be determined at this time.

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

Electric transmission facilities are already allowed to occupy the rights-of-way of noninterstate routes at no charge; however, these routes may not be desirable to the utility companies because the routes go through cities, and the utility companies would need to obtain franchise permits from the local agencies.

6. Alternative methods considered by the agency:

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

No alternative methods were 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?

No substantial impacts to small business are anticipated.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 115 and adopt the following **new** chapter in lieu thereof:

CHAPTER 115
UTILITY ACCOMMODATION

761—115.1(306A,314,320) General.

115.1(1) *Purpose.* This chapter covers the requirements needed for placement, adjustment and maintenance of utility facilities in, on, above or below the rights-of-way of primary roads to ensure the safety of the road user and the integrity of the road.

115.1(2) *Contact information.* Information regarding this chapter may be obtained from the department's website at: www.iowadot.gov/rightofway/Utility-Accommodation-and-Coordination; any of the department's six district offices; or the Transportation Development Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

115.1(3) *Considerations.* If the department determines that the literal application of these rules to a specific situation will create or result in an unsafe situation or an unreasonable design, the department shall use sound engineering practices to determine the appropriate design for the specific situation documenting the design decision in the permit or the road project file, as applicable, and addressing:

a. Safety of motorists, pedestrians, construction workers and other road users.

b. Integrity of the road.

c. Protection of the rights of the traveling public and of property owners, including the rights of abutting property owners.

d. Topography and geometric limitations and constraints affecting typical engineering standards.

e. Environmental protections, limitations and constraints of surrounding ecosystem.

115.1(4) *Permit approval process.*

a. To apply for a permit, the applicant must submit a request in the form and manner prescribed by the department. The department will do one of the following in response to a request for a utility accommodation on the primary road system: approve the request for a permit, approve the request for a permit with conditions, or deny the request for a permit. The department will notify the applicant of the determination in writing.

b. If the utility facility will impact a road or street under the jurisdiction of a local public agency, the request must be approved by the county. If the utility facility is within corporate limits of a city, the request must be approved by the city. The applicant is responsible for obtaining local jurisdiction approvals. If the utility facility will cross or impact an interstate road, the request must be approved by the FHWA. The department is responsible for obtaining FHWA approval.

c. Upon receipt of a denial notification or if the permit was approved with conditions, the applicant may choose to pursue a waiver from the director pursuant to subrule 115.1(5).

d. For the purposes of this chapter, required notifications may be made by electronic means.

115.1(5) *Waivers.* The director may, in response to a written petition, waive provisions of this chapter in accordance with 761—Chapter 11. The written petition is to contain the information as required in 761—subrule 11.5(2) and be submitted to the rules administrator either by mail to Rules Administrator, Government and Community Relations, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator's email address listed on the department's website at iowadot.gov/administrativerules.

115.1(6) *Additional requirement for waivers involving interstate roads.* The director will not waive these rules in utility accommodation and adjustment situations involving the interstate road system, including its ramps, without the approval of the FHWA.

761—115.2(306,306A,321) Definitions.

"511" means a traveler information system that provides real-time updates about weather-related road conditions, road work, commercial vehicle restrictions, road closures and other events that impact traffic via the phone or Internet.

"Abandoned" or *"abandonment"* means the decision by a utility owner to no longer use its utility facility.

"Adjustment" means a physical change to an existing utility facility, including improvement, rearrangement, reinstallation, protection, relocation or removal of the utility facility.

"Agreement" means a contract between the department and a utility owner.

"Applicant" means the utility owner or the utility owner's designated representative who submits a request for a utility permit on the primary road system.

"Appurtenance" means a utility facility-related feature, such as a vent, drain, utility access or marker.

"Attachment agreement" means a contract between the owner of a utility pole or structure and another utility owner for the joint use or sharing of poles or structures.

"Backfill" means placement of suitable material and compaction of the material as specified in these rules.

"Best management practices" means the industry's best-known method, technique or proven process used to achieve an end goal or standard.

"Breakaway" means designed to shatter, bend easily or separate from a solid foundation.

"Cable" means an insulated conductor or a combination of insulated conductors.

"Carrier" means a pipe directly enclosing a transmitted fluid (liquid or gas) or slurry. "Carrier" may also mean an electric or communication cable, wire or line.

"Casing" means an oversize load-bearing pipe, conduit, duct, or structure through which a carrier or cable is inserted.

"Cell" means a conduit.

"Clear zone" means a roadside area that is free of obstacles where an out-of-control vehicle can traverse safely, starting at the edge of the traveled way.

"Communication line" or *"communication cable"* means a cable used for the transmission of data, voice, images, television, alarm systems or traffic control.

"Conduit" means an enclosed tubular runway for protecting wires or cables. A conduit may also be referred to as a "cell" or "duct."

"Cover" means depth from the grade of a roadway or ditch to the top of an underground utility facility.

"Department specifications" means departmental standard specifications that can be found on the department's website at www.iowadot.gov/specifications.

"Designated representative" means a person with authority to make decisions on behalf of the utility owner, including employees of the utility company or consultants and utility contractors performing specific work on behalf of the utility owner.

"Director" means the director of transportation or the director's designee.

"District representative" means a department employee who processes utility accommodation requests in an assigned geographical area.

"Duct" means a conduit.

"Emergency" means an unplanned situation that presents a danger to the life, safety or welfare of motorists, persons working within the rights-of-way or the general public and that requires immediate attention. The emergency may be the result of storm damage and may involve disruption of utility service to customers. Work on a utility facility due to an emergency is unplanned work and may be

necessary at any time of the day or night. The emergency work operation usually involves a small crew and a work vehicle for a short period of time.

"Encasement" means placing a casing around a utility facility.

"FHWA" means the Federal Highway Administration.

"Flowline" means the lowest point in a pipe, culvert, ditch, stream bed, or other structure that conveys water.

"Foreslope" means the downward sloping surface of an embankment from the outer edge of the roadway shoulder away from the traveled way to the roadway ditch bottom.

"Freeway" means a fully controlled access primary road. The rights of ingress and egress from abutting properties have been legally eliminated by the department. Permanent access to the primary road is allowed only at interchange locations. A freeway is generally five or more miles in length.

"Generally accepted industry standards" means a set of criteria within an industry relating to the standard functioning and carrying out of operations in the industry's respective fields of production.

"Interchange" means a system that provides for the movement of traffic between intersecting roadways via one or more grade separations.

"Maintenance," as used in conjunction with a utility facility, means any repair or replacement of the utility facility that is not an adjustment and that does not increase the capacity of the original installation. The term "maintenance," when used in conjunction with a road, means repair or other operational activities performed by the department within the primary road rights-of-way to preserve the function of the road and its structures.

"Median" means that portion of a divided road separating traffic moving in opposite directions.

"Multiduct" means a system comprised of two or more conduits combined in a joined pathway.

"MUTCD" means the Manual on Uniform Traffic Control Devices as adopted in 761—Chapter 130.

"Nonfreeway primary road" means a primary road that is not a freeway.

"Occupy the primary road rights-of-way" means located or to be located in, on, above or below the primary road rights-of-way. The term includes attachments to primary road structures.

"Out-of-service" means a utility facility that has been removed from service and is not in use.

"Pavement" means that portion of a roadway used for the movement of vehicles, excluding paved and unpaved shoulders.

"Permit" means a utility permit issued by the department. The term "permit" includes all attachments to the permit.

"Pipe" means a tubular product used to transport solids, liquids or gases.

"Pipeline" means a carrier system used to transport liquids, gases, or slurries.

"Primary road" means the same as defined in Iowa Code section 306.3(6).

"Reimbursement agreement" means a contract between a utility owner and the department for reimbursement of utility facility relocation from private easement due to proposed primary road construction.

"Rights-of-way" means the same as "public road right-of-way" as defined in Iowa Code section 306.3(7).

"Road" or *"street"* means the same as defined in Iowa Code section 306.3(8).

"Roadway" means the same as defined in Iowa Code section 321.1(65).

"Rural-type roadway" means a roadway that does not have a curb and gutter section.

"Service connection" means a water, gas, power, sanitary sewer, storm sewer line or communications cable that extends from the main or primary utility facility into an adjacent property and that is used to serve the property regardless of ownership.

"Shoulder" means that portion of a roadway contiguous to the traveled way for the accommodation of disabled vehicles, for emergency use and for the lateral support of the pavement base and paved and unpaved surface courses.

"Toe of foreslope" means the intersection of the foreslope and the natural ground or ditch bottom.

"Traveled way" means that portion of a roadway used for the movement of vehicles, excluding shoulders and auxiliary lanes.

"Trenched" means installed in a narrow open excavation.

"Trenchless" means installed without breaking the ground or the pavement surface, such as by jacking, boring, tunneling, directional drilling or mechanical compaction.

"Urban-type roadway" means a roadway that has a curb and gutter section.

"Utility" means the same as defined in Iowa Code section 306A.13, and for the purposes of this chapter, the term "utility" includes traffic signal systems, street and intersection lighting systems and a communication line or communication cable.

"Utility access" means an opening in an underground utility system through which workers or others may enter for the purpose of making installations, inspections, removals, repairs, connections or tests.

"Utility conflict list" means a document that identifies the relevant information about the utility facilities identified within the primary road project footprint. The utility conflict list, also known as utility conflict matrix, serves as a tool to track the status of the utility facilities in relation to the road design, including but not limited to no conflict, potential conflict, utility owner, utility type, size, location, assessment, relocation required, actions, and resolutions.

"Utility facility" means any pole, pipe, pipeline, pipeline company facility, sewer line, drainage tile, conduit, cable, aqueduct or other utility-related structure or appurtenance.

"Utility owner" means the owner of a utility facility.

"Vent" means an appurtenance used to ventilate or to discharge gaseous contaminants from casings.

"Waterway" means a river, stream, creek, brook, drainage ditch or other perennially flowing body of water.

761—115.3(306A,318,320) General provisions.

115.3(1) *Permit required.* A permit is required to place utility facilities in, on, above or below the primary road rights-of-way to attach utility facilities to a primary road structure or to adjust existing utility facilities occupying the rights-of-way.

115.3(2) *Future adjustment.*

a. In the event any future maintenance or construction of the primary road requires an adjustment of the utility facility, the department will not reimburse the utility owner for adjustment costs incurred unless otherwise noted on the permit.

b. Should adjustment of the utility facility be required, the department makes no assurance nor assumes any liability to the utility owner that the utility facility will again be allowed to occupy the primary road rights-of-way.

115.3(3) *Compliance with requirements.* It is the responsibility of the utility owner to ensure that the utility owner's utility facility complies with all applicable federal, state, local and franchise requirements and meets generally accepted industry standards at the time of installation.

115.3(4) *Performance bond.* The department may require a performance bond for utility work within the primary road rights-of-way under the following circumstances: the work is being done to adjust or relocate the utility facility to accommodate a planned primary road project; the installation is unusual; abnormal site conditions exist, such as but not limited to unstable soil or unique vegetation; or the utility owner has a history of performance problems. A performance bond is required for longitudinal freeway occupancy; more information contained in subrule 115.15(9).

a. If a performance bond is required, the utility owner shall file the bond with the department prior to commencing work within the rights-of-way in the minimum amount of $10,000 per permit. Depending on the type and extent of the utility facility installed, the department may require a higher performance bond amount. The performance bond shall be in force for the duration of the permit and through completion of the primary road project construction, when applicable. The department will release the performance bond after all permit requirements have been accomplished by the utility

owner. The department shall have the right to file a claim against the performance bond for two years after the performance bond has been released.

b. An annual performance bond in the amount of $100,000 for statewide activities in lieu of an individual performance bond for each permit is permissible and shall be kept in force for as long as the utility owner's utility facilities occupy the primary road rights-of-way anywhere within the state of Iowa.

c. When required, a performance bond shall guarantee prompt relocation for primary road project construction, restoration of any damage that is the result of the utility facility's occupancy of the primary road rights-of-way, and correction of any installation that is not in accordance with the issued permit on location or method of installation.

115.3(5) *Execution of work.* Utility construction and maintenance work within the primary road rights-of-way is to be accomplished in a manner satisfactory to the department.

115.3(6) *Disturbance of other contractors.* Utility construction and maintenance work within the primary road rights-of-way is to be accomplished in a manner that minimizes disturbance to any other contractor working within the rights-of-way. It is the responsibility of the utility owner to coordinate work with other contractors.

115.3(7) *No adverse effect on primary road.* A utility facility must not adversely affect the safety, design, construction, operation, maintenance or stability of the present use or future expansion of a primary road.

115.3(8) *Safety, health and sanitation.* Construction and maintenance of a utility facility shall be accomplished in a manner that minimizes disruption of primary road traffic and other hazards to the road user. The utility owner is responsible to comply with the MUTCD and all applicable federal, state and local statutes, ordinances and regulations governing safety, health and sanitation. The utility owner is to furnish such additional safeguards, safety devices and protective equipment and take actions to protect the life and health of the public.

115.3(9) *Parking or storage in clear zone or median.*

a. Unattended vehicles, equipment and materials shall not be parked or stored within the shoulder, median or clear zone and should be located as close to the right-of-way line as possible.

b. When in use, vehicles are to be oriented with the direction of traffic.

c. Exceptions to parking or storage requirements may be authorized by the district representative on a case-by-case basis.

115.3(10) *Protection of landscaped or planted areas.* Prior to permit approval, specific authorization is to be obtained from the district representative for mowing, trimming trees and shrubs, and for spraying within the rights-of-way. Landscaped and planted areas are to be avoided as much as practical. A landscaped or planted area that is disturbed is to be restored as nearly as practical to its original condition.

115.3(11) *Noncompliance.* The department may take any or all of the following actions for noncompliance with any provision of this chapter or any term of a permit:

a. Halt utility construction or maintenance activities within the rights-of-way.

b. Withhold an adjustment reimbursement until compliance is ensured.

c. Revoke the permit.

d. Determine a utility facility to be an obstruction and remove the noncomplying utility facility, restore the area to its previous condition, and assess the removal and restoration costs to the utility owner in accordance with Iowa Code section 318.5.

e. Place all pending and future permits on hold until the issue is resolved.

115.3(12) *Identification signs and markers.* Utility facilities within primary road rights-of-way shall be properly marked in accordance with the following:

a. Identification signs are to be installed and maintained by the utility owner.

b. The signs must identify the utility owner, telephone number to contact in case of an emergency, and the type of buried utility.

c. Identification signs are to be composed of highly visible ultraviolet-resistant material.

d. Each sign is to be no larger than 200 square inches.

e. The mounting height is to be 5 feet to the bottom of the sign.

f. Signs are to be placed within 12 inches of the right-of-way line along the entire occupancy route.

g. The interval between signs is not to exceed one-quarter mile in rural areas and 500 feet in urban areas or as designated by the district representative.

h. Utility facility crossings must be properly marked on each side of the road.

i. If the utility facility is removed or relocated, the utility owner is to remove or relocate the corresponding identification signs and markers.

j. If the utility facility is abandoned in place, the utility owner is to promptly notify the department as set out in subrule 115.18(2).

115.3(13) *Insufficient capacity of rights-of-way.* The department may deny issuance of a permit if it determines there is insufficient room for additional utility facilities within the rights-of-way.

761—115.4(306A,318) General design provisions.

115.4(1) *Design.* The design plan for a utility facility shall:

a. Be prepared by a person knowledgeable with this chapter, road design, and work zone traffic control.

b. Include the measures to be taken to preserve the surrounding environment, safe and free flow of traffic, structural integrity of the road and road structures, ease of road maintenance, appearance of the road and integrity of the utility facility to the extent applicable.

c. Include the location of each utility facility in the proposed run line with footage off centerline or right-of-way line to ensure the placement of the proposed utility facility can be accommodated.

115.4(2) *Number of crossings.* The number of utility facilities crossing the primary road rights-of-way shall be kept to a minimum. The department may require distribution facilities to be installed on each side of the road to minimize the number of crossings and service connections. In individual cases, the department may require several facilities to cross in a single conduit or structure. Crossings should be as near to perpendicular to the road alignment as practical.

115.4(3) *Clear zone requirements and aboveground obstructions.* The department will determine the clear zone distance and cause all obstructions within the clear zone of the primary road rights-of-way to be removed pursuant to Iowa Code sections 318.4 and 318.5.

a. On rural-type roadways, a permanent, aboveground obstruction is to be situated as near to the right-of-way line as practical in an area beyond the clear zone or the road foreslope, whichever area locates the obstruction a greater distance from the edge of the traveled way, right-of-way width permitting.

b. On urban-type roadways, the face of a permanent, aboveground obstruction is to be situated no closer than 10 feet from the back of the curb. In areas with parking or auxiliary lanes, an aboveground obstruction is to be situated no closer than 2 feet behind the back of the curb or a minimum of 10 feet from the edge of the traveled way, whichever location is farther from the traveled way.

c. Poles, guys, anchors and related appurtenances shall be situated away from roadway shoulders, the foreslope, the flowline of ditches, and drainage structure openings in an area that minimizes interference with department maintenance operations.

d. Pedestals, cabinets, vaults, hand holes or similar appurtenances should be placed 1 foot from the right-of-way line. The number of installations is subject to district representative approval.

e. If sufficient right-of-way is not available to accommodate the clear zone distance, the department may require the use of breakaway devices, self-supporting poles or towers, double-arming and insulators or dead-end construction; require regrading of the rights-of-way; require the utility facility to be located underground; or authorize the utility facility to be placed near the right-of-way line. The district representative may approve the adjustment of minimum setback distances for poles and other appurtenances that have a breakaway design.

f. Additional clear zone requirements for freeways are included in subrule 115.13(2).

761—115.5(306A) Scenic enhancement.

115.5(1) *Introduction.* The type and size of a utility facility and the manner in which it is installed can materially alter the scenic quality, appearance and view of roads and adjacent areas. Such areas may include but are not limited to scenic strips, scenic overlooks, rest areas, recreation areas, public parks and historic sites, aesthetically enhanced corridors, and the rights-of-way of primary roads that pass through or are adjacent to these areas.

115.5(2) *Underground installations.* The department may permit a new underground installation if it does not require extensive removal or alteration of trees or other natural features visible to the road user and if it does not impair the visual quality of the area being traversed.

115.5(3) *Aboveground installations.* The department may permit a new aboveground installation only if the following three conditions are met:

a. Other locations for an aboveground installation are unusually difficult, are unreasonably costly, or are less desirable from the standpoint of visual quality.

b. Underground installation is not technically feasible or is unreasonably costly.

c. The location, design and materials to be used for the proposed aboveground installation will give adequate attention to the visual qualities of the area being traversed.

761—115.6(306A) Liability. The following are conditions of a permit:

115.6(1) *The utility owner.* The utility owner will defend, indemnify and save harmless the state of Iowa, its agencies and employees from any and all causes of action; suits at law or in equity; for losses, damages, claims or demands; and from any and all liability and expense of whatsoever nature (including reasonable attorney fees) arising out of or in connection with the utility owner's use or occupancy of the primary road rights-of-way or noncompliance with rule 761—115.19(306,306A) to rule 761—115.24(306A).

115.6(2) *The state of Iowa.* The state of Iowa, its agencies or employees, will be liable for expense incurred by the permit holder in its use and occupancy of the primary road rights-of-way only when negligence of the state, its agencies or employees, is the sole proximate cause of such expense. Whether in contract, tort or otherwise, the liability of the state, its agencies or employees, is limited to the reasonable, direct expenses to repair damaged utilities, and in no event will such liability extend to loss of profits or business, indirect, special, consequential or incidental damages.

761—115.7(306A,320) Utility permit.

115.7(1) *Applicant contact.* The permit request is to include contact information for the utility owner or utility owner's designated representative.

115.7(2) *Permit.*

a. At a minimum, a utility permit allows:

(1) The applicant or the applicant's contractor to perform the work covered by the permit.

(2) The utility facility described in the permit to occupy the primary road rights-of-way.

(3) The utility facility to be operated and maintained.

b. A utility permit does not convey a permanent right of occupancy.

115.7(3) *Plan.* Each permit request is to be accompanied by a plan. The plan shall include all of the following that are applicable to the installation:

a. Location of the utility facility by route, county, section(s), township(s), range(s), reference post and primary road stationing, where these references exist.

b. Primary road centerline and rights-of-way limits.

c. Location of the utility facility by distance to the nearest foot at each point where the utility facility's location changes alignment, as measured from the:

(1) Centerline of the primary road on nonfreeway installations.

(2) Right-of-way fence on freeway installations.

d. Applicable construction details, including the:

(1) Depth of burial.

(2) Types of materials to be used in the installation.

(3) Type and size of the utility facility, including operating pressures and voltages, number of cable pairs, and fiber counts.

(4) Vertical and horizontal clearances.

(5) Traffic control plan prepared by a person knowledgeable in work zone traffic control or a reference to a standard traffic control plan of the department.

115.7(4) *Discharging into waterways.*

a. A permit request for the placement of a utility facility that will discharge materials into the nation's waters is to be accompanied by satisfactory evidence of compliance with all applicable federal, state and local environmental statutes, ordinances and regulatory standards.

b. The utility owner is responsible for obtaining these approvals. The department may withhold a permit until these approvals are obtained.

115.7(5) *Department action on permit request.*

a. The department will act on the permit request within 30 days after the filing of the permit request with all necessary and accurate information. If an emergency should exist, the department will act on the request as expeditiously as practical.

b. Failure on the part of the utility owner to provide complete information may result in a delay in the department taking final action on the request.

115.7(6) *Changes to work.* Changes in the work as described in the original permit require the prior approval of the department and shall be documented in a revised permit and utility as-built plan pursuant to subrule 115.7(8).

115.7(7) *Department-issued permit.* The utility owner or the utility owner's designated representative is to have a complete copy of the department-issued permit in paper or electronic form, including attachments, at the construction site at all times for examination by the department. Failure to have the approved permit and attachments on site shall result in the department halting work until the issued permit is produced.

115.7(8) *As-built plan.*

a. Within 90 days after completion of construction, the utility owner is to submit to the department an as-built plan in an electronic format in accordance with department specifications.

b. If the utility owner fails to submit the as-built plan within the time required, the department may hire an independent contractor to locate the utility facility and prepare an as-built plan. All costs associated with this activity are the responsibility of the utility owner.

c. Any costs incurred by the department or its contractors due to incorrect as-built information supplied by the utility owner or deviations in actual placement from that described in the original permit are the responsibility of the utility owner.

115.7(9) *Transfer of permit.* A new utility permit is not needed when a utility facility is transferred or leased in its entirety. The requirements of the permit and this chapter remain in force for as long as the utility facility continues to occupy the primary road rights-of-way and serve the intended purpose. The transferee or lessee is to submit the following information to the appropriate district representative:

a. The name, mailing and email address and telephone number of the transferee or lessee.

b. Geographical area involved in the transaction.

c. Permit numbers or issued permit documents for utility facilities within the geographical area.

115.7(10) *Term of permit.* Except for permits for longitudinal occupancy of freeways as outlined in subrule 115.15(11), an issued permit will continue in perpetuity or until future maintenance or construction of the primary road requires an adjustment of the utility facility (more information contained in paragraph 115.3(2)*"b"*).

761—115.8(306A) Traffic protection.

115.8(1) *Traffic control for all work.*

a. When performing work within the rights-of-way, the utility owner is responsible for traffic control operations, including but not limited to providing, installing, maintaining and cleaning warning signs and protective devices; removing warning signs and protective devices when the work is complete; and providing certified flaggers.

b. Traffic control operations shall utilize department standard road plans for traffic control available on the department's website www.iowadot.gov/design/stdplne_tc.

c. The utility owner shall provide additional protection when special complexities and hazards exist.

115.8(2) *Traffic control for construction and maintenance work that is not emergency work.*

a. The utility owner is responsible for ensuring the use of traffic controls that are adequate for the nature, location and duration of work; type of roadway; traffic volume and speed; and potential hazards. The utility owner is to provide a ten-day notice to 511 of any lane restrictions or traffic closures.

b. Where high traffic volumes cause frequent congestion, routine scheduled maintenance and construction should be avoided during hours of peak traffic.

c. Work areas should be occupied for only as long as it is necessary to safely move in, finish the work, remove all utility work signs and move out.

d. Special care should be taken to clearly mark suitable boundaries for the workspace with channelizing devices so that pedestrians and drivers can see the workspace. If any of the traveled lanes are closed, tapers are to be used as required by the MUTCD.

e. Pedestrians should not be expected to walk on a path that is inferior to the previous path. Loose dirt, mud, broken concrete or steep slopes may force pedestrians to walk on the roadway rather than the sidewalk. Pedestrian detours, including those to accommodate persons with disabilities [Americans with Disabilities Act of 1990 (Pub. L. No. 110-336) 104 Stat. 327 (1990) (ADA)], may be required at the discretion of the district representative. Repairs (temporary or permanent) to damaged sidewalks should be made quickly. This may include bridging with steel plates or good quality wood supports.

f. Work areas involving excavations on the roadway should not exceed the width of one traffic lane at a time. The work should be staged and, if needed, approved bridging should be used. The utility owner should fully coordinate this type of activity with the district representative and, in a city, with the city's traffic or public works office.

115.8(3) *Traffic control for emergency work.*

a. The extent of traffic control used for emergency work may be less than that used for longer-term construction or maintenance. However, the utility owner is responsible to provide for the safety of pedestrians, motorists and workers. It may be necessary for the utility owner to contact local law enforcement officials to assist in securing the safety of the traveling public.

b. The work vehicle is to be equipped with an amber revolving light or amber strobe light, portable signs and channelizing devices, and necessary equipment for flagging operations.

761—115.9(306A) Construction responsibilities and procedures.

115.9(1) *Permit required before work may begin.* The utility owner shall not commence construction work in the primary road rights-of-way until the utility owner has received a fully approved and issued permit from the department.

115.9(2) *Notice of construction.* The utility owner shall give the district representative at least 48 hours' prior notice of the utility owner's intent to start construction within the rights-of-way.

115.9(3) *Authority of the district representative.*

a. The district representative has the authority to resolve any issues or concerns that arise regarding the intent of the permit and compliance therewith.

b. During the progress of the work, the district representative may approve minor alterations in the plan or character of the work that the district engineer deems necessary or desirable to satisfactorily complete the work. Such an alteration is not a waiver of the permit, nor does it invalidate any provision of the permit.

115.9(4) *Work in progress.* The utility owner is responsible for the care and maintenance of partially completed work within the rights-of-way. Unless otherwise authorized by the permit or the district representative, all work performed within the rights-of-way is to be accomplished within the time frame of 30 minutes after sunrise to 30 minutes before sunset.

115.9(5) *Department inspection.*

a. The department may inspect any permitted work performed within the rights-of-way.

b. If the department finds performance of permitted work is not in compliance with the issued permit, the department will provide to the utility owner written notice of the defects found. The utility owner is to perform any rework or removal as ordered by the department in the time frame established by the department.

115.9(6) *Department inspectors.* The department may appoint inspectors to represent the department in the inspection of construction. Inspectors are placed on the job to keep the district representative informed of the progress of the work and the manner in which it is being performed, and to call to the utility owner's attention any infringements of the permit. The inspectors may not:

a. Modify in any way the provisions of the permit.

b. Delay the work by failing to inspect the work with reasonable promptness.

c. Act as a supervisor for the work or perform any other duties for the utility owner or its contractor.

d. Improperly interfere with the management of the work.

e. Approve or accept any portion of the work on behalf of the department.

115.9(7) *Repair and cleanup.* Prior to the department's final inspection, the utility owner is to:

a. Upon notification by the department, make any repairs to the rights-of-way that are necessary due to the construction work, including but not limited to shoulder and pavement repairs within the time frame established by the department.

b. Remove from the rights-of-way all unused materials and rubbish resulting from the work and leave the rights-of-way in a clean, presentable condition.

c. Make arrangements for repair or compensation for any damage to another utility facility or tile line found to have been caused by the utility owner's actions.

115.9(8) *Completion of work.*

a. The utility owner is to notify the district representative upon completion of work.

b. Upon notification by the utility owner that the work is complete, the department may inspect each item of work included in the permit as set out in subrule 115.9(5).

761—115.10(306A) Vertical overhead clearance requirements.

115.10(1) *Conformance to standards.* The vertical clearance for overhead utility facilities and the lateral and vertical clearances for bridges are to conform to generally accepted industry standards as well as applicable codes and regulations.

115.10(2) *Minimum vertical clearance.*

a. In no event shall the vertical clearance be less than 20 feet above the roadway for all overhead utilities.

b. Utility facility attachments to existing utility-owned poles are to be documented in a fully executed attachment agreement between the applicant and the pole owner for all poles not owned by the applicant and included in the permit request.

c. When a primary road detour has been established utilizing local jurisdiction roadways and streets, the minimum vertical clearance shall be applied to the temporary detour route at no cost to the department.

761—115.11(306A) Utility facility attachments to bridges.

115.11(1) *Department determination.* Utility facilities may be attached to an existing primary road bridge if the department determines that the attachment is in the best interests of the public. The department may accommodate utility facility attachments or conduits in the department's design for a new bridge if the department determines that the accommodation is in the best interest of the public.

115.11(2) *Method and weight of attachment.* The plan identified in subrule 115.7(3) is to show the method and weight of attachment. A separate permit is required for each bridge.

a. All attachments are to be placed in conduits, cells, pipes or trays; beneath the bridge's floor; inside the outer girders or beams; and above low steel or masonry of the bridge.

b. Department-approved clamps are to be used for any attachments to structural steel. Attachments are to be designed to withstand expansion or contraction forces.

c. If necessary, expansion devices, such as expansion joints, offsets or loops, shall be used. Utility facilities in cells or casings are to be grounded wherever necessary.

d. Welding or drilling holes in structural steel primary members is prohibited.

e. Utility facilities may be attached to noncritical concrete areas.

f. Holes should not be cut in wing walls, abutments or piers.

115.11(3) *Attachment considerations.*

a. Carrier pipe is to be suitably insulated from electrical power line attachments.

b. Pipelines may be attached to primary road bridges when installation below ground is not feasible, the design of the bridge can accommodate the attachment, and space is available.

c. Pipelines that have an operating pressure of more than 75 pounds per square inch or that are larger than 2 inches in diameter are to have shutoffs not more than 300 feet from each end of the bridge.

d. The department will consider pipeline attachment casing requirements on an individual basis. In some instances, thicker-walled or extra-strength pipe may be considered in lieu of encasement. Encasement is required for plastic pipe attachments to bridges.

e. The utility owner is to provide an indemnity bond to be executed by either itself or by a responsible bonding company, at the department's option.

(1) The indemnifier under the bond is to, in the event of damage resulting from any cause whatsoever arising out of or from permission to attach a pipeline, indemnify the department against all loss or damage to the department or any third party, including but not limited to the expense of repairing or replacing the bridge and the cost of alternate primary road facilities for traffic during the period when the bridge is being repaired or replaced.

(2) The indemnity bond is to be kept in force for as long as the pipeline is attached to the bridge.

(3) The department may periodically review the amount of the bond and require adjustments in the bond amount.

f. All costs attributable to the installation of an attachment to a bridge are to be paid by the utility owner unless the attachment is installed pursuant to a utility agreement.

115.11(4) *Attachment fee.*

a. The utility owner is to pay to the department an attachment fee for attaching the utility owner's utility facility to a primary road bridge. The attachment fee is $181.60 per bridge plus $0.99 times the weight of the attachment in pounds per foot times the length of the bridge in feet. The fee will increase 3 percent per year over the previous year after the base year of 2024. Additional fees may apply for longitudinal freeway occupancy (more information contained in subrule 115.15(8)). The department maintains the current fee listing available on the department's website at www.iowadot.gov/rightofway/Utility-Accommodation-and-Coordination.

b. The attachment fee is due before any construction work commences within the rights-of-way and shall be submitted to the department upon request.

c. Utility facilities dedicated solely to government use may, at the department's discretion, be attached to a primary road bridge without assessment of an attachment fee.

115.11(5) *Utility attachments to freeway border bridges.* The department may permit a utility facility to be attached to an existing or planned freeway border bridge if the following conditions are met:

a. The appropriate state agency of the adjoining state approves the attachment.

b. Except for communication cable, the utility facility exits the freeway rights-of-way as soon as physically practical after crossing the state line into Iowa.

c. The attachment otherwise complies with this chapter, specifically including this rule and rule 761—115.15(306A) on longitudinal freeway occupancy.

761—115.12(306A) Underground utility facilities.

115.12(1) *Depth requirements.*

a. Minimum cover—roadway. The minimum required cover under a roadway is 48 inches below the bottom of the pavement.

b. Minimum cover—waterways. A minimum of 10 feet of cover below the flowline is required under waterways at the time of placement.

c. Minimum cover—other portions of rights-of-way. The minimum required cover under other portions of the rights-of-way is measured from design elevation at the time of placement and is to be a minimum of:

(1) 48 inches for electrical cable.

(2) 30 inches for communication cable, except that 36 inches is required for longitudinal occupancy under freeway rights-of-way.

(3) 36 inches for all other underground utility facilities.

d. Rocky terrain. The department may allow an exception to the minimum depth requirement where rocky terrain makes it difficult to obtain the required depth. The department will determine the minimum depth in these situations; however, no installation will be authorized with less than 24 inches of cover.

e. Other protective measures. In critical situations where the necessary cover cannot be obtained, the department may approve other protective measures.

f. Highly erodible areas. Highly erodible areas may require trenchless installation and additional depth requirements as determined by the district representative.

115.12(2) *Measurement of cover.* The cover is measured from one of the following:

a. On rural-type roadways, the lowest pavement surface edge.

b. On urban-type roadways, the gutter flow line, excluding local depressions at inlets.

c. Where longitudinal installations will be behind the curb, the top of the curb.

d. The surface of the surrounding ground or the low point of the ditch.

115.12(3) *Casing.* A casing is to:

a. Protect the road from damage.

b. Protect the carrier pipe from external loads or shock, either during or after construction of the road.

c. Convey leaking liquids or gases away from the area directly beneath the traveled way.

d. Provide for repair, removal and replacement of the utility facility without interference to the road.

e. Leave no excessive voids around the pipe (more information on procedures for backfilling contained in subrule 115.12(7)).

f. Be of sufficient strength to withstand the external loads created by the vehicular traffic on the roadway being traversed.

g. Be properly installed with fill compacted to department specifications.

h. Be made of material that complies with all applicable federal, state, local and franchise requirements and meets generally accepted industry standards.

115.12(4) *Seals.* Casing pipe shall be sealed at both ends with a suitable material to prevent water or debris from entering the annular space between the casing and the carrier.

115.12(5) *Encasement and related requirements.*

a. Trenchless construction. Underground crossings of existing paved roadways, gravel entrances and residential or business frontage roads shall be accomplished by trenchless construction. Other installation methods may be authorized by the district representative and noted in the permit. The utility owner is responsible for contacting the property owner prior to any open cuts in entrances and residential or business frontage roads.

b. Transverse crossings. Underground transverse crossings of freeways and primary roads are to be encased from right-of-way line to right-of-way line and clearly marked by the utility owner at the outer limits of the rights-of-way. Encasement exceptions for transverse crossings may be authorized by the district representative on a case-by-case basis.

c. Longitudinal installations. Utility lines installed longitudinally to the primary road rights-of-way are to be encased at entrances and crossings of hard-surfaced roads and streets. Encasement exceptions for longitudinal installations may be authorized by the district representative on a case-by-case basis.

d. Electrical service. Underground electrical service is to be placed in a conduit from right-of-way line to right-of-way line and clearly marked by the utility owner at the outer limits of the rights-of-way.

e. Pipelines.

(1) Exceptions to pipeline encasement may be made for a pipeline carrying natural gas at an operating pressure of 60 pounds per square inch or less that is made of copper, steel or plastic and is protected and installed in accordance with generally accepted industry standards; and the utility owner certifies as a part of the permit that these standards are met.

(2) Exceptions to pipeline encasement may be made for a pipeline carrying liquid petroleum products, ammonia, chlorine or other hazardous or corrosive products if the pipeline meets all of the following requirements and the utility owner certifies as a part of the permit that these requirements are met:

1. The pipeline is welded steel pipeline.
2. The pipeline is cathodically protected.
3. The pipeline is coated in accordance with generally accepted industry standards.
4. The pipeline complies with federal, state and local requirements and meets generally accepted industry standards regarding wall thickness and operating stress levels.

(3) Pipeline encasements are to be vented and marked at the outer rights-of-way limits. The markers are to meet generally accepted industry standards and include the following information:

1. Name and address of the utility owner.
2. Telephone number to contact in case of an emergency.
3. Type of product carried.

f. Communication cable. The department may require encasement of communication cable.

g. Sanitary sewer lines. Exceptions to sanitary sewer line encasement may be made for gravity flow lines installed subsequent to road construction if all of the following requirements are met:

(1) The opening is cut to the size of the carrier pipe so that there are no excessive voids around the pipe.

(2) The pipe is of sufficient strength to withstand the external loads created by the vehicular traffic on the roadway being traversed.

(3) Lines beyond the toe of foreslope are properly installed and compacted to department specifications.

h. Waterlines. Exceptions to waterline encasement may be made for the following:

(1) Encasement is not required where it is impractical due to existing conditions as determined by the district representative.

(2) Venting and sealing of waterlines encasement is not required for waterlines with an inside diameter of 2 inches or less.

(3) Waterlines installed in advance of road construction need not be encased if the pipe is properly embedded and made of extra strength cast iron or ductile iron pipe with mechanical joints and seals, or equivalent.

i. Installations vulnerable to damage. When it is acceptable to both the utility owner and the department, an underground utility facility that, by reason of shallow depth or location, is vulnerable to damage from road construction or maintenance operations may be allowed to remain in place and shall be protected with a casing, suitable bridging, concrete slabs or other appropriate measures and noted in the permit.

j. Other installations. When it is acceptable to both the utility owner and the department, an underground utility facility not otherwise addressed in this subrule may be installed without protective casing if the installation involves trenched construction.

115.12(6) *Multiduct systems.* The department may require installation of a multiduct system to be shared with others. Details of the installation are subject to department approval.

a. For other multiduct systems, the department may designate a "lead company" for the multiduct system. The lead company will generally be the first utility owner requesting occupancy. The lead company is to:

(1) Design and install the multiduct system.

(2) Maintain the multiduct system.

(3) Provide all capital required to construct the multiduct system.

b. Once a multiduct system has been established, the department may require future occupancies to be located within one of the unoccupied inner ducts of the system. If all inner ducts are occupied, the department may require the establishment of an additional multiduct system. Subsequent occupants of a multiduct system should share equally in the entire capital cost of the utility facility. As each new occupant is added to an existing system, the department may require the new occupant to pay its proportionate share based on the number of inner ducts it occupies.

c. More information is contained in subrule 115.15(8) regarding occupancy fees for longitudinal installations on freeways.

115.12(7) *Procedures for backfilling trenched construction and jacking or boring pits.*

a. When a carrier, pipe, conduit, or cable is placed by trenched construction, jacking or boring, the backfill shall be placed and compacted in accordance with department specifications so that there is no settlement or erosion. Should settling or erosion of a trench be observed, the utility owner will be responsible to correct the problem.

b. Backfill under roadways or entrances is to be of a suitable material to minimize settlement at the site. Examples of suitable material include granular backfill or flowable mortar.

115.12(8) *Procedures for trenchless construction.*

a. When trenchless construction techniques are used, the bore is to be as small as practical and in accordance with department specifications.

b. Grout backfill is to be used for all unused holes and abandoned pipes. Grout or sand backfill is to be used for any borehole more than 2 inches larger than the installed casing or other utility facility. All bored utility facilities are to be constructed in such a manner that surface water is not transported to or otherwise allowed access to groundwater.

115.12(9) *Procedures for pavement removal.*

a. When the existing pavement is cut to accommodate a utility installation, the cut shall be made with a concrete saw.

b. The dimensions of the pavement removal shall be 6 feet in length and full lane width. If the distance from the specified cut to any adjacent longitudinal or transverse joint or crack is less than 4 feet, the pavement removal shall be extended to the joint or crack.

c. The district representative will make the final determination on the required depth and width of cut.

115.12(10) *Procedures for pavement replacement.*

a. Restoration of pavement shall be accomplished in accordance with department specifications.

b. The district representative may authorize temporary repair with bituminous material.

c. A permanent patch shall be placed as soon as conditions permit.

115.12(11) *Clear zone for pits.* Jacking or boring pits are to be located beyond the clear zone or road foreslope, whichever locates the pit a greater distance from the edge of the traveled way.

a. On freeways, jacking or boring pits are not allowed within the median.

b. On rural-type, nonfreeway primary roads, jacking or boring pits may be allowed within the median or foreslope upon request and at the discretion of the district representative.

c. On urban-type, nonfreeway primary roads, jacking or boring pits should be located at least 2 feet from the curb.

d. Jacking or boring pits authorized within the clear zone are to be protected at all times. All protection measures are to be included in the permit request. Examples of protection measures include backfilling of the pit, temporary barrier rail, or reflective fence.

115.12(12) *Construction methods.* Casing and pipeline installations are to be accomplished by dry boring, tunneling, jacking, trenching, or directional drilling.

a. The use of water under pressure, jetting or puddling to facilitate boring, pushing or jacking operations is not allowed.

b. Water may be used to lubricate a cutter and pipe during a dry boring operation.

761—115.13(306A) Freeways.

115.13(1) *Access to utility facilities occupying freeway rights-of-way.*

a. Except for emergency work, access to utility facilities during utility construction or maintenance activities is to be obtained from the areas other than the freeway or its ramps. More information is contained in subrules 115.8(3) and 115.17(2) regarding emergency work.

b. Fence removal and replacement will be determined by the district representative.

c. No gates or ladders are to be placed in or upon the right-of-way fence.

d. The department will coordinate approval from the FHWA for any request to access the interstate right-of-way for utility work.

115.13(2) *Freeway clear zone requirements.* The clear zone requirements of subrule 115.4(3) apply to freeways. In addition:

a. Personnel, equipment and materials are not allowed in the median or within the clear zone area during utility facility construction or maintenance operations, except as provided in paragraph 115.13(2)*"b."*

b. Temporary poles may be allowed in the median during cable or conductor stringing operations at the discretion of the district representative.

115.13(3) *Aboveground appurtenances.* Aboveground appurtenances, including but not limited to poles, guys and other supporting structures, are not allowed within the rights-of-way of freeways.

115.13(4) *Existing utility facilities.*

a. A utility facility occupying land that subsequently becomes freeway rights-of-way may remain within the rights-of-way if the utility facility:

(1) Can be accessed from areas other than the freeway or its ramps.

(2) Does not adversely affect the safety, design, construction, operation, maintenance or stability of the freeway.

b. If the conditions in paragraph 115.13(4)*"a"* are not met, the department may request the utility facility be relocated outside the freeway rights-of-way.

761—115.14(306A) Transverse installations on freeways.

115.14(1) *Interchange areas.*

a. Utility facilities may not be placed within the interchange area of intersecting freeways unless they are road-related.

b. In other interchange areas, the department may permit occupancy if access to the utility facility can be obtained from areas other than the freeway or its ramps, such as an intersecting, adjacent or nearby road or trail.

115.14(2) *Aboveground installations.*

a. A single span is to be used to cross the freeway where the width of freeway rights-of-way permits.

b. Within interchange areas:

(1) Single-pole construction is to be used, with the number of poles kept to a minimum.

(2) Overhead lines are to be constructed on tangent, parallel to the intersecting road, without guys or anchors being placed in the areas between the ramps and the main freeway. Guy poles are to be located as near to the freeway rights-of-way line as practical.

(3) Poles are to be located outside the clear zone and situated as far from the main freeway and ramps and as close to the toe of foreslope of the intersecting road as practical but shall remain outside the clear zone.

(4) The use of self-supporting poles or towers, double arming and insulators, breakaway devices and dead-end construction should be considered.

761—115.15(306A,314) Longitudinal installations on freeways.

115.15(1) *Type of installation permitted.*

a. Pursuant to Iowa Code section 314.20, the department may permit the installation of an underground utility facility if, in addition to complying with other provisions of this chapter, the utility facility specifically complies with this rule.

b. Except as provided in this rule, no aboveground installations other than those needed to serve road facilities are allowed.

c. If the department determines that an aboveground installation is necessary to advance the state's priorities, can be installed safely with minimal impact on the traveling public, can be safely accommodated within existing right-of-way, is along a roadway that is not anticipated to require additional right-of-way for future improvements in the foreseeable future, and extends for a relatively short distance, the department may permit installation with proper justification.

115.15(2) *Prohibitions on longitudinal occupancy.*

a. A utility facility may not be placed longitudinally within freeway rights-of-way that is used for transmitting gases, liquids, or products that are flammable, corrosive, expansive or unstable.

b. A utility facility may not be placed longitudinally within the freeway rights-of-way that presents a hazard to life, health or property if it fails to function properly, is severed or is otherwise damaged.

c. No direct service connection to adjacent properties is allowed.

d. No utility facility is allowed in or on a structure carrying a freeway roadway or ramp, except for freeway border bridges, as provided in subrule 115.11(5).

115.15(3) *Minimal maintenance.* Once installed, the utility facility should require minimal maintenance.

115.15(4) *Location and depth.* The utility facility should be located on uniform alignment, preferably within 8 feet of the freeway rights-of-way line, and at a location approved by the department.

a. More information is contained in subrule 115.12(1) regarding minimum depth requirements.

b. Installation methods should be minimally invasive and authorized by the district representative.

c. Utility accesses should be placed below the existing ground line. The locations and number of accesses are subject to district representative approval.

115.15(5) *Pedestals, cabinets, vaults, hand holes, repeater stations or similar appurtenances.*

a. Aboveground pedestals are permissible. All pedestals, cabinets, vaults, hand holes or similar appurtenances should be placed one foot from the right-of-way fence. The number of installations is subject to district representative approval.

b. Repeater stations are not allowed in the rights-of-way.

115.15(6) *Metallic warning tape.* Metallic warning tape is to be installed a minimum of 12 inches below the existing grade and above the utility installation unless installation is done by directional boring or other trenchless methods.

115.15(7) *Engineering.* The utility owner is to retain the services of a licensed, professional engineer familiar with the requirements for utility work to be accomplished in Iowa.

a. The engineer is responsible for overseeing continuous on-site inspection of the installation of the utility facility, including all provisions pertaining to access to the work site and traffic control.

b. Upon completion of the project, the engineer is to certify to the department on the appropriate form that the installation, traffic control, and access to the work site were accomplished in accordance with the permit.

c. Any change to the alignment as described in the permit requires the prior approval of the district representative and is to be included in the as-built plan (more information is contained in subrule 115.7(8)).

115.15(8) *Occupancy fee.* The utility owner is to pay to the department an annual fee for longitudinal occupancy of the freeway rights-of-way in accordance with Iowa Code section 314.20. The initial fee is due before any construction work commences within the rights-of-way. Additional fees may apply for bridge attachments (more information is contained in subrule 115.11(4)). The department maintains the current fee listing available on the department's website at www.iowadot.gov/rightofway/Utility-Accommodation-and-Coordination.

a. Unless otherwise specified, the annual fee is based on the number of ducts, cables and length in miles as follows:

(1) When a multiduct system is required by the department the fee is $26,188.61 per cable installation or $13,094.31 per mile of cable, whichever is greater. These fees increase 3 percent per year over the previous year after the base year of 2024.

(2) The fee for all other installation is $21,673.33 per cable installation or $4,252.25 per mile of cable, whichever is greater. These fees increase 3 percent per year over the previous year after the base year of 2024.

b. When the department requires the installation of a multiduct system, the department may enter into an agreement with the lead company for a discounted fee payment schedule to be in effect until the company has recovered all or an agreed upon portion of its cost of installing the system. Subsequent occupants of the multiduct system will be required to pay the full annual fee.

c. Utility facilities dedicated solely to state government use may, at the department's discretion, longitudinally occupy freeway rights-of-way without assessment of an occupancy fee.

115.15(9) *Performance bond.* The utility owner is to file a performance bond with the department prior to commencing work within the freeway rights-of-way.

a. The bond shall be in the minimum amount of $100,000 per permit as determined by the district representative and shall guarantee prompt restoration of any damage caused during the installation of the utility facility.

b. The bond is to be in force for the duration of the construction. The department may file a claim against the bond for two years thereafter.

115.15(10) *Insurance.*

a. The utility owner shall maintain the following insurance for bodily injury, death and property damage arising out of or in connection with the construction, maintenance and operation of the utility facility:

(1) General public liability insurance with limits of not less than $500,000 for injury to or death of a single person, or not less than $1,000,000 for any one accident, and not less than $250,000 per accident for property damage.

(2) Comprehensive automobile liability insurance with limits of not less than $500,000 for injury to or death of a single person, or not less than $1,000,000 for any one accident, and not less than $250,000 per accident for property damage.

(3) Excess liability coverage with limits of not less than $5,000,000.

(4) Statutory workers' compensation coverage.

b. This insurance is to be in effect before the utility owner commences any work within the freeway rights-of-way.

c. Coverage may be provided by blanket policies of insurance covering other property or risks.

d. The department is to be named as an additional insured party in the general public liability and excess liability insurance policies.

115.15(11) *Term of permit.* The permit is valid for 20 years from the date of issuance. Upon written request, the department may extend or renegotiate the term.

115.15(12) *Utilities for road facilities.* Longitudinal occupancy of utility facilities that service road-related facilities are permissible upon such terms and conditions as the department may determine.

761—115.16(306A) Longitudinal installations on nonfreeway primary roads.

115.16(1) *Location.* Longitudinal utility facility installations should be located on uniform alignment as near as practical to the right-of-way line to provide a safe environment for traffic operations and to preserve space for future road improvements and other utility installations.

115.16(2) *Underground installations.*

a. No carrier of flammable, corrosive, expansive or unstable material may be placed longitudinally within the rights-of-way of a nonfreeway primary road. Exceptions:

(1) A natural gas line with an operating pressure that is no greater than 150 pounds per square inch is permissible.

(2) The department may permit the placement of a natural gas line with an operating pressure that is greater than 150 pounds per square inch only if a suitable alternate location cannot be found.

b. On rural-type roadways, utility facilities shall be located in an area beyond the road foreslope and ditch bottom, right-of-way width permitting. Exceptions to the location may be made by the district representative for areas such as deep ravines or ditches. When adequate room within the rights-of-way is available, the utility facility shall be installed beyond the end of any culverts at a minimum depth of 10 feet beneath the normal flow line. When adequate room within the rights-of-way is not available, the utility facility shall be installed by trenchless methods a minimum depth of 10 feet beneath any culverts.

c. On urban-type roadways, utility facilities shall be located as near to the right-of-way line as practical. A utility access placed within the rights-of-way shall not protrude above the surrounding surface.

d. Utility facilities should not be placed in the median. The district representative may allow an installation within the median if a suitable alternative is not found.

e. Utility facility locations shall be marked and identified as set out in subrule 115.3(12).

761—115.17(306A) Maintenance and emergency work.

115.17(1) *Maintenance responsibilities.* The utility owner is responsible for utility facility maintenance. The utility owner is to:

a. Maintain the utility facility in a good state of repair.

b. Replace and stabilize all earth cover and vegetation where erosion has occurred over an underground utility facility when the erosion is due to or caused by the placement or existence of the utility facility.

c. Give the district representative 48 hours' prior notice of the utility owner's intent to perform predictable routine maintenance within the rights-of-way.

115.17(2) *Utility emergency work.*

a. Access to the worksite is permissible from the freeway roadways and ramps when an emergency exists.

b. The utility owner shall take all necessary, appropriate and reasonable measures to protect the safety of the traveling public and cooperate fully with law enforcement and the department in completing the emergency work.

c. The utility owner shall notify the district representative of the emergency as soon as practical, describing the steps being taken to protect the traveling public, the extent of the emergency, and the steps being taken to address the emergency.

d. If the nature of the emergency is such that it interferes with the free movement of traffic, the utility owner shall immediately notify law enforcement, 511 and the district representative.

e. When an emergency occurs on the interstate system, the department will notify the FHWA as soon as practical, describing the steps being taken to protect the traveling public and the steps being taken to address the emergency.

115.17(3) *Department emergency work.* There will be times when the department performs road-related emergency work. If utility facilities are affected, the department shall as soon as practical notify the utility owner of the emergency condition and what steps are necessary to protect the utility facility.

761—115.18(306A) Abandonment, out-of-service facilities, or removal of utility facilities.

115.18(1) *Ownership.* The utility owner shall continue to own, maintain, map, locate and mark its abandoned and out-of-service facilities within the primary road rights-of-way.

115.18(2) *Notice to department.* Within 90 days after the abandonment, out-of-service designation, or removal of all or a portion of an existing utility facility that occupies the primary road rights-of-way, the utility owner is to submit a notice of abandonment, out-of-service designation, or removal to the district representative. The notice shall include:

a. Type of utility facility.

b. Location of the utility facility by route, county, section, township, range, milepost and primary road stationing, where these references exist.

c. Name of the original utility owner if different than the current utility owner.

d. Original permit number and date of approval, if known.

761—115.19(306,306A) Utility facility adjustments for primary road improvement projects. Rules 761—115.20(306A) through 761—115.24(306A) establish administrative procedures for utility facility adjustments made necessary by primary road improvement projects pursuant to Iowa Code section 306A.10, including information exchange and the responsibilities of the department, utility owners, and the department's contractor. The purpose of these procedures is to adjust utility facilities with minimal delays or added expense pursuant to Iowa Code section 306.47. Rules 761—115.20(306A) through 761—115.24(306A) apply to all primary road improvement projects with the following exceptions:

1. Projects the department develops on an accelerated schedule.
2. Projects with no anticipated utility adjustments.

115.19(1) *Adjustment of facilities.* If, despite making reasonable efforts to avoid or minimize the need for adjusting an existing utility facility, it is determined that adjustment is required due to proposed primary road construction, the utility owner is to adjust the utility facility in advance of the road construction. Scheduling of relocation work in the case of the following exceptions should be coordinated with the district representative:

a. Relocation work that needs to be coordinated with the department's contractor.

b. Relocation work that is dependent on work to be performed by another utility company.

c. Relocation work that is not practical until certain department project construction activities occur.

115.19(2) *Relocation costs.*

a. If adjustment of an existing utility facility occupying the right-of-way is required due to proposed primary road construction, the utility owner is to adjust the utility facility without cost to the state.

b. If adjustment of an existing utility facility located on an easement outside existing rights-of-way is required due to proposed primary road construction, approved relocation costs will be eligible for reimbursement by the department through a reimbursement agreement.

c. When the department participates in the cost of a utility facility adjustment required for proposed primary road construction, the department will not pay for a betterment that results in an increase in the capacity of the utility facility or for any other adjustment not required by proposed primary road construction and is made solely for the benefit of and at the election of the utility owner. The department is entitled to receive credit for the accrued depreciation on replaced facilities and the salvage value of any materials or parts salvaged and retained or sold by the utility owner.

d. Adjustment costs for which the department is responsible will be paid on a cost reimbursement basis through a reimbursement agreement. Estimates shall follow the cost development and reimbursement requirements outlined in 23 CFR 645 (Subpart A, 645.117) as amended October 1, 2023.

761—115.20(306A) Utility investigation and notice of project.

115.20(1) *Determining affected utilities.*

a. The department will make a reasonable effort to identify utility facilities located in the vicinity of a proposed primary road project and collect location information and attributes.

b. The department will periodically evaluate the information available and determine the utility investigation needs for the project. Utility companies are to respond to collaboration efforts with the department to determine the best approach to meet those needs.

c. The department will look at potential utility impacts and initiate coordination with utility owners. A utility conflict list should be used to document and track information obtained on the potential utility conflicts.

115.20(2) *Notifying utilities.* The department will identify by name the owner of each known utility facility located within the vicinity of a proposed primary road project. In accordance with Iowa Code section 306A.10, the department will send to each identified utility owner a notice of the improvement project, including the route number of the primary road, the geographical limits of the project and a general description of the proposed primary road work to be done, type of project, important schedule milestones, and, if available, the name and contact information of the designer or a department's representative for coordination purposes.

115.20(3) *Responding to notice.* The utility owner shall:

a. Within 30 calendar days after the date of the notice, provide to the department information about the utility owner's utility facilities that are in the vicinity of the improvement project. This information shall include the following:

(1) A confirmation in writing that the utility owner has or has no facilities in the vicinity of the project.

(2) Information on the utility owner's utility facilities' location and attributes, the name of any other utility companies that have utility facilities that coexist with the utility owner's utility facilities and contact information of the coexisting utility owner's authorized representative.

b. The utility owner is to reply regardless of whether or not it has utility facilities in the project's vicinity.

761—115.21(306A) Preliminary plan, verifying accuracy of information.

115.21(1) *Depicting utility information.* The department will use collected information to list all known utility owners within the vicinity of a proposed primary road project and include the utility owners' utility facility locations on the project plans in accordance with department specifications.

115.21(2) *Preliminary plan.* The department will submit its preliminary plan to the owner of each known utility facility within the vicinity of a proposed primary road project and ask utility owners to provide information regarding the accuracy of utility information depicted in the preliminary plan and potential conflicts and the utility owners' recommended solutions. The department should schedule a utility coordination meeting after the preliminary plan is sent to the utility owners.

115.21(3) *Response to the preliminary plan.*

a. The utility owner shall review the preliminary information sent by the department and provide a response within 30 calendar days. The response is to include the following:

(1) A statement regarding the accuracy of the location of the utility owner's existing utility facilities as depicted in the preliminary plan. If the information is inaccurate, a description of the inaccuracies is to be provided.

(2) A declaration that there are no known conflicts between the utility owner's utility facilities and the department's project, or a description of any potential conflicts between the utility owner's utility facilities and the department's project.

(3) Utility owners may provide recommended changes to the department's plan that may help to avoid or minimize impacts to utility facilities.

(4) Any other relevant information regarding potential utility facility conflicts, such as potential rights-of-way needs, permits that may be required, estimated time frame required for utility facility relocations, and any dependencies with other utility owners' work or the department's contractor.

b. The utility owner is to reply regardless of whether or not the utility owner's utility facilities in the project's vicinity are impacted by the proposed primary road project.

761—115.22(306A) Semifinal plan, utility work plan.

115.22(1) *Preparation of semifinal plan.* When preparing the semifinal plan, the department should review information provided by utility owners in response to the preliminary plan that was received within the requested time frame and implement recommended changes when feasible. The project utility investigation needs may be reevaluated to determine the best approach to meet those needs.

115.22(2) *Distribution of semifinal plan.* The department will submit its semifinal plan to the owner of each known utility facility within the vicinity of a proposed primary road project. The semifinal plan contains information details of the department's project to assist the utility owner in the design and the adjustment of the utility owner's utility facilities.

115.22(3) *Work plan.* Within 90 calendar days after the date the department provides its semifinal plan, the utility owner shall submit to the department a work plan for the adjustment or relocation of utility facilities impacted by the proposed primary road project.

a. The work plan is to include the following:

(1) A narrative description of what work the utility owner will do.

(2) An electronic plan or drawing showing the existing and proposed locations of the utility owner's utility facilities in relation to the semifinal plan.

(3) Whether the work is dependent on work by another utility owner.

(4) Whether the work can be done prior to road construction or must be coordinated with the department's contractor.

(5) Whether the work is dependent on the acquisition of rights-of-way.

(6) The number of working days required to complete the work and the earliest date when the utility owner could begin to implement the work plan.

(7) A list of permits and approvals the utility owner is required to obtain from governmental agencies and railroad companies for the work, and the expected time schedule to obtain them.

(8) The expected lead time in calendar days to obtain materials, schedule work crews, and obtain necessary rights-of-way.

(9) Any other information that may be useful to the department or the department's contractor.

b. If the utility adjustment work may be reimbursable, the utility owner shall include the following with the work plan:

(1) Documentation of real estate interests.

(2) A detailed cost estimate for the adjustment, including appropriate credits for betterments or salvage.

115.22(4) *Conflict between work plans.* When requested by the utility owners or when the department determines there is potential for conflict between work plans, the department shall schedule a coordination meeting. All affected utility owners shall attend the meeting to coordinate the utility owners' work plans. The department may allow a utility owner an additional 30 calendar days to submit the utility owner's work plan if coordination is required with other utility owners.

115.22(5) *Department review of work plan.* The department will review each utility owner's work plan to ensure compatibility with permit requirements, the department's project, other utility work plans, and the department's project schedule.

a. If the work plan is acceptable, the department will notify the utility owner of the department's acceptance of the utility owner's work plan.

b. All relocation work plans should ensure the safety and reliability of the utility facilities and the road and avoid any unnecessary cost or delay. An approved and issued permit is to be obtained for work within the primary road rights-of-way. Any work plan by itself does not constitute a permit nor does it grant permission to occupy primary road rights-of-way.

c. If the work plan is not acceptable to the department, the department will notify the utility owner that the work plan is not acceptable and provide a detailed explanation of the problem.

d. The utility owner is to submit a revised work plan to the department within 30 calendar days after the utility owner's receipt of notice from the department that the work plan was not acceptable.

e. The department will review the revised work plan. If the revised work plan is acceptable, the department will notify the utility owner of the department's acceptance of the revised plan.

f. If the revised work plan is still not acceptable, the department may initiate noncompliance procedures per subrule 115.3(11). If the department determines that meaningful progress is being made, the department may elect to repeat the process set out in paragraphs 115.22(5)*"c"* to *"e."*

115.22(6) *Reimbursement agreement.*

a. For certain utility facility adjustments, the department may enter into a reimbursement agreement between the department and the utility owner. If applicable, the utility owner is to provide a request for reimbursement to the department prior to commencement of any relocation work. If the department determines that the relocation is eligible for reimbursement, a reimbursement agreement may be prepared between the department and the utility owner and should be fully executed by both parties prior to commencement of any relocation work. The agreement is to include the following:

(1) The responsibilities of each party, including the pro rata share of costs to be borne by each party.

(2) The scope, description, and location of the relocation work.

(3) The relocation work plan.

(4) The itemized cost estimate of the relocation work, including appropriate credits.

(5) The actions to be taken in case of noncompliance with state requirements.

b. A reimbursement agreement by itself does not constitute a permit nor does it grant permission to occupy the primary road rights-of-way. The utility owner is responsible for obtaining a permit prior to commencing work within the rights-of-way.

761—115.23(306A) Notice of work.

115.23(1) *Notice of receipt of permits and approvals.* The utility owner shall notify the department within 14 calendar days after the utility owner has received all required permits and approvals from government agencies and railroad companies.

115.23(2) *Notice to utility owner to begin work.*

a. The department shall send a notice to proceed to the utility owner when necessary approvals are received, permits are issued, and rights-of-way have been acquired for the relocation work.

b. If the utility owner's work plan is dependent upon work by the department's contractor, the department's contractor is to provide the department and the utility owner a good faith notice 14 calendar days before the department's contractor's work is expected to be complete and ready for the utility owner to begin its work. The department's contractor should follow up with a confirmation notice to the department and the utility owner not less than three working days before the department's contractor's work will be complete and ready for the utility owner to begin its work.

115.23(3) *Notice to department of commencement and completion of work.* The utility owner is to give the department 48 hours' prior notice, excluding weekends and holidays, of the utility owner's intent to start utility adjustment work within the vicinity of a proposed primary road project. The utility owner is to also notify the department immediately upon completion of the work.

761—115.24(306A) Miscellaneous adjustment provisions.

115.24(1) *Work plan compliance.* The utility owner is to complete its utility adjustment work within the time frame of the work plan approved by the department. Upon completion of the work, the utility owner is to certify to the department that the adjustment of the utility owner's utility facilities is in accordance with the accepted work plan. The utility owner is to submit an as-built plan in accordance with department specifications.

115.24(2) *Work plan changes.* If a utility owner needs to change its work plan after its adjustment work begins, the utility owner shall notify the department. Once the department approves a modified work plan, the utility owner may make the necessary changes and perform the work.

115.24(3) *Cost allocation.*

a. If the department requires the adjustment of a utility facility that was originally determined, per the notice and work plan processes, to not need adjustment:

(1) The utility owner will bear the cost of the adjustment if the work is otherwise not reimbursable.

(2) The department will bear the reasonable cost of the adjustment if the work is otherwise reimbursable.

b. If the department requires additional adjustment to a utility facility after the utility facility has been adjusted in accordance with a work plan accepted by the department, the department will bear the reasonable cost of the additional work. This applies to all utility facilities, whether the original adjustment work was reimbursable or not reimbursable.

c. The utility owner will bear the cost of additional adjustment work performed after its utility facilities have been adjusted in accordance with a work plan accepted by the department if the additional work is due to the utility owner's error.

115.24(4) *Failure to comply with these rules, to provide an acceptable work plan, or to adjust utility facilities.* If a utility owner fails to comply with these rules, fails to provide an acceptable work plan per subrule 115.22(5), fails to comply with the accepted work plan, or fails to complete the adjustment of its utility facilities in accordance with the accepted work plan, and its failure results in a delay to the primary road project or causes damages to be incurred by the department or the department's contractor, the utility owner is liable for all costs and damages incurred as a result of its failure. In addition to any other remedy that may exist at law, in equity, or under these rules, the department may initiate noncompliance procedures per subrule 115.3(11) for failure to comply with the requirements of these rules.

These rules are intended to implement Iowa Code chapters 306A and 318 and sections 306.3, 306.47, 314.20, 320.4 through 320.8, and 321.1.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 162
"Surface Transportation Block Grant Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8.41(3)"c"

State or federal law(s) implemented by the rulemaking: Iowa Code sections 8.41(3)"c," 307.44, and 313.4(1)

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 11:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 938 298 103

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:

Shawn Majors
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1288
Email: shawn.majors@iowadot.us

Purpose and Summary

The purpose of this chapter is to establish requirements for the distribution of federal Surface Transportation Block Grant (STBG) funds as required in Iowa Code section 8.41(3). This Iowa Code section requires that federal funds associated with a block grant be deposited in a special fund in order to allocate funds. Federal authorization acts appropriate funds to states to support transportation investments. A portion of these funds is made available through STBG funds. STBG funds can be used for any federal-aid highway, bridge or tunnel on any public road and may also be used on pedestrian bicycle infrastructure and transit improvements. These funds may also be swapped with primary road funds in accordance with Iowa Code section 313.4(1). These funds are administered by the Department and are made available on a fair and equitable basis. The Department, through consultation with city, county and local planning agency officials, makes these funds available to Iowa's transportation management areas, metropolitan planning organizations and regional planning affiliations, counties, cities and the Department. Allocation of these funds is based on distribution methodology approved by the Iowa Transportation Commission upon passage of each federal authorization act. Funds allocated to cities and counties to support the Federal-aid Highway Bridge Program are made in accordance with Instructional Memorandum 1.100. All allocations of the STBG funds are made in accordance with the Federal Highway Administration's regulations and include the allocations of the Surface Transportation Program (STP) Set-Aside for transportation alternatives as established in 23 U.S.C. Section 133(h).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Any costs associated with this chapter would be borne by cities, counties, transit agencies, the Department, and other governmental sponsors. This chapter outlines how the federal funds will be allocated as required in Iowa Code section 8.41(3). The costs incurred by the public are those associated with adhering to the requirements of usage of federal-aid funds.

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

This chapter will benefit cities, counties, transit agencies, the Department and other governmental sponsors, and users of Iowa's transportation system by ensuring these federal highway transportation funds can be utilized to improve Iowa's transportation system.

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 chapter allows for the expenditure of federal funds that are deposited in a special fund pursuant to Iowa Code section 8.41(3). Any costs incurred would be associated with the requirements of federal law in 23 U.S.C. Section 133(h). Costs typically associated with federal aid projects include those necessary to plan, develop and administer projects. The benefits of which ensure the reimbursement of nearly $100 million annually for investments in Iowa's transportation system.

- Qualitative description of impact:

The impact of this chapter is positive in that it allows for the expenditure of nearly $100 million on transportation improvement projects in Iowa.

3. Costs to the State:

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

No costs are associated with implementation of this chapter.

- Anticipated effect on state revenues:

This chapter does not impact the amount of state revenue collected.

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

The benefits of this chapter are the funds that are made available for transportation improvements throughout the state. Inaction would result in the loss of nearly $100 million in federal funds to the citizens of Iowa through the allocation of funds to cities, counties, the Department, and other governmental sponsors.

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

The Department has reviewed and determined that there are no less costly or intrusive methods for achieving the purpose of the proposed rules. These rules are necessary to comply with Iowa Code section 8.41.

6. Alternative methods considered by the agency:

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

Elimination of the rulemaking requirement included in Iowa Code section 8.41 would no longer make Chapter 162 necessary.

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

The chapter is required and needs to remain, absent amendments to Iowa Code section 8.41.

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 costs associated with this chapter would not impact small business negatively. The impact to small business is that these rules ensure federal highway transportation dollars can be invested into Iowa's transportation system.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 162 and adopt the following **new** chapter in lieu thereof:

CHAPTER 162
SURFACE TRANSPORTATION BLOCK GRANT PROGRAM

761—162.1(8,307) Purpose and information.

162.1(1) Federal authorization acts appropriate funds to states to support surface transportation investments. A portion of these funds are provided to the state of Iowa for the Surface Transportation Block Grant Program. The purpose of these rules is to establish requirements for the Surface Transportation Block Grant Program.

162.1(2) Information relating to this chapter may be obtained from the Program Management Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1288; or on the department's website at www.iowadot.gov.

761—162.2(8,307) Source of funds. The Surface Transportation Block Grant Program established in 23 U.S.C. Section 133 provides for the use of federal funds to preserve and improve the condition and performance of any federal-aid highway, bridge or tunnel project on any public road. Surface Transportation Block Grant funds may also be used on pedestrian and bicycle infrastructure and transit capital projects, including intercity bus terminals.

761—162.3(8,313) Swapping of funds. Surface Transportation Block Grant funds allocated to city and county road or bridge construction projects may be swapped with primary road funds in accordance with Iowa Code section 313.4(1).

761—162.4(8,307) Administration of funds. Surface Transportation Block Grant funds are administered by the department and will be made available for obligation throughout the state on a fair and equitable basis. The department, in consultation with city, county and local planning agency officials, through their representative organizations, will allocate these funds to Iowa's transportation management areas, metropolitan planning organizations, regional planning affiliations, incorporated cities, counties and the department. Allocation of these funds is to be based upon a distribution methodology approved by the commission. The commission reviews and approves the distribution methodology upon passage of each federal authorization act. Funds allocated to cities and counties to support the Federal-Aid Highway Bridge Program will be made in accordance with Instructional Memorandum 1.100 dated June 12, 2024, available at www.iowadot.gov/local_systems/publications/im/1100.pdf. All allocations of the Surface Transportation Block Grant funds are made in

accordance with the Federal Highway Administration's regulations and include the allocations of the Surface Transportation Program (STP) Set-Aside for transportation alternatives as established in 23 U.S.C. Section 133(h) in effect as of December 4, 2015.

These rules are intended to implement Iowa Code sections 8.41(3)*"c,"* 307.44 and 313.4(1).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 400
"Vehicle Registration and Certificate of Title"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 252J.8, 307.12(1)"j," 307.30, 321.20, 321.20B, 321.24, 321.34, 321.44A, 321.52, 321.69, 321.71, 321.121, 321H.4A, and 435.26B

State or federal law(s) implemented by the rulemaking: Iowa Code sections 17A.10; 17A.10A; 17A.11; 17A.12; 17A.13; 17A.14; 17A.15; 17A.16; 17A.17; 17A.18; 17A.18A; 17A.19; 25.1; 252J.1; 252J.8; 252J.9; 307.12(1)"j," 307.30; 321.1; 321.5; 321.8; 321.13; 321.18; 321.18A; 321.19; 321.20 as amended by 2024 Iowa Acts, House File 674, sections 1 and 2; 321.20B; 321.21; 321.22; 321.23 as amended by 2024 Iowa Acts, House File 674, sections 4 and 5; 321.24 as amended by 2024 Iowa Acts, House File 2316, section 1; 321.25; 321.26; 321.30; 321.31; 321.32; 321.34; 321.37; 321.39; 321.40; 321.41; 321.42; 321.43; 321.44A; 321.45; 321.46; 321.46A; 321.47; 321.48; 321.49; 321.50 as amended by 2024 Iowa Acts, House File 674, sections 16 and 17; 321.52; 321.52A; 321.53; 321.54; 321.55; 321.67; 321.69; 321.70; 321.71; 321.92; 321.101; 321.101A; 321.102; 321.103; 321.104; 321.105; 321.105A; 321.106; 321.109; 321.111; 321.116; 321.117; 321.119; 321.121; 321.122; 321.123; 321.124; 321.126; 321.127; 321.128; 321.129; 321.134; 321.135; 321.153; 321.157; 321.159; 321.162; 321.166; 321.167; 321.170; 321.171; 321.466; 321.515; 321.519; 321H.4A; 321I.4; 321L.1; 322.2; 322.3; 322C.2; 322G.12; 326.15; 423.26; 435.1; 435.26; 435.26A; 435.26B; 435.27; and 633A.4604; and chapters 322, 554D and 809A.

Public Hearing

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

October 24, 2024	Microsoft Teams Link
9 to 9:30 a.m.	Or dial: 515.817.6093
	Conference ID: 231 627 177

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:

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Purpose and Summary

The purpose of proposed Chapter 400 is to provide the process allowing motor vehicle owners to register and title their vehicle in Iowa, which is required for a vehicle to be legally operated on Iowa roadways. The rules provide clarity to county treasurers, law enforcement, and the public on the application and issuance process for vehicle registration and title, as well as outlining any exemptions or specific requirements to title and register a vehicle in Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons who register and title a motor vehicle in Iowa, as required by the Iowa Code, will bear the costs of the proposed rule. Fees for registration and title are set by the Iowa Code.

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

Persons who register and title a motor vehicle in Iowa will benefit from having a consistent framework for the application, issuance and revocation of vehicle registration and certificates of title and knowing if any exemptions from registration or title 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:

In calendar year 2023, the Department registered approximately 4.6 million vehicles (including trailers, which are required to be registered along with motor vehicles) and collected approximately $711 million in fees for the Road Use Tax Fund. Additionally, Iowa county treasurers collected $37.8 million in fiscal year 2023 for county general funds through administration of this chapter.

- 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 reader-friendly version of the information the public, county treasurers, and law enforcement rely on to understand vehicle registration and title requirements in Iowa.

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 require the Department to implement vehicle registration and titling procedures.

County treasurers process the bulk of vehicle registration and title issuance transactions, and they are required to perform these duties by statute. Counties do not incur additional costs beyond what is required by the underlying statutes.

- Anticipated effect on state revenues:

None 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 processes for registering and titling vehicles. The costs required by the proposed chapter are the same as the costs required by the underlying statutes.

The cost of inaction is the inability or diminished ability of the Department to register and title vehicles in Iowa and inconsistent procedures for vehicle titling and registration performed by Iowa county treasurers. It would be difficult to implement and enforce consistent processes for the 4.6 million registered vehicles processed by 99 county treasurer locations without the requirements outlined in this chapter.

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 available for the application and issuance of vehicle registration and certificates of title, which is a statutory requirement for vehicles to legally be operated on Iowa roadways unless a specific exception applies. The rules simply interpret and clarify the underlying statutory requirements applicable to motor vehicle owners, trailer owners, county treasurers, and the Department.

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 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 small business impact beyond what was already anticipated in the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 400 and adopt the following **new** chapter in lieu thereof:

CHAPTER 400
VEHICLE REGISTRATION AND CERTIFICATE OF TITLE

761—400.1(307,321,322,554) Definitions. The definitions in Iowa Code section 321.1 are hereby made part of this chapter. In addition, the following words and phrases, when used in Iowa Code chapter 321 or this chapter, shall have the meanings respectively ascribed to them, except when the context otherwise requires.

"Certificate of title" means a document issued by the appropriate official that contains a statement of the owner's title, the name and address of the owner, a description of the vehicle, a statement of all security interests and additional information required under the laws or rules of the jurisdiction in which the document was issued, and that is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms "title certificate," "title only," and "title" are synonymous with the term "certificate of title."

"Dealer's or manufacturer's inventory" means all vehicles owned by a dealer that are being held for sale or trade and for which the dealer has a duly assigned ownership document as required by Iowa Code section 321.45.

"Driverless-capable vehicle" means the same as defined in rule 761—380.2(321).

"Electric vehicle annual registration fee" means an annual registration fee for a battery electric or plug-in hybrid electric motor vehicle as provided in Iowa Code sections 321.116 and 321.117. Unless otherwise provided, for purposes of this chapter, any reference to a registration fee, a penalty, or a registration fee and penalty shall also include an annual registration fee, penalty, or registration fee and penalty for a battery electric or plug-in hybrid electric motor vehicle.

"Electronic" means as defined in Iowa Code section 554D.103.

"Electronic lien and title" or *"ELT"* means an information technology system authorized by the department for the purpose of providing an electronic record of the certificate of title to a security interest holder in order to subject a vehicle to an electronic lien and to allow for the submission and

receipt of forms related to security interests through electronic means as described in Iowa Code section 321.50.

"Electronic record" means as defined in Iowa Code section 554D.103.

"Electronic signature" means as defined in Iowa Code section 554D.103.

"End user" means a person or entity that directly uses the services of an ERT service provider to submit an electronic application for certificate of title or registration of a vehicle.

"ERT" means the electronic registration and title program.

"ERT service provider" means a person or entity authorized by the department to submit electronic applications for certificate of title or registration of a vehicle on behalf of an end user to a county treasurer.

"Farm trailer" means a trailer used exclusively by a farmer in the conduct of the farmer's agricultural operation. The term shall not include a "semitrailer."

"Final-stage manufacturer" means as defined in Iowa Code section 322.2.

"Half-year fee" means the first semiannual installment of an annual registration fee under Iowa Code section 321.134(2) for a heavy weighted truck when the registration month is December but does not include an electric vehicle annual registration fee. The term "half-year registration" is synonymous with the term "half-year fee."

"Hearse" means a motor vehicle used exclusively to transport a deceased person.

"Lien" means an interest in a vehicle that secures payment or performance of an obligation. The term "security interest" is synonymous with the term "lien."

"Manufacturer's certificate of origin" means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named and that the transfer is the first transfer of the vehicle in ordinary trade and commerce.

1. The terms "manufacturer's statement," "importer's statement or certificate," "MSO" and "MCO" are synonymous with the term "manufacturer's certificate of origin."

2. In addition to the requirements of Iowa Code section 321.45(1), the certificate shall contain a description of the vehicle that includes the make, model, style, vehicle identification number, and, if a motorized bicycle, the maximum speed.

3. For 1992 and subsequent model year vehicles, the form used for manufacturers' certificates of origin shall conform with the American Association of Motor Vehicle Administrators (AAMVA) Appendix B: Recommended Specifications and Security Features for a Manufacturers Certificate of Origin effective 2023. This requirement does not apply to trailer-type vehicles.

"Model year," except where otherwise specified, means the year certified by the manufacturer. For purposes of titling and registration, the model year shall advance one year each January 1.

"Registered" means that the appropriate registration fee has been paid for a vehicle and a registration receipt evidencing payment has been issued to the owner.

"Registration receipt" means a document issued to the owner of a vehicle by the appropriate agency whose duty it is to register vehicles, that contains the name and address of the owner and a description of the vehicle, and that is issued to the owner when the vehicle has been registered. The terms "registration card" and "registration certificate" are synonymous with the term "registration receipt."

"Security interest" means an interest in a vehicle that secures payment or performance of an obligation. The term "lien" is synonymous with the term "security interest."

"Signature" unless otherwise specified shall include a signature in ink or an electronic signature as provided in Iowa Code section 554D.103(8). A requirement to sign a document unless otherwise specified shall allow for a signature in ink or an electronic signature.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"*; 321.1; 321.8; 321.20 as amended by 2024 Iowa Acts, House File 674, section 2; 321.23; 321.24; 321.40; 321.45; 321.50; 321.116; 321.117; 321.123; 321.134; 321.157; and 322.2; and chapter 554D.

761—400.2(307,321,322) Vehicle registration, certificate of title, receipt, validation sticker and registration plates—general provisions.

400.2(1) *Vehicles subject to registration.*

a. A vehicle subject to registration under the laws of Iowa shall be required to be registered from the time the vehicle is first operated or moved upon a highway in this state.

b. The department shall not register the following:

(1) An all-terrain vehicle.

(2) A vehicle built on or after January 1, 1968, unless it was manufactured primarily for use on public streets, roads and highways except a vehicle operated exclusively by a person with a disability, which may be registered if the department, in its discretion, determines that the vehicle is not in an unsafe condition. This subparagraph does not apply to a vehicle that is specially constructed, a reconstructed street rod or a replica vehicle as defined in Iowa Code section 321.1.

400.2(2) *Vehicles exempt from titling or registration.* No certificate of title will be issued for a vehicle that is exempt from the titling or registration provisions of Iowa Code chapter 321 unless issuance of a certificate of title is specifically authorized in Iowa Code chapter 321 or as provided in 761—Chapter 410.

400.2(3) *Issuance of a certificate of title, receipt, validation sticker and registration plates upon payment of registration fees.* Except as otherwise provided in Iowa Code chapter 321 or this chapter, the current year registration fee and any delinquent registration fees and penalties, if any, shall be paid prior to issuance of a certificate of title, receipt, validation sticker and registration plates.

400.2(4) *Trailers with an empty weight of 2,000 pounds or less.* No certificate of title will be issued for trailers with an empty weight of 2,000 pounds or less.

400.2(5) *Vehicles owned by the government.* A certificate of title shall be issued for a vehicle owned by the government that is otherwise required to be titled. However, vehicles owned by the government are exempted from registration and titling fees.

400.2(6) *Vehicles leased by the government.* Vehicles leased by the government for a period of 60 days or more are exempted from payment of registration fees. A copy of the lease agreement, certificate of lease, or other evidence that the vehicle is being leased by the government shall be required. However, the lessor is not exempted from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321 and these rules, including payment of the appropriate certificate of title fee.

400.2(7) *Private school buses, fire trucks, authorized emergency vehicles, and transit buses.* In accordance with Iowa Code sections 321.18, 321.19 and 321.22, private school buses, fire trucks not owned or operated for a pecuniary profit, certain authorized emergency vehicles owned and operated by nonprofit organizations, and urban and regional transit system buses are exempt from the payment of registration fees. However, these vehicles are not exempt from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321, including payment of the appropriate certificate of title fee.

400.2(8) *Plates for exempted vehicles.* The department, upon application, issues plates for exempted vehicles under subrules 400.2(5), 400.2(6) and 400.2(7) in accordance with the requirements in Iowa Code sections 321.18, 321.19, 321.22 and 321.170, as applicable, and this chapter. As authorized by Iowa Code sections 8A.361 and 8A.362(7), the department of administrative services may order the issuance of regular registration plates for exempted vehicles assigned to the department of administrative services. The following process applies to regular registration plates issued to an exempted vehicle under Iowa Code section 321.19(1)*"c"*:

a. The requesting agency under Iowa Code section 321.19(1)*"c,"* other than the department of administrative services, files an application with the department in the form and manner prescribed by the department and certifies the authorized purpose for which issuance of the registration plates for an exempted vehicle is requested.

b. The plates shall be assigned to a specific vehicle. The requesting agency shall notify the department within ten days of assigning the plates to another vehicle.

c. In accordance with Iowa Code section 321.19, the department maintains separate records of regular registration plates issued to exempted vehicles, which are available in a manner that allows law enforcement and other persons authorized by Iowa Code section 321.11(3) to query vehicle and owner information by the registration plate number.

d. If a vehicle to which regular registration plates are assigned under this subrule is no longer used for an exempted purpose, the requesting agency shall surrender the plates to the department and the department will cancel the plates. The department may revoke the plates and require the agency to surrender the plates pursuant to Iowa Code section 321.103 if the department determines use of the plates is no longer authorized.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.18 through 321.22, 321.24, 321.34, 321.103, 321.123, 321.170, 321I.4, and 322C.2(19).

761—400.3(321,322,423) Application for certificate of title or registration for a vehicle.

400.3(1) *Application form.* To apply for a certificate of title or registration for a vehicle, the owner of the vehicle shall complete an application form prescribed by the department, which may be electronic. In addition to the information required in Iowa Code section 321.20, the application shall include:

a. The plate number and plate type if the owner has registration plates that have been assigned to the owner and transferred to the vehicle.

b. The vehicle owner's month of birth, if applicable, subject to the following:

(1) If the vehicle is owned by one individual, the individual's month of birth determines the registration year.

(2) If the vehicle is owned by two or three individuals, the county treasurer selects the month of birth of one of the individuals to determine the registration year.

(3) If the vehicle is owned by a partnership, corporation, association, or governmental subdivision, the county treasurer selects the month to determine the registration year.

c. The model year of the vehicle.

d. The purchase or acquisition date and the purchase price.

e. The vehicle color. If the color is not already listed in the department's vehicle registration and titling system, then the county treasurer selects the color that most closely matches the application.

f. The date the vehicle was brought into Iowa, if the vehicle was registered in a foreign jurisdiction.

g. The owner's signature. If there are two or more owners, all owner signatures. The definition of "signature" in Iowa Code section 9B.2(15) applies.

h. If the vehicle has been sold to the owner by a dealer as defined in Iowa Code section 321.1 and the dealer collects the fees and forwards the application form under Iowa Code section 321.25(1), a dealer certification containing the dealer's number and signed by the dealer or an authorized representative of the dealer, including signature by electronic means, containing the following information:

(1) Sale price of the vehicle.

(2) The amounts allowed for property traded in.

(3) Nontaxable charges and rebates.

(4) The tax price of the vehicle.

(5) The date that a "Registration Applied For" card was issued, and the registration fee collected.

i. If an application is being made to lower the tonnage on any motor truck, bus or truck tractor, the county treasurer may require a copy of a stamped weigh ticket issued by any public scale.

j. If leased, the lease price of the vehicle and the lessor's leasing license number if the entity is required to have a leasing license. A federal employer identification number is not required to be listed for an entity with a leasing license number.

k. If requested by the department, whether the vehicle is a driverless-capable vehicle as defined in rule 761—380.2(321). The department may also use a separate form to assess the vehicle's driverless capability.

400.3(2) *Information about owner, lessee and primary user.* A firm, association, corporation, or trust that is not required to have a federal employer identification number shall disclose the social security number, Iowa driver's license number or Iowa nonoperator's identification card number of an authorized representative of the firm, association, corporation, or trust. The authorized representative of a trust is the trustee unless otherwise specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604.

400.3(3) *Affidavit of correction.* As provided in Iowa Code section 321.23A, the county treasurer or the department may accept an affidavit of correction on a form prescribed by the department.

a. The affidavit may be used only to correct those errors, erasures or alterations listed on the affidavit.

b. The affidavit must be signed by the parties that made the error, erasure or alteration.

c. The affidavit must be surrendered with the document that contains the error, erasure or alteration.

d. The affidavit may be accepted to correct errors, erasures or alterations on either an Iowa title or a foreign title.

400.3(4) *Electronic applications.* The department will authorize electronic submission of applications for certificate of title and registration by an authorized ERT service provider pursuant to the authority in Iowa Code section 321.20(2). To be authorized to serve as an ERT service provider, the ERT service provider must comply with the department's ERT policy and execute a provider agreement with the department.

a. An application submitted electronically must meet all legal requirements for the applicable transaction, and no requirement is excused or waived as a result of submitting the transaction electronically. However, wherever a signature is required, the signature may be an electronic signature. Wherever an electronic solution approved by the department requires the submission of scanned documents, the scanned documents shall be of a quality and resolution determined by the department. The department and any county treasurer processing an application retain the right under Iowa Code sections 321.13 and 321.30 to determine the genuineness, regularity, and legality of the application and any scanned document submitted as part of the application and may withhold approval of the application and require presentation of the original document whenever the scanned document is of insufficient quality, content, or appearance. An end user shall retain all such documents for a period of six months from the date of submission of the application by the end user and make all such documents available for inspection by the department upon request. Anything in this paragraph notwithstanding, lessors required to retain a damage disclosure statement under Iowa Code section 321.69(4), and authorized vehicle recyclers licensed under Iowa Code chapter 321H and motor vehicle dealers licensed under Iowa Code chapter 322 required to retain damage disclosure statements under Iowa Code section 321.69(6) shall retain the original document for a period of five years from the date of the statement as required therein.

b. An end user that electronically submits an application on behalf of the owner or owners to whom the end user is transferring or delivering the vehicle shall disclose to all owners or, if there is more than one owner and the title application uses "or" between the names of the owners, at least one owner, that the application will be submitted electronically and shall obtain written authorization from all owners, or if there is more than one owner and the title application uses "or" between the names of the owners, written authorization from at least one owner, to submit the application on the owner's behalf. The written authorization shall be retained by the end user for a period of six months from the date of application and be made available for the department's inspection upon request. Before submitting the application, the end user shall review and disclose to the owner or owners all details of the application and provide a complete, true, and accurate copy of the application to the owner or

owners immediately after submitting the application. The written authorization shall be submitted in the form and manner required by the department.

This rule is intended to implement Iowa Code sections 321.1; 321.8; 321.20 as amended by 2024 Iowa Acts, House File 674, section 2; 321.23 through 321.26; 321.31; 321.34; 321.46; 321.105A; 321.109; 321.122; 321.515; 321.519; and 423.26.

761—400.4(321,322,633A) Supporting documents and processing requirements.

400.4(1) *New vehicle.* An application for a new vehicle must be accompanied by a manufacturer's certificate of origin, properly assigned to the applicant. A manufacturer's certificate of origin is not acceptable if the assignment to the applicant is made by any person other than the manufacturer, importer or distributor, a licensed motor vehicle dealer franchised to sell that line-make of vehicle, or a final-stage manufacturer motor vehicle dealer licensed under rule 761—425.11(322).

a. The first person, including a dealer not franchised to sell that line-make of vehicle, who is assigned the manufacturer's certificate of origin shall obtain a certificate of title and register the vehicle.

b. An uncanceled security interest noted on the reverse side of a manufacturer's certificate of origin (MCO) shall be noted as a separate security interest on the certificate of title, in addition to any security interest acknowledged by the applicant, unless the security interest acknowledged by the applicant is the same as the one noted on the reverse side of the MCO.

c. For a 1980 or subsequent model year vehicle manufactured by a person other than the original manufacturer, both the original manufacturer's certificate of origin and the final-stage manufacturer's certificate of origin shall be submitted if the vehicle's original line-make is changed by the final-stage manufacturer. The final-stage manufacturer's certificate of origin shall contain all assignments or reassignments of ownership of the vehicle and list the original manufacturer's vehicle identification number. The face of the original manufacturer's certificate of origin is to be stamped in bold type with the statement: "Final-stage manufacturer's MCO has been issued on this vehicle."

d. If a final-stage manufacturer is a motor vehicle dealer licensed under rule 761—425.11(322), the final-stage manufacturer may reassign the original manufacturer's certificate of origin or an incomplete or intermediate MCO to the retail buyer.

400.4(2) *Used vehicle registered or titled in this state.* The last issued certificate of title, properly assigned to the applicant, shall be submitted, unless the applicant is an insurer applying for a salvage certificate of title under Iowa Code section 321.52(4). An uncanceled security interest noted on the face of the certificate of title shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant. If the vehicle is not subject to titling provisions, the last issued registration receipt or bill of sale, properly assigned to the applicant, shall be submitted.

400.4(3) *Used vehicle from a foreign jurisdiction.* If the vehicle was subject to the issuance of a certificate of title in the foreign jurisdiction, the certificate of title issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted unless the applicant is an insurer applying for a salvage certificate of title under Iowa Code section 321.52(4).

a. A security interest, noted on the face of the foreign certificate of title, which has not been canceled, shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant.

b. A certificate of title issued in a foreign jurisdiction may be assigned to a motor vehicle dealer in another jurisdiction, and the dealer may reassign the certificate of title to the applicant. Unless a regulation of the foreign jurisdiction provides otherwise, an assignment or reassignment form issued by any foreign jurisdiction may be used with any foreign title to complete an assignment or reassignment of ownership from a foreign motor vehicle dealer to the applicant, provided the ownership chain is complete.

c. An Iowa licensed motor vehicle dealer who acquires a vehicle registered in a foreign jurisdiction may reassign the foreign certificate of title to the applicant as provided in Iowa Code section 321.48(2) and rule 761—400.24(321,322).

d. A person who registers a foreign vehicle under Iowa Code section 321.23(3) will be issued a nontransferable-nonnegotiable registration. To transfer ownership of the vehicle, the owner must first obtain an Iowa certificate of title except as provided in Iowa Code section 321.23(3) when ownership is transferred to an Iowa licensed motor vehicle dealer or an insurance carrier authorized to do business in Iowa.

e. If the vehicle was not subject to the issuance of a certificate of title but was registered in the foreign jurisdiction, the registration document issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted.

(1) If the foreign registration document is not issued in the applicant's name and does not contain an assignment of ownership form, a bill of sale conveying ownership from the owner as listed on the foreign registration document to the applicant shall be submitted with the foreign registration document.

(2) Upon receipt of the foreign registration document, the county treasurer shall issue a nontransferable—nonnegotiable registration unless the foreign registration document has been approved by the department.

(3) Acceptance of the foreign registration document is determined by the department on an individual basis, if the county treasurer of the county where the certificate of title is to be issued cannot determine whether the document is acceptable.

f. If a trailer weighing 2,000 lbs. or less is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, a bill of sale conveying ownership to the applicant, if acquired by a resident from a nonresident, or an affidavit of ownership signed by the applicant, if the applicant is establishing residence in this state, shall be submitted.

g. If a motor vehicle is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, the bonding procedures as provided in Iowa Code section 321.24 shall be followed.

400.4(4) *Used vehicle acquired by a resident of this state from a federal government agency.* If the vehicle was acquired from an agency of the federal government, the applicant shall surrender the government bill of sale, General Services Administration Form 97, or Internal Revenue Service Form 2435, properly assigned to the applicant.

400.4(5) *Manufactured or mobile home.* If the vehicle described on the application is a manufactured or mobile home with an Iowa title, the applicant shall submit a tax clearance form to show that no taxes are owing, unless the title has been issued to a manufactured or mobile home retailer licensed under Iowa Code chapter 103A. The form may be obtained by any owner of record of the manufactured or mobile home from the county treasurer.

400.4(6) *Vehicle acquired by a resident of this state by operation of law.* Iowa Code section 321.47 applies to a vehicle acquired by the applicant by operation of law under the conditions specified in Iowa Code section 321.47. Acceptable proof of ownership includes but is not limited to a foreclosure sale affidavit, artisan's or storage lien affidavit, affidavit of death testate or intestate, abandoned vehicle sales receipt, peace officer's bill of sale or court order.

400.4(7) *Foreign ownership document issued in a language other than English.* The county treasurer may require an applicant to produce a written English translation of a foreign ownership document or other supporting document issued in a language other than English.

400.4(8) *Titles from foreign jurisdictions.*

a. Except as provided in paragraph 400.4(8)*"b,"* the department will not accept a certificate of title issued by a foreign jurisdiction if the title or assignments thereon contain an alteration or erasure.

b. An affidavit of correction form issued by a foreign jurisdiction that corrects the certificate of title issued by the same foreign jurisdiction will be accepted only for the reason listed on the affidavit

of correction form. However, acceptance of an affidavit of correction form that corrects an odometer statement or a designation will be determined by the department on an individual basis.

400.4(9) *Applications in the name of trusts.* An application in the name of a trust must be accompanied by a copy of all documents specifying the required signatories of the trust or by the certification of trust as defined in Iowa Code section 633A.4604. A certification of trust must meet the requirements of Iowa Code section 633A.4604, including but not limited to providing the names of all the currently acting trustees. If there are two or more currently acting trustees, the certification of trust must state whether the trustees may act individually, whether the trustees must act by majority decision or whether the trustees must act by unanimous decision. If the certification of trust does not meet said requirements, the certification of trust will be considered invalid for the purposes of the application. Each signature on the application shall be followed by the words "as trustee."

400.4(10) *Driverless-capable vehicles.* If an application is made for a driverless-capable vehicle, the department may require the application to be accompanied by the operational design domain.

This rule is intended to implement Iowa Code sections 321.20 as amended by 2024 Iowa Acts, House File 674, section 2; 321.23; 321.24; 321.30; 321.31; 321.45 through 321.50; 321.67; 321.515; 321.519; 322.3; and 633A.4604.

761—400.5(321) Where to apply for registration or certificate of title.

400.5(1) Application shall be made to the department's motor vehicle division for the following:

a. Titling and registration of vehicles owned by the government. This requirement does not apply to manufactured or mobile homes subject to a public bidder sale as explained in Iowa Code section 321.46(2).

b. Registration of vehicles exempted under Iowa Code section 321.19.

c. Registration of private school buses.

d. Registration of vehicles under the provisions of Iowa Code section 321.23(4), relating to restricted-use vehicles.

e. Registration of apportioned vehicles under Iowa Code chapter 326. More information contained in 761—Chapter 500.

400.5(2) Application for a certificate of title for a vehicle subject to apportioned registration under Iowa Code chapter 326 may be made to either the county treasurer or to the department's motor vehicle division.

This rule is intended to implement Iowa Code sections 321.18; 321.91; 321.20 as amended by 2024 Iowa Acts, House File 674, section 2; 321.21; 321.22; 321.23; 321.46(2); and 321.170.

761—400.6(307,321) Addresses, information and forms. Assistance under this chapter is available as follows:

400.6(1) Information and forms for vehicle registration, certificate of title, or other procedures covered under Iowa Code sections 321.18 through 321.173 may be obtained from the county treasurer or by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at Iowa Department of Transportation, 6310 SE Convenience Boulevard, Ankeny, Iowa 50021; by telephone at 515.237.3110; or on the department's website at www.iowadot.gov.

400.6(2) Information for investigations under this chapter may be obtained from the Bureau of Investigation and Identity Protection, Iowa Department of Transportation, 6310 SE Convenience Boulevard, Ankeny, Iowa 50021; or on the department's website at www.iowadot.gov/biip/home.

This rule is intended to implement Iowa Code section 307.12(1)*"j"* and section 321.20 as amended by 2024 Iowa Acts, House File 674, section 2.

761—400.7(307,321) Information appearing on title or registration. In addition to the requirements of Iowa Code sections 321.24, 321.52, 321.69, 321.71 and 322G.12, a certificate of title or registration receipt or both shall contain the following information when applicable:

400.7(1) Registration expiration date.

400.7(2) Registration month, as explained in rule 761—400.3(321).

400.7(3) Description of the vehicle, including the following items. These items may be represented on the title and registration by code letters or numbers.

a. Vehicle identification number.

b. Type, such as automobile, trailer, truck, etc.

c. Make, model, and model year.

d. Color.

e. Weight and registered gross weight.

f. The square footage of floor space of a manufactured or mobile home or travel trailer as determined by measuring the exterior.

g. The odometer mileage and whether the mileage is "actual," "not actual," or "exceeds mechanical limits."

400.7(4) Previous Iowa title number or the name of the foreign jurisdiction if the previous title is a foreign title.

400.7(5) Plate number.

400.7(6) List price or value.

400.7(7) Penalties and title, registration and security interest receipt numbers.

400.7(8) The following phrase stamped on the reassignment portion of a manufactured or mobile home title: "Dealer reassignment not authorized on this certificate of title."

400.7(9) The designation required by 761—Chapter 405. A vehicle may have no more than one designation.

400.7(10) Full legal name of owner.

a. When the name of an owner changes from that which is printed on the title or registration issued to the owner, the owner shall apply for a replacement registration receipt and submit to the county treasurer one of the following documents:

(1) Court order for a name change. The court order must contain the full name, date of birth, and court seal.

(2) Divorce decree.

(3) Marriage certificate.

b. This subrule does not apply to owners that are firms, associations, corporations, or trusts.

400.7(11) Driverless-capable vehicle indicator, which may also indicate whether operational restrictions exist.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.24, 321.31, 321.40, 321.45, 321.52, 321.69, 321.71, 321.124, 321.515, 321.519 and 322G.12.

761—400.8(307,321) Release form for cancellation of security interest.

400.8(1) A secured party may note the cancellation of a security interest on any of the following:

a. Form 411168 (Cancellation of Security Interest).

b. The secured party's letterhead if the written statement is notarized and contains the same information as Form 411168.

c. The certificate of title containing the cancellation pursuant to Iowa Code section 321.50(5) *"a."*

400.8(2) The secured party shall forward the cancellation form or statement to the county treasurer or to the department if the title was issued by the department. The county treasurer or department may accept facsimiles or photocopies. A separate form or statement is required for each vehicle.

This rule is intended to implement Iowa Code section 307.12(1)*"j"* and section 321.50 as amended by 2024 Iowa Acts, House File 674, section 16.

761—400.9(307,321) Assignment of security interest. A security interest noted on a certificate of title may be assigned to another secured party without losing the seniority of the security interest by complying with the procedure in Iowa Code section 321.50 or with the following procedure:

400.9(1) *Notice of assignment.* In the cancellation portion of the title certificate, the secured party listed on the title certificate shall make the notation "Assigned to (name of assignee)" where the security interest is noted and include the date, name of secured party and signature of the person noting the assignment.

400.9(2) *Application for notation of security interest.* The assignee shall complete, and sign in the space where the signature of the owner is ordinarily required, Form 411046 (Application for Notation of a Security Interest).

400.9(3) *Submission of documents to county treasurer.* The certificate of title, application for notation of security interest and appropriate notation fee shall be submitted to the county treasurer.

a. If there are additional security interests noted on the certificate of title, the seniority of the assignee's security interest may be preserved by issuance of a certificate of title in lieu of the original, on which the assignee's security interest will be noted in the same seniority as the assignor's security interest.

b. A receipt for notation of security interest form processed by a county treasurer shall list the following:

(1) A new receipt number.

(2) The original notation date.

(3) The words "by assignment" following the name of the assignee.

This rule is intended to implement Iowa Code section 307.12(1)*"j"* and section 321.50 as amended by 2024 Iowa Acts, House File 674, section 16.

761—400.10(307,321,809A) Sheriff's levy, restitution lien, and forfeiture lien noted as security interests.

400.10(1) A sheriff's levy may be noted as a security interest on a certificate of title by completing Form 411046. The sheriff or sheriff's deputy shall sign the application in the space where the signature of the owner is ordinarily required and submit with the appropriate notation fee to the county treasurer.

400.10(2) A restitution or forfeiture lien may be noted as a security interest on a certificate of title by completing Form 411046. The county attorney or the county attorney's designee shall sign the application in the space where the signature of the owner is ordinarily required and submit to the county treasurer.

This rule is intended to implement Iowa Code section 307.12(1)*"j"*; section 321.50 as amended by 2024 Iowa Acts, House File 674, section 16; and chapter 809A.

761—400.11(307,321) Replacement certificate of title. Application for a replacement certificate of title shall be made on Form 411033 (Application for Replacement of Iowa Certificate of Title to a Motor Vehicle). All living owners of the vehicle as listed on the certificate of title shall sign Form 411033 unless the application is made by a lienholder. If all owners are deceased, a court-appointed executor or administrator may complete, sign, and submit Form 411033 along with a certified copy of the court order or the letter of appointment confirming executor or administrator status.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.42.

761—400.12(321) Bond required before title issued.

400.12(1) *Procedures.* An applicant for a certificate of title who cannot provide the supporting documents required in rule 761—400.4(321) is required to comply with the procedure under Iowa Code section 321.24(11) as amended by 2024 Iowa Acts, House File 2316, section 1, in addition to this rule.

a. The applicant shall submit a bond application and supporting material to the motor vehicle division on a form prescribed by the department.

b. The department will search the department's vehicle title and registration system to determine if there is an owner of record or security interest for the vehicle and if the vehicle has been reported stolen or embezzled.

(1) If an owner of record is found, the department will mail a release letter by first-class mail to the owner of record at the owner's last-known address notifying the owner of the right to claim ownership of the vehicle or to waive all rights or claims.

(2) If the owner of record makes a claim, the motor vehicle division will review the claim.

(3) If the department receives no response from the owner of record within ten days after the date of mailing, the owner of record waives all rights or claims; or if the letter is returned as undeliverable, the department will continue processing the bond application.

(4) If one or more security interests are found and can be identified, the department will send a certified letter and application for cancellation of security interest to a lienholder at the last-known address of that lienholder. If a lienholder releases the lien, the department will continue to process the application. If a lienholder responds with a request to claim the vehicle, the department will review the claim. If the certified letter is returned as undeliverable, the department will continue to process the application.

(5) If one or more security interests is found but a lienholder cannot be identified because the record is held by another jurisdiction, the department will return the application to the applicant and inform the applicant which jurisdiction holds the record(s) to the vehicle.

c. If the department determines that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department is authorized to determine the current value of the vehicle and notify the applicant to deposit cash or file a surety bond with the department in an amount equal to one and one-half times the current value of the vehicle.

d. A motor vehicle investigator of the department may verify information in the application, examine the vehicle, and authorize the county treasurer to issue a title for and register the vehicle. An investigator may require the applicant to drive the vehicle to and from the examination location upon completing Form 420054, Affidavit to Operate a Vehicle for Inspection. Should the vehicle not meet the equipment requirements of Iowa Code chapter 321, the investigator may authorize the county treasurer to issue a title and registration but instruct the county treasurer to immediately suspend the registration until such time as the vehicle meets these equipment requirements. If applicable, the investigator will also affix an assigned vehicle identification number to the vehicle.

400.12(2) *Denial.* If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, or that there is an unsatisfied security interest, then the department will not authorize issuance of a certificate of title or registration receipt and will notify the applicant in writing of the reason(s).

400.12(3) *Junked vehicle.* A certificate of title will not be reinstated for a vehicle that has been issued a junking certificate unless the junking certificate was issued in error, as explained in rule 761—400.23(321), or the vehicle qualifies as an antique vehicle under Iowa Code section 321.115(1).

This rule is intended to implement Iowa Code section 321.24 as amended by 2024 Iowa Acts, House File 2316, section 1, and section 321.52.

761—400.13(307,321) Authorized signatories for a transfer of ownership. The following procedures shall apply for all titling and registration purposes:

400.13(1) *Transfer of vehicle owned by two or three persons.* If the names of the owners of a vehicle on the certificate of title, the manufacturer's certificate of origin, or the registration receipt for a vehicle that does not require a title are joined by the word "or," as in "John Doe, Jane Doe or Mary Doe," then the signature of any of these owners is sufficient to transfer ownership or to junk the vehicle. In all other cases the signature of each named owner is required.

400.13(2) *Assignment of title to two or three persons.* If a certificate of title, a manufacturer's certificate of origin, or a bill of sale for a vehicle that does not require a title is assigned to two or three persons with their names joined by the word "or," as in "John Doe, Jane Doe or Mary Doe," then a certificate of title or registration receipt for a vehicle that does not require a title may be issued to any one of these persons, or to any two or all three of these persons with their names joined by the word "or." However, a certificate of title or registration for a vehicle that does not require a title shall only be issued to persons who have signed the application for title and registration.

400.13(3) *Organizational ownership.*

a. When a vehicle is owned by a partnership, corporation, association, governmental unit, or private organization, the signature of its authorized representative is required.

b. When a vehicle is owned by a trust, the title shall be accompanied by a copy of all documents creating or otherwise affecting the trust or by the certification of trust as defined in Iowa Code section 633A.4604.

(1) The certification of trust may be signed by any trustee or the attorney for any trustee.

(2) The title shall be signed by the number of trustees as specified in the trust agreement, and the transferor shall provide the department with the document or the certification of trust specifying the required signatories for the trust.

(3) If a certification of trust is provided, one of the following shall apply:

1. Any currently acting trustee may sign the title if the certification of trust states that such trustee may act individually.

2. A majority of the trustees must sign the title if the certification of trust states that the trustees must act by majority decision.

3. All currently acting trustees must sign the title if the certification of trust states that the trustees must act by unanimous decision.

(4) A certification of trust must meet the requirements of Iowa Code section 633A.4604, including but not limited to providing the names of all the currently acting trustees. If there are two or more currently acting trustees, the certification of trust must state whether the trustees may act individually, whether the trustees must act by majority decision or whether the trustees must act by unanimous decision. If the certification of trust does not meet said requirement, the certification of trust will be considered invalid for the purposes of the transfer.

(5) Each signature on the title shall be followed by the words "as trustee."

400.13(4) *Death with a will.* When ownership is transferred according to a decedent's will, a certified copy of the court order or the letter of appointment appointing the person assigning the title as executor of the will shall be required.

400.13(5) *Death without a will.* When ownership is transferred from a decedent without a will and there is no administration of the estate, a notarized affidavit of death intestate form shall be required. When ownership is transferred from a decedent without a will but there is an administration of the estate, a copy of the court order or the letter of appointment appointing the person assigning the title as administrator shall be required.

400.13(6) *Power of attorney.* An attorney in fact may act for the living owner(s) if the appointment is shown on a power of attorney form. Power of attorney forms are available from the department, but other forms or a certified true copy may be accepted if they contain all necessary information.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.20, 321.24, 321.45, 321.47, 321.49, 321.67 and 633A.4604.

761—400.14(307,321) Cancellation of a certificate of title.

400.14(1) The department will cancel a certificate of title when authorized by any provision of law or when it has reasonable grounds to believe that the person holding the certificate of title, purportedly issued for the vehicle, has no immediate right to possession of the vehicle.

400.14(2) The decision to take any action regarding ownership of the vehicle for which the current title has been canceled will be determined after an investigation and recommendation by a motor vehicle investigator of the department.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.101.

761—400.15(307,321) Application for certificate of title or original registration for a vehicle that is specially constructed, reconstructed, a street rod or a replica vehicle.

400.15(1) *Definitions applicable to this rule.*

a. *"Ownership document for the vehicle"* means the certificate of title, the manufacturer's certificate of origin, the junking certificate, or other evidence of ownership acceptable to the department.

b. *"Ownership documents for essential parts"* means bills of sale for all essential parts used to construct or reconstruct the vehicle. Each bill of sale shall contain a description of the part, the manufacturer's identification number of the part, if any, and the name, address, and telephone number of the seller.

400.15(2) *Procedures.* This subrule describes the procedures for obtaining department approval to title and register a vehicle that is specially constructed, reconstructed, a street rod or a replica vehicle. The procedures described are in addition to the regular procedures for titling and registering a vehicle.

a. The applicant shall apply to the county treasurer for a certificate of title and registration. The county treasurer, upon receiving an application that indicates the vehicle is specially constructed, reconstructed, a street rod or a replica vehicle, shall forward the application to a motor vehicle investigator of the department.

b. The investigator will contact the applicant and schedule a time and place for an examination of the vehicle and the ownership documents. An investigator may require the applicant to drive or tow the vehicle to and from the examination location upon the applicant's completion of Form 420054. The applicant, when appearing with the vehicle for the examination, shall submit to the investigator the ownership document for the vehicle, the ownership documents for essential parts, and a weigh ticket indicating the weight of the vehicle. However, a weigh ticket is not required for motorcycles, autocycles, trucks, truck tractors, road tractors or trailer-type vehicles.

c. If the investigator determines that the vehicle complies with 761—Chapter 450, that the integral parts and components have been identified as to ownership, and that the application has been completed properly:

(1) The investigator will approve the application, affix to the vehicle an assigned vehicle identification number, and return the application and ownership documents to the applicant. The investigator will authorize the county treasurer to issue a title and registration for the vehicle.

(2) If the vehicle is a passenger-type motor vehicle, the department is authorized to determine its weight and value and if the vehicle is subject to the electric vehicle annual registration fee. The vehicle weight shall be fixed as provided in Iowa Code section 321.162. The weight and value shall constitute the basis for determining the annual registration fee under Iowa Code section 321.109, except as provided in Iowa Code section 321.113.

(3) The applicant shall then submit the ownership document for the vehicle to the county treasurer and continue with the regular title and registration process.

400.15(3) *Disapproval.* If the department determines that the vehicle does not comply with 761—Chapter 450, that the integral parts or components have not been identified as to ownership, or that the application has not been completed properly, then the department will not approve the vehicle for titling and registration.

400.15(4) *Model year.* The model year of a specially constructed or reconstructed motor vehicle is the year the vehicle is approved by the department as a specially constructed or reconstructed motor vehicle.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"*; 321.20; 321.23 as amended by 2024 Iowa Acts, House File 674, section 4; 321.24; 321.52; 321.109; 321.116; 321.117; and 321.162.

761—400.16(307,321) Temporary use of vehicle without plates or registration receipt.

400.16(1) *Temporary use of vehicle without plates.* A person who acquires a vehicle that is currently registered or in a dealer's inventory at the time of sale and who does not possess registration plates that may be assigned to and displayed on the vehicle may operate or permit the operation of the vehicle not to exceed 30 days from the date of purchase or transfer without registration plates displayed thereon, if ownership evidence is carried in the vehicle.

400.16(2) *Temporary use of vehicle without registration receipt.* A person who acquires a vehicle that is currently registered or in a dealer's inventory at the time of sale and who has possession of plates which may be attached to the vehicle acquired may operate or permit the operation of the vehicle not to exceed 45 days from the date of delivery or transfer without a registration receipt, if ownership evidence is carried in the vehicle.

400.16(3) *Ownership evidence.* Ownership evidence under this rule shall consist of the certificate of title or registration receipt, or a photocopy thereof, properly assigned to the person who has acquired the vehicle, or a bill of sale conveying ownership of the vehicle to the person who has acquired the vehicle. The ownership evidence shall be shown to any peace officer upon request.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.25 and 321.46.

761—400.17(307,321) Registration of motor vehicle weighing 55,000 pounds or more. When applying for registration or renewal of registration for a motor vehicle weighing 55,000 pounds or more, the owner shall present to the department or to the county treasurer proof of compliance with the federal heavy vehicle use tax required by 26 CFR Part 41 in effect as of April 1, 2021.

400.17(1) If the motor vehicle is used exclusively in the transportation of harvested forest products, the owner may present a written statement certifying that usage and the usage will be recorded.

400.17(2) If the motor vehicle is used primarily for farming purposes, the owner may present a written statement certifying that usage and the usage will be recorded.

This rule is intended to implement Iowa Code section 307.30 and section 321.20 as amended by 2024 Iowa Acts, House File 674, sections 1 and 2.

761—400.18(307,321) Registration of vehicles on a restricted basis. The department may register a vehicle that does not meet the equipment requirements of Iowa Code chapter 321, due to the particular use for which it is designed or intended, or which is a driverless-capable vehicle as defined in rule 761—380.2(321). Registration may be accomplished upon payment of the appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition.

400.18(1) Operation of the vehicle may be restricted to a roadway to which a specific lawful speed limit applies, as specified in Iowa Code section 321.285, if the maximum speed of the vehicle is such that the operation of the vehicle would impede or block the normal and reasonable movement of traffic.

400.18(2) The department may also restrict the operation of the vehicle to daylight hours if operation of the vehicle during hours other than daylight would create a hazard.

400.18(3) The department will issue a certificate of restriction in conjunction with registration of the vehicle, listing the restrictions that apply to the operation of the vehicle.

a. Registration laws applicable to motor vehicles in general shall also apply to vehicles registered under a restricted registration.

b. The department may approve exceptions to those equipment requirements of Iowa Code chapter 321 which cannot be met due to the particular use for which the vehicle is designed or intended.

400.18(4) When a vehicle registered in this state is modified to make it a driverless-capable vehicle as defined in rule 761—380.2(321), the person in whose name the vehicle is registered shall within 30 days notify the department upon a form prescribed by the department.

400.18(5) As provided in Iowa Code sections 321.515 and 321.519, the department may restrict the operations of a driverless-capable vehicle registered in this state or another state but that operates in this state. The restrictions may include but are not limited to the restrictions provided in subrules 400.18(1) and 400.18(2) and any operational restrictions based on a specific functional highway classification, weather conditions, days of the week, times of day, and other elements of operational design while the automated driving system is engaged. The department may require the vehicle owner to submit to the department the automated driving system's intended operational design domain for the vehicle on a form prescribed by the department. The department may evaluate the automated driving system's intended operational design domain for the vehicle. The department may establish additional operational restrictions to ensure safe operation of the vehicle. The department shall issue a certificate of restriction as provided in subrule 400.18(3) for any restriction established under this subrule, and the certificate shall be carried in the vehicle and made available for inspection by any peace officer upon request.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.1, 321.23(4), 321.30(2), 321.101(1), 321.515 and 321.519.

761—400.19(307,321) Transfers of ownership by operation of law. For a vehicle transferred by operation of law under Iowa Code section 321.47 that is not currently registered in this state, the registration fee and penalties due shall be computed as follows:

400.19(1) If the vehicle is ordered confiscated or forfeited by a court under a judgment or forfeiture, the fee shall be computed on the remaining unexpired months in the registration year from the date of the court order.

400.19(2) If the vehicle is sold on a peace officer's bill of sale as an unclaimed, stolen, embezzled or abandoned vehicle, or as a vehicle seized under Iowa Code section 321.84, the fee shall be computed on the remaining unexpired months in the registration year from the date of the sale.

400.19(3) If the vehicle is sold or transferred under a judgment or order entered by a court in a civil action or proceeding, or is transferred under any provision of Iowa Code section 321.47 which is not covered in this subrule, the fee shall include any delinquent fees which have accrued during previous registration periods and accrued penalties. Penalties shall continue to accrue until paid.

400.19(4) If the vehicle was last titled or registered in a foreign state, the fee shall be based on the month the vehicle becomes subject to registration in this state, except as provided in subrules 400.19(1) and (2) above.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.47, 321.105, 321.106, 321.134, and 321.135.

761—400.20(321,321H) Junked vehicle.

400.20(1) *Junking certificate.* The owner of a vehicle that is to be junked or dismantled shall obtain a junking certificate when required by Iowa Code section 321.52.

400.20(2) *Required verification.*

a. One of the following shall satisfy the required verification when a vehicle owner junks or dismantles a vehicle to a licensed vehicle recycler under Iowa Code section 321.52(2)*"b"* or 321H.4A(2)*"b"*:

(1) The owner or authorized representative provides information to the licensed vehicle recycler who acquires the vehicle, including, at a minimum, government-issued photo identification and verification of prior reporting to the National Motor Vehicle Title Information System (NMVTIS). For a subsequent transaction with the licensed vehicle recycler, the vehicle owner or authorized representative is not required to provide government-issued photo identification if the licensed vehicle

recycler has retained such information from a prior transaction. A licensed vehicle recycler is not required to report a vehicle verified under this subparagraph to the NMVTIS.

(2) The vehicle's owner is a licensed vehicle recycler or is the authorized representative of an established commercial or industrial business, operating from a fixed location, that is known to the licensed vehicle recycler to be regularly engaged in the junking or dismantling of vehicles or may reasonably be expected to produce vehicles for junking or dismantling and has entered into a written agreement with the licensed vehicle recycler confirming it has reported the vehicles to the NMVTIS. The written agreement shall, at a minimum, contain the owner's or authorized representative's name and address. A licensed vehicle recycler is not required to report a vehicle covered under an agreement under this subparagraph to the NMVTIS.

(3) The licensed vehicle recycler obtains the vehicle owner's or authorized representative's name and the vehicle identification number for the vehicle being junked or dismantled, and the vehicle recycler reports the vehicle to the NMVTIS.

b. A licensed vehicle recycler acquiring a vehicle as described under this subrule shall cooperate with a law enforcement agency during normal business hours when the agency has reason to believe that fraud has occurred in connection with the junking or dismantling of the vehicle. A law enforcement agency shall maintain the information as confidential and shall not disclose the information to a third party, except as may be necessary for the prosecution of a criminal violation.

400.20(3) *Retitling a junked vehicle.* The department may authorize issuance of a new certificate of title to the vehicle owner named on the junking certificate only if the department determines that the junking certificate was issued in error.

a. The reasons a junking certificate was issued in error include but are not limited to the following:

(1) The owner inadvertently surrendered the wrong certificate of title. The owner shall submit to the department a photocopy of the ownership document for each vehicle and a signed statement explaining the circumstances that resulted in the error.

(2) A junking certificate was obtained in error and the vehicle continues to be registered. The owner shall submit to the department a photocopy of the current registration and a signed statement explaining the circumstances that resulted in the error.

(3) The owner intended to apply for a salvage title under Iowa Code section 321.52(4) but inadvertently submitted an application for a junking certificate. The owner shall submit to the department a bill of sale or other documentation from the previous owner stating that the vehicle was rebuildable when purchased and a signed statement explaining the owner's original intention to obtain a salvage title. The department shall inspect the vehicle to verify the rebuildable condition.

b. If the department determines that the junking certificate was issued in error, the department will authorize the proper county treasurer to issue a certificate of title for the vehicle after payment by the owner of appropriate fees and taxes, including the return of any credit or refund for registration fees paid to the owner because of the error.

This rule is intended to implement Iowa Code sections 321.52 and 321H.4A.

761—400.21(307,321) Annual vehicle registration fee. The registration fee shall be computed on the month of purchase or transfer of a vehicle, except that the registration fee on a vehicle acquired outside of this state shall be based on the month that the vehicle was brought into Iowa.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.105 and 321.135.

761—400.22(307,321) Fees established by the department. If the department cannot obtain the retail list price and weight for a particular motor vehicle model registered under Iowa Code section 321.109(1), the department shall determine a list price and weight.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.109, 321.157 and 321.159.

761—400.23(321) Anatomical gift. Voluntary contributions collected by the county treasurer or the department to the anatomical gift public awareness and transplantation fund shall be a minimum of $1. The county treasurer and the department will remit contributions collected monthly to the funds specified in Iowa Code section 321.44A.

This rule is intended to implement Iowa Code section 321.44A.

761—400.24(307,321,322) Vehicles held for resale or trade by dealers. A motor vehicle dealer, as defined in Iowa Code section 321.1, is authorized to hold a motor vehicle for resale or trade under the following conditions.

400.24(1) *Assignment to dealer.* The certificate of title or manufacturer's certificate of origin for the vehicle shall be assigned to the dealer by the seller. The seller shall complete the assignment portion of the form, including the date of sale or trade and the name and address of the dealer, and shall sign the form. The date of the sale or trade shown in the assignment portion of the form shall be the date the dealer acquired the vehicle.

400.24(2) *New certificate of title and registration not required.*

a. A motor vehicle held for resale by a dealer or registered in Iowa at the time of sale or trade to a dealer may be held by that dealer without obtaining a new certificate of title or a new registration if the dealer holds for that vehicle a certificate of title or a manufacturer's certificate of origin properly assigned to the dealer.

b. A motor vehicle may also be held by a dealer without obtaining a new certificate of title or a new registration if the dealer has a title properly assigned to the dealer from a state that permits its titles to be reassigned by Iowa dealers and if a vacant reassignment space is available on the title.

400.24(3) *New certificate of title required.* A dealer shall obtain a new certificate of title under the procedures in Iowa Code section 321.20(1) as amended by 2024 Iowa Acts, House File 674, section 1, but is not required to pay registration fees for a vehicle if the application for title is made within 30 days of vehicle transfer date and if any of the following conditions apply:

a. The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers.

b. The vehicle was assigned to the dealer using an affidavit of foreclosure form prescribed by the department or issued by a foreign jurisdiction.

c. All reassignment spaces of the certificate of title have been used.

d. The vehicle registration fee was delinquent in Iowa at the time the vehicle was acquired by the dealer. The delinquent fees and penalty shall be paid by the dealer from the first day the registration was due to the month the application for title is submitted.

e. In accordance with 761—Chapter 405, the dealer is required to obtain a salvage certificate of title.

400.24(4) *New certificate of title and registration fee required.* A dealer shall obtain both a new certificate of title and pay a registration fee for a vehicle if:

a. The vehicle has a foreign certificate of title but has never been registered and the dealer is not licensed under Iowa Code chapter 322 to sell that line-make of vehicle. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

b. The vehicle was placed in storage by the previous owner. The registration fee due shall be computed from and commence the month the vehicle is removed from storage.

c. The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers and the application for a new certificate of title is submitted more than 30 days after the date the vehicle entered Iowa. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

d. The vehicle has been registered in a foreign state or country and all reassignment spaces on the title are full and the application for a new certificate of title is submitted more than 30 days after the last available reassignment space is used. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

e. The vehicle was in the dealer's inventory and the dealer's license was revoked as provided in Iowa Code chapter 322 or 322C or surrendered in lieu of revocation. The dealer shall obtain title and registration within 30 days from the date of revocation or surrender of the license. The registration fee due shall be prorated for the remaining unexpired months of the registration year.

400.24(5) *Registration fee required.* A vehicle owned by a dealer and used as a work or service vehicle, or offered for lease, rent or hire, shall become subject to a registration fee in the month that the vehicle is first used for that purpose. The registration fee shall be due annually unless the vehicle is transferred to the dealer's inventory. To transfer the vehicle, the dealer shall surrender the registration plates that were issued for the vehicle.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"*; 321.20 as amended by 2024 Iowa Acts, House File 674, section 1; 321.45, 321.46; 321.48; 321.49; 321.67; 321.70; 321.104; and 321.126; and chapter 322.

761—400.25(321) Special trucks. The owner of a truck tractor registered as a special truck shall certify to the owner's county treasurer annually at the time of renewal that the truck tractor is not operated more than 15,000 miles annually.

This rule is intended to implement Iowa Code sections 321.1(75) and 321.121.

761—400.26(307,321) Registration of vehicles registered in another state or country.

400.26(1) The registration fee for a vehicle from another state or country shall be due in the month that the vehicle becomes subject to registration in Iowa.

400.26(2) A vehicle registered in another state or country shall become subject to registration in Iowa and payment of the Iowa registration fee beginning in either of the following:

a. The month of sale or transfer to an Iowa resident.

b. The month that a nonresident owner establishes Iowa residency or accepts employment in Iowa of 90 days duration or longer. The county treasurer or the department may require from the applicant a written statement giving the date that the applicant established residency in Iowa.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"*; 321.18; 321.20 as amended by 2024 Iowa Acts, House File 674, section 1; 321.53 through 321.55; 321.101; and 321.135.

761—400.27(307,321) Vehicles owned by nonresident members of the armed services.

400.27(1) A vehicle owner who is a nonresident and a member of the armed services is not required to register the vehicle in Iowa if it is properly registered in the person's state of residence.

400.27(2) A vehicle owner who is a nonresident and a member of the armed services may register the vehicle in Iowa under the following conditions:

a. The vehicle is owned entirely by nonresidents.

b. The fee for a passenger-type vehicle registered under Iowa Code section 321.109 shall be based only on the weight of the vehicle; the part of the fee based on value shall be excluded. The fees for all other vehicles shall be determined as specified in Iowa Code chapter 321. The registration fee under Iowa Code sections 321.116 and 321.117 shall apply.

c. The application for vehicle registration shall include a certification by the person's commanding officer of the person's state of residence and assignment to Iowa.

400.27(3) If ownership of a passenger-type vehicle is transferred to another person, the vehicle shall be subject to registration in Iowa.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.53 through 321.55, 321.109, 321.116 and 321.117.

761—400.28(307,321,321L) Registration of vehicles equipped for persons with disabilities. To apply for the reduced registration fees under Iowa Code 321.109(1)*"b"* or 321.124(1)*"h"*(1)(f), the owner of the vehicle must provide a written self-certification at the first registration and at each renewal of either of the following:

400.28(1) That the automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less has permanently installed equipment manufactured for and necessary to assist a person with a disability, as defined in Iowa Code section 321L.1, to enter or exit the vehicle.

400.28(2) That the owner or a member of the owner's household uses a wheelchair as the person's only means of mobility.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.109, 321.124 and 321L.1.

761—400.29(321) Motorcycle or autocycle primarily designed or converted to transport property. A motorcycle or autocycle primarily designed or converted to transport less than 1,000 pounds of property will be registered as a motorcycle or autocycle. A motorcycle or autocycle primarily designed or converted to transport 1,000 pounds of property or more will be registered as a motor truck.

This rule is intended to implement Iowa Code sections 321.1; 321.20 as amended by 2024 Iowa Acts, House File 674, section 2; and 321.117.

761—400.30(307,321) Conversion of motor vehicles.

400.30(1) An automobile converted to a truck with a carrying capacity of 1,000 pounds or more will be registered as a reconstructed motor vehicle.

400.30(2) A vehicle manufactured as a truck tractor or motor truck will not be registered as a motor home unless the vehicle has been substantially altered to change its type and mode of operation so that it is a reconstructed vehicle as defined in Iowa Code section 321.1.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.1, 321.23, 321.111 and 321.124.

761—400.31(321,435) Manufactured or mobile home converted to or from real property.

400.31(1) *Conversion to real property.* When a manufactured or mobile home is converted to real property under Iowa Code section 435.26, the process shall be as follows:

a. If a security interest is noted on the title and the secured party is given a mortgage for the land on which the home is located, the assessor shall collect the certificate of title as provided in rule 701—74.5(435).

b. If a security interest is noted on the title and the secured party is not given a mortgage for the land on which the home is located, the secured party shall retain the certificate of title as provided in Iowa Code section 435.26. At the time the security interest is released, the secured party may surrender the certificate of title to the county treasurer, who shall cancel the title as converted to real estate and destroy the title.

c. If there is no security interest noted on the title, the owner shall surrender the certificate of title to the assessor. The assessor shall note the conversion on the face of the certificate of title above the assessor's signature, date the notation and deliver the title to the county treasurer. The county treasurer shall note the conversion on the vehicle record and then cancel the title as converted to real estate and destroy the certificate of title.

d. If the assessor identifies in the county records a security interest no longer exists that would prevent the title to the home and the title to the land to merge under Iowa Code section 435.26 and the county treasurer verifies there is no lien on the certificate of title, the title to the home and the title to the land shall merge, and the county treasurer shall cancel the title as converted to real estate and destroy the certificate of title, if available.

400.31(2) *Reconversion from real property.*

a. When a manufactured or mobile home is reconverted from real property by adding a vehicular frame, the owner may apply to the county treasurer for a certificate of title.

b. The owner shall submit a record of existing liens obtained from a local abstracter. The record shall identify the owner of the property, list all liens and encumbrances against the property, and shall be signed by the abstracter.

c. The owner shall also submit written consent to the reconversion from any person holding a mortgage on the real property (mortgagee). An existing mortgage shall be noted as a security interest on the certificate of title.

d. The county treasurer shall submit written notice of the reconversion to the county assessor's office.

400.31(3) *Affidavit for surrender of certificate of title.*

a. As provided in Iowa Code section 435.26B, an owner may effectuate a surrender of the certificate of title by recording with the county recorder Form 411186 if all of the following requirements are met:

(1) There is no record that a certificate of title has been issued or surrendered for a manufactured or mobile home that is located outside a manufactured home community or mobile home park.

(2) The manufactured home or mobile home has been converted to real estate by being placed on a permanent foundation.

(3) The manufactured or mobile home is entered on the tax rolls.

b. The fee for the duties performed by the department pursuant to Iowa Code section 435.26B(1)*"i"*(2) shall be $5.

This rule is intended to implement Iowa Code sections 321.1, 435.1, 435.26, 435.26A, 435.26B and 435.27.

761—400.32(307,321) Church bus registration fee. If ownership of a church bus registered under Iowa Code section 321.119 is transferred to a person not entitled to register the vehicle as a church bus or the bus is used in a manner other than provided by law, the church bus shall be registered under the provisions of Iowa Code section 321.122. The registration fee shall be prorated for the remaining unexpired months of the registration year.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.119 and 321.122.

761—400.33(307,321) Storage of vehicles.

400.33(1) The owner of a vehicle upon which the registration fee is not delinquent may surrender all registration plates for the vehicle to the county treasurer where the vehicle is registered and has the right to register the vehicle later upon payment of the annual registration fee due, which shall be computed from and commence the month the vehicle is removed from storage. Payment of a registration fee is not required when the vehicle is removed from storage within the current registration year, provided that registration fees have not been refunded. Surrendered plates shall be destroyed. When a vehicle is removed from storage, the fee is $5 for a set of replacement plates.

400.33(2) The owner of a motor vehicle that is placed in storage when the owner enters the military service of the United States shall comply with Iowa Code section 321.126, and subrule 400.33(1) does not apply.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.126 and 321.134.

761—400.34(307,321) Penalty on registration fees.

400.34(1) *Monthly basis.* The penalty on the delinquent payment of a registration fee shall be computed on a monthly basis, rounded to the nearest whole dollar. If multiple penalties are assessed, the penalties shall be first added together and then the sum shall be rounded to the nearest whole dollar.

400.34(2) *Vehicle purchased.* The penalty on the registration fee shall accrue from the first day of the month following the date of purchase unless the application for a certificate of title is submitted within 30 days after the date of purchase.

400.34(3) *Vehicle moved into Iowa.* The penalty on the registration fee shall accrue on the first day of the month following 30 days from the date a vehicle is moved into Iowa.

400.34(4) *When delinquency extends beyond the current year.* When the penalty on a delinquent registration fee extends beyond the current registration year, the penalty shall continue to accrue until paid or until the provision of Iowa Code section 321.134(4) takes effect. Penalty shall only accrue on the fee applicable at the time the delinquency accrued and shall not be applicable to subsequent registration fees that have not been paid.

400.34(5) *Statement of nonuse.* If the owner of a vehicle, on which the registration fees have not been paid for more than three complete registration years, certifies to the county treasurer of the owner's residence, or to the department on Form 442018 if a vehicle is registered under Iowa Code chapter 326, that the vehicle has not been moved or operated upon the highway since the year it was last registered, the vehicle may be registered upon payment of the current year's registration fee.

400.34(6) *Waiver of penalties for military members.* Registration penalties will be waived as provided in Iowa Code section 321.134(5), if the owner provides a copy of an official government document verifying that the applicant is in the military service of the United States and has been relocated as a result of being placed on active duty on or after September 11, 2001.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.39, 321.46, 321.47, 321.49, 321.134 and 321.135.

761—400.35(252J,307,321) Suspension, revocation or denial of registration.

400.35(1) A peace officer, county treasurer, or the county treasurer's designee may submit a request using Form 411012, Request for Cancellation of Title or Revocation or Suspension of Registration and Plates, or 411013, Request for Suspension of Registration and Plates, as applicable, to the department for suspension or revocation of registration and plates under Iowa Code section 321.101.

a. The notice of suspension or revocation will contain the following:

(1) The basis of the suspension or revocation.

(2) Information regarding how the person may satisfy the violation and have the suspension or revocation removed, if applicable.

(3) Information notifying the person of the right to appeal the suspension or revocation in accordance with rule 761—400.44(321).

b. Reserved.

400.35(2) When the registration of a vehicle has been revoked as provided in Iowa Code sections 321.101 and 321.101A, the registration fee and penalty shall accrue as if the plates had never been issued, unless waiver of registration fees and penalties is specifically provided for in Iowa Code chapter 321.

400.35(3) Pursuant to Iowa Code section 252J.8, the department will suspend or deny the issuance or renewal of registration and plates upon receipt of a certificate of noncompliance from the child support recovery unit.

a. The suspension or denial takes effect 30 days after notice to the vehicle owner and continues until the department receives a withdrawal of the certificate of noncompliance from the child support recovery unit.

b. If a person who is the named individual on a certificate of noncompliance subsequently purchases a vehicle, the vehicle will be titled and registered, but the registration will be immediately suspended.

This rule is intended to implement Iowa Code sections 252J.1, 252J.8, 252J.9, 307.12(1) *"j,"* 321.101, 321.101A and 321.127.

761—400.36(307,321) Termination of suspension of registration. Upon termination of the suspension of registration of a vehicle, the county treasurer may issue new plates for the vehicle. If the new plates replace a current series of plates, there shall be a replacement fee as provided in Iowa Code

section 321.42. If the vehicle is not currently registered at the time the suspension is lifted, the registration fee and penalties due shall be determined as follows:

400.36(1) If the registration fee was delinquent at the time that the suspension became effective, the penalty shall continue to accrue on the registration fee until the suspension became lifted and the registration fee is paid. In addition, if the suspension was for failure to pay an additional registration fee, the additional registration fee shall be paid before the suspension is lifted.

400.36(2) If the registration fee was not delinquent when the suspension became effective and the suspension is lifted after the beginning of another registration year, the annual registration fee for that year shall be due in the month the suspension is lifted. The penalty shall accrue on the registration fee the first day of the month following the month that the suspension was lifted. The annual registration fee on a recovered stolen vehicle for which the registration has been suspended shall be prorated for the remaining unexpired months of the registration year.

400.36(3) If the registration fee was not delinquent at the time that the suspension became effective and the suspension is lifted during the same registration period, no additional registration fees shall be due unless the suspension was for failure to pay an additional registration fee, in which event the additional registration fee shall be paid before the suspension is lifted.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.42, 321.105 and 321.134.

761—400.37(307,321) Raw farm products. A vehicle may be operated with a gross weight of 25 percent in excess of the gross weight for which it is registered when transporting a load of raw farm products or soil fertilizers under Iowa Code section 321.466 except that nothing in this rule shall be construed to allow operation of a special truck on the public highways with a gross weight exceeding the maximum gross weight allowed under Iowa Code section 321.463(6). In addition, the following products are considered raw farm products. This list is not exhaustive and does not exclude other commodities that might be considered raw farm products:

Animals which are dead	Hides
Berries, fresh	Honey, comb or extracted
Blood	Melons
Corn, ear corn including hybrids	Milk, raw
Corn, shelled	Nursery stock
Corn, cobs	Potatoes
Cream, separated	Peat
Eggs, fresh or frozen in shell	Poultry, live
Flax	Saw logs
Flaxseed	Sod
Fodder	Soybeans
Fruit, fresh	Straw, baled or loose
Grain, threshed or unthreshed	Vegetables, fresh
Hair	Wood, cord or stove wood
Hay, baled or loose	Wool

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.466(4) and 321.466(5).

761—400.38(25,307,321,326) Refund of registration fees.

400.38(1) *Vehicles registered by county treasurer.*

a. The department will refund annual registration fees for vehicles registered by the county treasurer pursuant to Iowa Code section 321.126.

b. Except as provided in Iowa Code section 321.126, the owner may submit a claim for refund to the county treasurer's office in any county.

c. Registration plates shall be submitted with the claim if the vehicle is placed in storage or registered for apportioned registration, if the owner of the vehicle moves out of state, or if the plates have not been assigned to a replacement vehicle, unless the plates have been surrendered to a licensed

dealer in Iowa that has submitted the title and registration application under Iowa Code section 321.25. If one or both plates have been lost or stolen, the claimant shall certify this fact in writing.

d. For a vehicle that was junked, the date on the junking certificate determines the date the vehicle was junked.

e. If the claim for refund is for excess credit or no replacement vehicle:

(1) The county treasurer will, within three days of receipt of the claim for refund, provide the information required to process the refund to the department.

(2) The department is authorized to approve or deny the claim.

f. The county treasurer shall forward all other claims for refund to the department for processing in the form and manner prescribed by the department.

400.38(2) *Vehicles registered by the department.* Forms and instructions for claiming a refund on apportioned registration fees under Iowa Code section 326.15 may be obtained from the department at the address in subrule 400.6(1).

This rule is intended to implement Iowa Code sections 25.1, 307.12(1)*"j,"* 321.126 through 321.129 and 326.15.

761—400.39(307,321) Assigned identification numbers. The department is authorized to issue to the owner an assigned vehicle identification number for a vehicle, an assigned component part number for a component part, and an assigned product identification number for a fence-line feeder, grain cart, or tank wagon. An identification number will be assigned only if the department is satisfied as to the true identity and ownership of the vehicle, component part, fence-line feeder, grain cart or tank wagon. When an assigned vehicle identification number has been issued for a vehicle, the vehicle will be registered and titled under that number. An assigned component part number or an assigned product identification number shall be used only for identification purposes.

400.39(1) *Issuance of an identification number.* The department will issue an assigned vehicle identification number, assigned component part number or assigned product identification number, as applicable, only if:

a. The original number has been destroyed, removed or obliterated.

b. The vehicle has had a cab, body, or frame change and the replacement cab, body, or frame is within the manufacturer's interchangeability parts specifications catalog and is compatible with the make, model, and year of the vehicle. If the replacement cab, body, or frame change is not within the manufacturer's interchangeability parts specifications catalog or is not compatible with the make, year, and model of the vehicle, the vehicle shall be considered reconstructed and subject to rule 761—400.16(321).

c. The vehicle is specially constructed, reconstructed, a street rod or a replica vehicle. More information is contained in rule 761—400.15(321) for the requirements and procedures applicable to vehicles that are specially constructed, reconstructed, street rods or replica vehicles.

400.39(2) *Procedures.*

a. Request. Whenever an assigned identification number is required under subrule 400.39(1) and the request does not apply to a vehicle that is specially constructed, reconstructed, a street rod or a replica vehicle, the owner of the vehicle, component part, fence-line feeder, grain cart or tank wagon, or the person holding lawful custody, shall contact the department's motor vehicle division at the address in subrule 400.6(1) and request the assignment of a number.

b. Examination. A motor vehicle investigator will contact the owner and schedule a time and place for examination of the vehicle, component part, fence-line feeder, grain cart or tank wagon and ownership documents. An investigator may require the owner to drive or tow the vehicle to and from the examination location upon the applicant's completion of Form 420054. If the vehicle has had a cab, body, or frame change, the owner shall have, for evidence of ownership for the replacement cab, body, or frame, a bill of sale with a description of the part, complete with the manufacturer's identification number, if any, and the name, address, and telephone number of the seller. The bill of

sale, the vehicle, and the cab, body, or frame that has been replaced shall be made available for examination at the time and place scheduled.

c. Assigned vehicle identification number.

(1) The investigator upon approval of the request will affix to the vehicle an assigned vehicle identification number and authorize the county treasurer to issue a title and registration for the vehicle.

(2) The owner shall submit the certificate of title and the registration receipt issued for the vehicle to the county treasurer. If the certificate of title is in the possession of a secured party, the county treasurer will notify the secured party to return the certificate of title to the county treasurer for the purpose of issuing a corrected title. Upon receipt of the notification, the secured party shall submit the certificate of title within ten days. The county treasurer, upon receipt of the certificate of title and the registration receipt, will issue a corrected title and registration receipt listing as the vehicle identification number the assigned vehicle identification number.

d. Assigned component part number. The investigator upon approval of the request will affix to the component part an assigned component part number and give to the owner a component part form. The owner shall retain the form as a record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

e. Assigned product identification number. The investigator upon approval of the request will affix an assigned product identification number to the fence-line feeder, grain cart or tank wagon and give to the owner an assigned product identification number form. The owner shall retain the form as a record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

400.39(3) *Fees.* A county treasurer, as provided in Iowa Code section 321.20(1) as amended by 2024 Iowa Acts, House File 674, section 1, may issue a corrected certificate of title upon collection of the certificate of title fee and a fee for a notation of a security interest, if applicable. A corrected certificate of title is not required for a name change.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"*; 321.1; 321.20 as amended by 2024 Iowa Acts, House File 674, section 1; 321.43; 321.50 as amended by 2024 Iowa Acts, House File 674, section 16; 321.52A; and 321.92.

761—400.40(321) Odometer statement.

400.40(1) Pursuant to Iowa Code section 321.71 and 49 U.S.C. Section 32705, an odometer disclosure statement shall be submitted with an application for certificate of title for a motor vehicle unless the motor vehicle is exempt. The statement shall provide a current odometer reading and reflect whether the mileage is "actual," "not actual" or "exceeds mechanical limits."

400.40(2) If the transferor failed to provide an odometer disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts on a form prescribed by the department. The sworn statement will be accepted by the county treasurer or the department in lieu of the required odometer disclosure statement. The subsequent title issued from the sworn statement will record "not actual" mileage.

400.40(3) As required by 49 CFR Section 580.17 in effect as of October 1, 2024, for vehicle transfers that occur through December 31, 2030, any vehicle that is model year 2011 or newer shall require an odometer disclosure statement. For vehicle transfers that occur on or after January 1, 2031, the model year formula for odometer disclosure statements is the current year minus 20. The resulting number represents the first model year for which a motor vehicle is exempt from the odometer statement requirements incident to a transfer.

This rule is intended to implement Iowa Code section 321.71.

761—400.41(321) Stickers.

400.41(1) *Placement of validation sticker.* The validation sticker shall be affixed to the lower left corner of the rear registration plate. EXCEPTIONS: For motorcycle, autocycle and small trailer plates,

the validation sticker shall be affixed to the upper left corner of the plate. For natural resources plates, the sticker may be affixed to the lower right corner of the rear plate.

400.41(2) *Special fuel identification sticker.* Iowa Code section 321.41(4) applies to special fuel identification stickers. This sticker shall be displayed on the cover of the fuel inlet of the motor vehicle or on the outside panel of the motor vehicle within 3 inches of the fuel inlet so as to be in view when fuel is delivered into the motor vehicle.

400.41(3) *Persons with disabilities parking sticker.* A persons with disabilities special registration plate parking sticker shall be affixed to the lower right corner of the rear registration plate. A persons with disabilities parking sticker shall be affixed to the lower left corner of the flying our colors rear registration plate and above the validation sticker to allow for full view of all numerals and letters printed on the plate pursuant to Iowa Code section 321.37.

400.41(4) *Special truck for farm use sticker.* An owner of a special truck, registered pursuant to Iowa Code section 321.121, who has been issued either regular registration plates or special registration plates other than special truck registration plates must obtain from the county treasurer a sticker that distinguishes the vehicle as a special truck. The sticker shall be affixed to the lower right corner of the rear registration plate. EXCEPTION: If the vehicle displays front and rear plates, two stickers shall be issued with one sticker affixed to the lower right corner of the front plate and rear plate. For natural resources plates and flying our colors plates, the stickers must be affixed to the lower left corner of the front and rear plates.

This rule is intended to implement Iowa Code sections 321.34, 321.37, 321.40, 321.41, 321.121 and 321.166.

761—400.42(307,321) Registration receipt issued for trailer-type vehicles. The registration receipt issued for trailer-type vehicles shall be carried in the vehicle that is described on the receipt or in the driver's compartment of the towing vehicle.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.32.

761—400.43(321) Damage disclosure statement.

400.43(1) If the transferor failed to provide a damage disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts. The transferee shall also complete section 2 of a separate damage disclosure statement and sign on the buyer's line. The sworn statement and damage disclosure statement completed by the transferee will be accepted by the county treasurer or the department in lieu of the damage disclosure statement required from the transferor.

400.43(2) A model year formula for damage disclosure statements shall be the current year minus eight. The resulting number represents the first model year for which a motor vehicle is exempt from the damage disclosure statement requirements incident to a transfer.

400.43(3) If the transferor completes the damage disclosure on the assignment of title at the time of application for title, a transferor or transferee of a vehicle may submit a separate damage disclosure statement, Form 411108, indicating the damage level of the vehicle and whether the damage level exceeds 70 percent.

a. If the transferor signs both the damage disclosure on the assignment of title and the separate damage disclosure statement, Form 411108, the county treasurer shall accept the separate damage disclosure statement.

b. If the transferee signs the separate damage disclosure statement, Form 411108, the county treasurer shall accept the separate damage disclosure statement only if the separate damage disclosure statement indicates the damage level exceeds 70 percent. If the transferee's statement indicates the damage level is less than 70 percent, and there is no evidence that a prior Iowa title or foreign title was issued or designated as salvage, rebuilt or flood, the department will review the transaction to confirm the damage level using data obtained from the insurance provider, motor vehicle repair facility, or other entity with direct knowledge of the damage.

This rule is intended to implement Iowa Code sections 321.52 and 321.69.

761—400.44(17A,321) Hearings. The department will send notice by certified mail to a person whose certificate of title, vehicle registration, license, or permit is to be revoked, suspended, canceled, or denied under this chapter. The notice will be mailed to the person's mailing address as shown on departmental records and takes effect after 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the motor vehicle division at the address in subrule 400.6(1). The request for a contested case shall be deemed timely submitted if it is delivered or postmarked on or before the 20th day from the date the notice was mailed for revocation, suspension, cancellation, or denial.

This rule is intended to implement Iowa Code sections 17A.10 through 17A.19, 321.101 and 321.102.

761—400.45(321) Motorized bicycles. The following rules shall apply to motorized bicycles.

400.45(1) *Maximum speed.* If the department has reason to believe that a particular vehicle or model is capable of speeds exceeding 39 miles per hour, the department may conduct independent tests to determine the maximum speed of the vehicle or model. If the department determines that the maximum speed of the particular vehicle or model exceeds 39 miles per hour, the vehicle or model will not be registered as a motorized bicycle.

400.45(2) *Identification of a vehicle as a motorized bicycle.* Registration plates issued for motorcycles will also be issued for motorized bicycles.

This rule is intended to implement Iowa Code sections 321.1, 321.13 and 321.166.

761—400.46(307,321) Registration documents lost or damaged in transit through the United States postal service. To obtain without cost the reissuance of registration documents that were sent by the county treasurer to the owner through the United States postal service and that were lost or damaged in transit, the owner of the vehicle shall file application for reissuance between 20 and 60 days of the date the documents were issued by the county treasurer.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.42.

761—400.47(307,321) Credit of registration fees.

400.47(1) *Credit for unexpired registration fee.* The applicant may claim credit, as specified in Iowa Code section 321.46(3), toward the registration fee for one newly acquired replacement vehicle.

a. The credit may be claimed only when the owner of the newly acquired vehicle is applying for a certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) for the newly acquired vehicle.

b. For a junked vehicle, the date on the junking certificate determines the date the vehicle was junked.

c. Excess credit shall not be applied toward the registration fee for a second vehicle.

d. Credit shall be allowed for one or two vehicles which have been sold, traded or junked toward one replacement vehicle. Credit shall be based on the remaining unexpired months of the registration year(s) of the vehicle(s) sold, traded or junked.

400.47(2) *Credit for transfer to spouse, parent or child.* Credit shall be allowed toward a new registration for a vehicle being transferred to the applicant from the applicant's spouse, parent or child, or from a former spouse pursuant to a dissolution of marriage decree, if application for the certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) is made within 30 days after the date of transfer. If the owner is deceased, credit may be transferred under rule 761—400.13(321).

400.47(3) *Credit from/to apportioned registration.*

a. Pursuant to Iowa Code section 321.46A, an owner may claim credit toward the registration fees due when changing a vehicle's registration from apportioned registration under Iowa Code

chapter 326 to registration under Iowa Code chapter 321. The owner shall surrender proof of apportioned registration to the county treasurer. Credit shall be allowed for the unexpired complete calendar months remaining in the registration year from the date the application is filed with the county treasurer.

b. Pursuant to Iowa Code sections 321.126 and 321.127, the owner or lessee of a motor vehicle may claim credit for the apportioned registration fees due when changing the vehicle's registration from registration by the county treasurer to apportioned registration. Application for apportioned registration shall be submitted to the department's motor vehicle division; more information is contained in 761—Chapter 500.

400.47(4) *Assignment of credit and registration plates from lessor to lessee.* When a lessee purchases the leased vehicle and within 30 days requests the assignment of the vehicle's fee credit and registration plates, the lessor shall assign the registration fee credit and registration plates for the purchased vehicle to the lessee.

400.47(5) *Rounding.* If credit from two registration years or two registration fees, or some combination of both, is available, the credits shall first be added together, then it shall be determined whether the sum meets the minimum required under Iowa Code section 321.46(3)*"c,"* and then the sum shall be rounded to the nearest whole dollar.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.46, 321.46A, 321.48, 321.116, 321.117, 321.126 and 321.127.

761—400.48(321) Reassignment of registration plates.

400.48(1) Registration plates may be reassigned if one of the owners listed on the registration receipt before the transfer is also a listed owner following the transfer.

400.48(2) Registration plates may be reassigned when credit is allowed toward a new registration for a vehicle being transferred to the owner's spouse, parent, or child, or to a former spouse pursuant to a dissolution of marriage decree. If the owner is deceased, plates may be transferred under rule 761—400.13(321).

400.48(3) Registration plates shall not be reassigned between a natural person or persons and a corporation, association, copartnership, company, or firm.

400.48(4) Registration plates may be reassigned and credit allowed if two or more corporations, associations, partnerships, or firms merge into one corporation, association, partnership or firm.

400.48(5) Registration plates may be assigned and credit allowed if an owner listed on the certificate of title and registration transfers ownership of the vehicle to a trust created by that owner.

400.48(6) Registration plates may be assigned and credit allowed if an owner listed on the certificate of title and registration transfers ownership of the vehicle from a living trust to an individual owner who created that trust and vice versa.

This rule is intended to implement Iowa Code sections 321.34 and 321.46.

761—400.49(307,321) Storage of registration plates, certificate of title forms and registration forms. Registration plates, certificate of title forms and registration forms that are consigned to county treasurers by the department shall be stored in a secure location only accessible to authorized persons as designated by the county treasurer or department.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.5, 321.8, and 321.167.

761—400.50(307,321) Disposal of surrendered registration plates. The county treasurer shall return plates that have been surrendered to the county treasurer to Iowa state prison industries for recycling.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.5 and 321.171.

761—400.51(307,321) County treasurer's report of motor vehicle collections and funds. The county treasurer shall file the report provided for in Iowa Code section 321.153 in a manner prescribed by the department.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.153.

761—400.52(321) Removal of registration and plates by peace officer under financial liability coverage law. This rule applies to instances when a peace officer issues a citation and removes the registration receipt and registration plates of a motor vehicle registered in this state when the driver of the motor vehicle is unable to provide proof of financial liability coverage. This rule applies regardless of whether the vehicle was also impounded.

400.52(1) The peace officer shall forward the registration receipt and evidence of the violation to the county treasurer of the county in which the motor vehicle is registered. Evidence of the violation is one of the following:

a. A copy of the citation. The citation must either reference Iowa Code section 321.20B(4)*"a"*(3) or 321.20B(4)*"a"*(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded.

b. A written statement from the peace officer listing the plate number of the registration plate removed from the vehicle and the vehicle owner's name. The statement must either reference Iowa Code section 321.20B(4)*"a"*(3) or 321.20B(4)*"a"*(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded. The statement must be signed by the peace officer or an employee of the law enforcement agency.

400.52(2) The peace officer may either destroy removed plates or deliver the removed plates to the county treasurer for destruction.

This rule is intended to implement Iowa Code section 321.20B.

761—400.53(307,321) Electronic lien and title.

400.53(1) The department may authorize the use of an electronic lien and title (ELT) system to provide an electronic record of the certificate of title to a security interest holder, to subject a vehicle to an electronic lien, and to allow for the submission and receipt of forms related to security interests through electronic means.

a. The department may enter into an agreement with ELT providers for transmission of vehicle data, title data and forms necessary to process security interest transactions through electronic means.

b. The department may authorize an ELT lender to participate in the ELT system if the ELT lender has first established a service relationship with an authorized ELT provider. The department may establish application forms and approval processes as necessary for ELT lenders.

400.53(2) For each individual transaction, an authorized ELT lender may choose to use either the ELT process or the paper security interest process as provided in Iowa Code section 321.50 and rules 761—400.8(321) and 761—400.9(321).

400.53(3) If a security interest is released through ELT and there are no other secured parties, but the ELT lender does not request a paper title to be printed and provided to the owner, or the ELT lender does not otherwise provide a paper title to the owner, then the owner of the vehicle may apply to the county treasurer or the department for a certificate of title to be printed and provided to the owner by submitting an application form in the form and manner prescribed by the department.

a. If there is more than one owner of the vehicle, any owner may apply to the department or the county treasurer, as applicable, for the certificate of title to be printed and provided to whomever the owner specifies.

b. If an owner is deceased, the signatures and documents specified in subrules 400.13(4) and 400.13(5) shall be required.

This rule is intended to implement Iowa Code section 307.12(1)*"j"* and section 321.50 as amended by 2024 Iowa Acts, House File 674, section 17.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 634
"Driver Education"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.178 and 321.178A

State or federal law(s) implemented by the rulemaking: Iowa Code sections 321.13, 321.178, 321.178A, 321.180B, and 321.194

Public Hearing

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

October 25, 2024 10 to 10:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 343 768 039

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 the Department's rulemaking authority granted in Iowa Code section 321.178, which explains driver education course requirements for school districts and private and commercial driver education schools, including the qualification, application, and certification requirements for behind-the-wheel instructors. The proposed chapter also implements Iowa Code section 321.178A, which explains the requirements for a teaching parent to provide driver education as an alternative to a driver education course offered by a course provider.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Individuals seeking approval as a behind-the-wheel instructor incur tuition costs to complete an approved instructor preparation course. Individuals seeking to complete a driver's education course or a parent-taught driver's education program incur costs from the course provider or vendor. These costs are assessed directly by the course providers and vendors and are not determined or retained by the Department. Private/commercial driver's education companies seeking approval by the Department incur an annual $25 fee.

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

Persons who are driver education providers employed by a school district or private or commercial driver education school in Iowa will benefit from these rules by knowing and understanding the standards and requirements a driver education course must follow.

Persons seeking to become behind-the-wheel instructors in Iowa will benefit from these rules by knowing what the requirements are for certification under Iowa Code section 321.178. Persons seeking to provide driver education as a teaching parent will benefit from these rules by knowing the requirements for instruction and submission of course completion information to 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:

Private/commercial driver's education companies seeking approval by the Department incur an annual $25 fee.

- 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 reader-friendly version of information the public relies on for understanding the required standards for driver education courses, behind-the-wheel instructor requirements and qualifications, and requirements for teaching parents that provide driver education.

Driver's education programs and instructors will be positively impacted by the removal of unnecessary restrictions, including the requirement that classroom and behind-the-wheel instruction be scheduled every week.

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 driver education courses, instructors, behind-the-wheel instructors, and driver education provided by teaching parents.

- Anticipated effect on state revenues:

Approximately $1,200 is anticipated annually as a result of the $25 fee incurred by private/commercial driver's education companies. The Department currently certifies 42 driver education companies and six colleges that are subject to the $25 fee.

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 a lack of consistency and transparency in the requirements to become a driver's education program or a behind-the-wheel instructor and the process to complete a parent-taught driver's education program. Additionally, inaction would result in the inability for the public to quickly and efficiently understand the standards required for driver education courses, what is required to be a certified behind-the-wheel instructor, or what is required to provide driver education as a teaching parent.

There is no benefit to 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 to quickly and efficiently provide information to the public regarding the required standards for driver education courses, behind-the-wheel instructors, and teaching parents that provide driver education 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 for the proposed rules. The Department is required to approve driver's education programs, behind-the-wheel instructors, and parent-taught driver's

education courses. Requirements for approved driver education courses are set forth in the Iowa Code. Iowa follows best practices and national standards for driver education for states set forth by the National Highway Traffic Safety Administration.

- 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. The proposed rules apply equally to school districts as well as private or commercial businesses that provide driver education courses. The same eligibility criteria and equipment requirements apply. The $25 annual application fee in this chapter is not burdensome for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 634 and adopt the following **new** chapter in lieu thereof:

CHAPTER 634
DRIVER EDUCATION

761—634.1(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 Boulevard, Ankeny, Iowa 50021; by telephone at 515.244.8725; by facsimile at 515.239.1837; or on the department's website at www.iowadot.gov/mvd/drivereducation.

761—634.2(321) Definitions.

"Approved course" means a driver education curriculum approved by the department that meets the requirements of Iowa Code section 321.178A and is appropriate for teaching parent-directed driver education and related behind-the-wheel instruction.

"Behind-the-wheel instruction" means the street or highway driving instruction component of an approved driver education course.

"Clear driving record" means the person currently and during the prior two-year period has not been identified as a candidate for suspension or revocation of a driver's license under the habitual offender or habitual violator provisions of rule 761—615.4(321) or rule 761—615.6(321); is not subject to a driver's license suspension, revocation, denial, cancellation, disqualification, or bar; has no record of a contributive motor vehicle accident that caused the death or serious injury of another person; and has no record of two or more contributive motor vehicle accidents in a two-year period.

"Course vendor" means a third-party vendor that makes available commercially an approved course.

"Driver education school" means any school district, area education agency, merged area school, or other agency or person planning to offer driver education.

"Instructor," for purposes of this chapter, means a person certified to provide behind-the-wheel instruction.

"Laboratory instruction" includes instruction received by a student while the student is in the driver education vehicle or adjacent to it as referred to in paragraphs 634.3(2)*"c"* and *"d"* and may also include range or simulation as referred to in paragraphs 634.3(2)*"h"* and *"i."*

"Serious injury" means the same as defined in Iowa Code section 702.18.

"Student" means the same as defined in Iowa Code section 321.178(1)*"d."*

"Teacher" means the same as defined in Iowa Code section 256.145(16).

"Teaching parent" means the same as defined in Iowa Code section 321.178A(2)*"c."*

761—634.3(321) Driver education course standards and requirements.

634.3(1) *Course approval.* Any school district, area education agency, merged area school, or other entity planning to offer a driver education course must apply for and receive departmental approval, including approval of all teachers, instructors, and course curriculum. Approvals remain valid for a calendar year, expiring December 31, and must be renewed annually. The application for course renewal shall be submitted to the department within 60 days of the expiration date unless otherwise approved by the department.

634.3(2) *Course requirements.*

a. The instruction provided under Iowa Code section 321.178(1)*"a"* is to be performed in a dual-controlled motor vehicle and exclusive of observation time.

b. Except upon showing of good cause, laboratory instruction shall not conclude later than 45 days after classroom instruction has been completed. When the driver education course provider determines there is good cause, the laboratory instruction shall not conclude later than 90 days after classroom instruction has been completed. For the purpose of this paragraph, "good cause" means an unanticipated event causing a delay in the student's ability to complete the laboratory instruction if the event is beyond the student's control.

c. Behind-the-wheel instruction shall be limited to a maximum of 30 minutes per student per session and a maximum of 60 minutes in a single day.

d. Two or more students shall be scheduled for all behind-the-wheel instruction to ensure that appropriate observation time is experienced.

e. Routine maintenance and operation of motor vehicles to maximize energy efficiency and safety will be included in classroom instruction.

f. Each school district will provide students who are absent from instruction an opportunity to make up a reasonable amount of time and coursework.

g. When driving simulators are used for part of the behind-the-wheel driving experience, four hours of simulator experience will be considered equal to one hour of behind-the-wheel driving in the car. However, in addition to simulator time, a minimum of three hours of on-street, behind-the-wheel driving must be completed.

h. When driving ranges are used in driver education courses, two hours of range experience will be considered equal to one hour of on-street, behind-the-wheel driving. However, in addition to range time, a minimum of three hours of on-street, behind-the-wheel driving must be completed.

i. Motor vehicles that are designed primarily for carrying nine or fewer occupants, excluding motorcycles and mopeds, are the only motor vehicles approved for use in driver education courses, and each shall be equipped with a dual control. Vehicles must bear a manufacturer's label pursuant to 49 CFR §567.4 effective as of October 1, 2023.

j. The driver education teacher or instructor is to verify at the beginning of each course that each student possesses a valid instruction permit or driver's license. Each student is responsible for

possessing an instruction permit or driver's license throughout all laboratory instruction and is to report any suspension, revocation or cancellation of the instruction permit or driver's license to the driver education teacher or instructor prior to attending laboratory instruction.

634.3(3) *Experimental program.* The department may approve an experimental program based on student or school district need for improved instruction. The maximum duration of an experimental program is three years. Annual documentation of the effectiveness of instruction must be submitted to the department.

761—634.4(321) Instructor qualifications, application, and certification.

634.4(1) *Behind-the-wheel instructor qualifications.* Behind-the-wheel instructors must:

a. Hold a valid driver's license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.

b. Have a clear driving record for the previous two years.

634.4(2) *Behind-the-wheel instructor's certification requirements.* Except as otherwise provided in this chapter, the following requirements apply to a behind-the-wheel instructor:

a. An applicant for a behind-the-wheel instructor's certification will apply to the department using Form 431160.

(1) An initial behind-the-wheel instructor's certification is to be submitted annually within 60 days of the expiration date unless otherwise approved by the department. The instructor approval expires on December 31 but remains valid for an additional 30 days after the expiration date.

(2) To renew a behind-the-wheel instructor's certification, a person will do all of the following:

1. Apply to the department annually. Instructor approval is valid for a calendar year or the remainder of a calendar year. The instructor approval expires on December 31 but remains valid for an additional 30 days after the expiration date. An application for renewal of instructor approval shall be submitted within 60 days of the expiration date unless otherwise approved by the department.

2. Provide behind-the-wheel instruction for a minimum of 12 clock hours during each calendar year.

b. A behind-the-wheel instructor will complete at least one state-sponsored or state-approved behind-the-wheel instructor refresher course biennially. Approved courses may include electronic completion or remote attendance options. The department may develop a special course for licensed teachers or peace officers who qualify to provide behind-the-wheel instruction under subrule 634.4(3) or 634.4(5).

c. Upon certification, but prior to providing behind-the-wheel instruction, the person will be:

(1) Authorized by the Iowa board of educational examiners to provide behind-the-wheel driving instruction unless exempt under Iowa Code section 321.178.

(2) Employed by a public or licensed commercial or private provider of the approved driver education course.

634.4(3) *Instructor's certification for licensed teachers.* A teacher licensed by the Iowa board of educational examiners as provided in 282—subrule 13.28(4) will be included as an approved instructor on an annual driver education course approval as referenced in subrules 634.3(1) and 634.6(1) and shall meet the requirements in paragraph 634.4(2)*"b"* to be certified by the department to provide behind-the-wheel instruction.

634.4(4) *Instructor application and certification for a teacher with an expired teacher's license.* A teacher who holds an expired initial, standard, exchange, or master educator license with an endorsement for driver education as provided in 282—subrule 13.28(4) shall meet the requirements in subrule 634.4(2) to be certified by the department to provide behind-the-wheel instruction.

634.4(5) *Instructor application and certification for active peace officers and retired peace officers.*

a. An applicant for behind-the-wheel instructor certification who is an active peace officer or a retired peace officer as referenced in Iowa Code section 321.178 shall:

(1) Be at least 25 years of age.

(2) Submit Form 431233 certifying the person's status as an active or retired peace officer.

(3) Meet all other requirements of subrule 634.4(2), except peace officers or retired peace officers who otherwise qualify under this subrule are not required to meet the requirement of subparagraph 634.4(2)*"c"*(1).

b. A retired peace officer is only required to submit Form 431233, required under paragraph 634.4(5)*"a,"* to the department once unless the form is invalid or not accepted by the department.

634.4(6) *Instructor application and certification for persons other than licensed teachers, peace officers or retired peace officers.* A person who is not licensed by the Iowa board of educational examiners to provide classroom driver education as provided in 282—subrule 13.28(4), who does not hold an expired teacher's license as referenced in subrule 634.4(4), or who is not a peace officer or a retired peace officer as referenced in Iowa Code section 321.178 must satisfy all of the following to be certified by the department to provide behind-the-wheel instruction:

a. Be at least 25 years of age.

b. Meet the requirements in subrule 634.4(2).

c. Successfully complete a department-approved instructor preparation course within 12 months of application for behind-the-wheel instruction certification. The instructor preparation course will:

(1) Be a driver education teacher preparation program that is designed to observe, coach, and evaluate behind-the-wheel instructor candidates.

(2) Be approved by the Iowa board of educational examiners.

(3) Consist of 24 hours of classroom instruction in sessions not exceeding 4 hours that covers, at minimum, the psychology of the young driver, behind-the-wheel teaching techniques, and driving route selection.

(4) Consist of 12 hours of behind-the-wheel instruction in sessions not exceeding 4 hours in a dual-controlled vehicle with a licensed driver education instructor.

634.4(7) *Behind-the-wheel certification—reissuance.*

a. Completion of the behind-the-wheel instructor preparation course will be required to re-issue a behind-the-wheel instructor certification that has expired and is past the renewal date unless the applicant has:

(1) Held a valid behind-the-wheel certification within the two years immediately preceding the application.

(2) Provided a minimum of 12 clock hours of behind-the-wheel instruction within the two years immediately preceding the application.

(3) Completed at least one state-sponsored or state-approved behind-the-wheel instructor refresher course within the two calendar years immediately preceding the application unless otherwise exempt under this chapter.

(4) Completed a minimum of 12 clock hours shadowing a teacher licensed by the Iowa board of educational examiners as provided in 282—subrule 13.28(4) through a department-approved driver education program within 90 days immediately preceding the application.

b. Upon recertification but prior to providing behind-the-wheel instruction, the person will:

(1) Be authorized by the Iowa board of educational examiners to provide behind-the-wheel driving instruction unless otherwise exempt under this chapter.

(2) Be employed by a public or licensed commercial or private provider of the approved driver education course and work under the supervision of a person licensed by the Iowa board of educational examiners as provided in 282—subrule 13.28(4).

761—634.5(321) Instructor disqualification, investigation, and cancellation.

634.5(1) *Disqualifications.* A person will be disqualified by the department from certification as a behind-the-wheel driving instructor for any of the reasons for which the chair of the Iowa board of educational examiners would deny an application for licensure, certification or authorization as provided in rule 282—11.35(256).

634.5(2) *Investigation.* The department may investigate an applicant for a behind-the-wheel instructor's certification or an instructor to determine if the applicant or instructor meets the requirements for certification. The investigation may include but is not limited to an inquiry into the applicant's or instructor's criminal history from the department of public safety.

634.5(3) *Cancellation.* The department shall cancel the behind-the-wheel instructor's certification of an individual who no longer qualifies under this chapter.

761—634.6(321) Private and commercial driver education schools. The department licenses private and commercial driver education schools as follows:

634.6(1) *Course approval.* A driver education school will receive course approval, which includes approval of all teachers and instructors listed on the application, from the department prior to the beginning of the first class that is offered and annually thereafter. Behind-the-wheel instruction must be provided by a person who meets the instructor requirements in rule 761—634.4(321). Evidence of the approvals and certifications will be submitted to the department upon application for a license, upon renewal of a license, and upon reinstatement of a license following cancellation.

634.6(2) *Application and fees.* Application for license issuance or renewal is $25.The fee will be made to the department in a manner determined by the department.

634.6(3) *Issuance and renewal.* A license to teach driver education shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 but remains valid for an additional 30 days after the expiration date. The application for renewal will be submitted to the department within 60 days of the expiration date unless otherwise approved by the department.

634.6(4) *Cancellation.* A license to teach driver education shall be canceled if the course, teacher, or instructor is no longer approved or the person providing only behind-the-wheel instruction for driver education is no longer certified by the department and authorized by the Iowa board of educational examiners.

761—634.7(321) Driver education—teaching parent. As an alternative to a driver education course offered by a course provider approved under rule 761—634.3(321), a teaching parent may instruct a student in an approved course of driver education.

634.7(1) *Instruction by a teaching parent.*

a. A teaching parent will instruct the student using an approved course.

b. The teaching parent will select the course to be used from the list of approved courses posted at www.iowadot.gov/mvd/driverseducation/Parent-taught/Step-2 and will purchase the course directly from the applicable course vendor.

c. No person will provide driver education as a teaching parent unless the person meets the definition of a teaching parent, and the department will not recognize driver education that was:

(1) Provided by a person who does not meet the definition of a teaching parent.

(2) Provided to a person who is not a student as defined in rule 761—634.2(321).

(3) Offered under a course other than an approved course.

634.7(2) *Course completion—certificate of completion.*

a. Upon the student's completion of an approved course, the teaching parent will apply for a certificate of completion on behalf of the student pursuant to Iowa Code section 321.178A.

b. The department will deny issuance of a certificate of completion if:

(1) The course was not conducted by a person meeting the definition of a teaching parent.

(2) The application does not properly identify a student eligible to be instructed in driver education by the teaching parent.

(3) The application and evidence do not demonstrate the student's successful completion of an approved course.

(4) The application and evidence do not include all documentation, statements, certifications, and logs required by Iowa Code section 321.178A in adequate and proper form and content.

(5) The department has determined that the application should be rejected for any reason listed in Iowa Code section 321.13.

c. If the application is denied, the department will issue a letter of denial to the teaching parent explaining the reason for the denial.

d. If the application is approved, the department will issue a certificate of completion to the student. A certification of completion issued by the department under this subrule constitutes proof of successful completion of an Iowa-approved course in driver education but shall not be grounds for waiver of a driving test under 761—subrule 604.31(2).

634.7(3) *Course approval.*

a. For a course to become an approved course under Iowa Code section 321.178A, a vendor of a driver education curriculum will submit an application on a form provided by the department to the address in rule 761—634.1(321), along with a copy of all proposed curriculum materials.

b. To be designated as an approved course, the curriculum submitted must, at a minimum, meet the requirements of Iowa Code section 321.178A, be appropriate for teaching-parent-directed driver education and related street or highway instruction, and meet or exceed the required content set forth in the Appendix to this rule.

c. If the proposed curriculum does not meet the requirements for an approved course, the department will issue a letter of denial to the course vendor explaining the reason for denial.

d. If the proposed curriculum is approved, the department will issue a certificate of approval to the vendor designating the curriculum as an approved course and will list the approved course on the department's website. Course approval will be issued for one calendar year or for the remainder of a calendar year. The approval expires on December 31 and must be renewed annually by the submission of an application on a form provided by the department and all required materials as set forth in this subrule at least 60 days prior to the expiration date unless otherwise approved by the department.

These rules are intended to implement Iowa Code sections 321.13, 321.178, 321.178A, 321.180B and 321.194.

Appendix to Rule 761—634.7(321)

To be designated as an approved course, a curriculum must, at a minimum, meet the requirements of Iowa Code section 321.178A, be appropriate for teaching-parent-directed driver education and related street or highway instruction, and meet or exceed the required content listed below:

1. *Duration and required content.* The course must provide for both classroom and behind-the-wheel instruction. As used in this rule, *"classroom instruction"* means instruction provided by a teaching parent in a private setting using printed or electronic course materials, and *"behind-the-wheel instruction"* means street or highway driving instruction provided by a teaching parent or a person who is qualified to provide street or highway driving instruction pursuant to Iowa Code section 321.178 in a motor vehicle operated by the student.
    a. Classroom instruction shall include all of the following:
        i. Instruction concerning distracted driving and substance abuse.
        ii. Instruction concerning railroad crossing safety.
        iii. Instruction relating to becoming an organ donor under the revised uniform anatomical gift Act as provided in Iowa Code chapter 142C.
        iv. Instruction providing awareness about sharing the road with pedestrians, bicycles and motorcycles.
    b. Behind-the-wheel instruction shall consist of at least 40 hours of street or highway driving, including 4 hours of driving after sunset and before sunrise while accompanied by the teaching parent or a person who is qualified to provide street or highway driving instruction pursuant to Iowa Code section 321.178.
2. *Required topics.* The course may follow any format the vendor determines, provided all of the following topics are properly and adequately covered, as detailed in the course application form provided by the department:
    a. Traffic law – *classroom instruction*
        i. Introduction to driver education and driving laws and privileges.
        ii. Understanding your license to drive.
        iii. Right-of-way.
        iv. Traffic control devices.
        v. Controlling traffic flow.
        vi. Alcohol and other drugs.
        vii. Cooperating with other roadway users.
    b. Driver preparation – *classroom and behind-the-wheel instruction*
        i. Pre-drive tasks.
        ii. Occupant protection.
        iii. Symbols and devices.
        iv. Starting tasks.
        v. Vehicle operation and control tasks.
        vi. Post-drive tasks.
        vii. In-car progress assessment.
        viii. Driving plan *(classroom instruction)*.
    c. Vehicle movements – *classroom and behind-the-wheel instruction*
        i. Visual attention, mental attention and communication.
        ii. Reference points.
        iii. Vehicle balance.

iv. Vehicle maneuvers.
v. In-car progress assessment *(behind-the-wheel instruction)*.

d. Driver readiness – *classroom and behind-the-wheel instruction*
i. Driving practices.
ii. Fatigue.
iii. Aggressive driving.
iv. In-car progress assessment *(behind-the-wheel instruction)*.

e. Risk reduction – *classroom and behind-the-wheel instruction*
i. Risk factors.
ii. Space management.
iii. In-car progress assessment *(behind-the-wheel instruction)*.

f. Environmental factors – *classroom and behind-the-wheel instruction*
i. Environmental characteristics.
ii. Environmental risk factors.
iii. In-car progress assessment *(behind-the-wheel instruction)*.

g. Distractions – *classroom and behind-the-wheel instruction*
i. Distractions.
ii. Multi-task performances.
iii. In-car progress assessment *(behind-the-wheel instruction)*.

h. Alcohol and other drugs – *classroom instruction*
i. Introduction of alcohol and other drug problems.
ii. Nature of alcohol-related crash problems.
iii. Physiological effects of alcohol.
iv. Psychological effects of alcohol.
v. Other drug effects on the driving task.
vi. Zero-tolerance in the driving environment.

i. Vehicle movement and reference points – *behind-the-wheel instruction*
i. Vehicle movements and reference points (entering and exiting traffic and parking).
ii. In-car progress assessment *(behind-the-wheel instruction)*.

j. Adverse conditions – *classroom instruction*
i. Adverse weather and reduced visibility conditions.
ii. Traction loss.
iii. Emergencies.

k. Vehicle requirements – *classroom and behind-the-wheel instruction*
i. Vehicle malfunctions *(classroom instruction)*.
ii. Vehicle maintenance *(classroom instruction)*.
iii. Trip planning *(classroom instruction)*.
iv. Adverse conditions and vehicle requirements – off-street simulated practice *(behind-the-wheel instruction)*.
v. In-car progress assessments *(behind-the-wheel instruction)*.

l. Consumer responsibility – *classroom and behind-the-wheel instruction*
i. Vehicle use and ownership *(classroom instruction)*.
ii. Vehicle insurance *(classroom instruction)*.
iii. Environmental protection and litter prevention *(classroom instruction)*.

iv. Anatomical gift Act – organ donor *(classroom instruction)*.

m. Personal responsibility *(classroom and behind-the-wheel instruction)*.

i. Comprehensive classroom progress assessment (testing) *(classroom instruction)*.

ii. Driver licensing *(classroom instruction)*.

iii. In-car progress assessment *(behind-the-wheel instruction)*.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 23
"Employer's Contribution and Charges"

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 22, 2024 9 to 10 a.m.	Iowa Workforce Development 1000 East Grand Avenue Des Moines, Iowa

Public Comment

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

Jeffrey Koncsol
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

The proposed chapter details employers' contributions and charges related to unemployment.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Employers, employees, and 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:

Employers and employees are impacted by unemployment costs.

- Qualitative description of impact:

Employers and employees will have rules for understanding unemployment finance.

3. Costs to the State:

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

Iowa Workforce Development expends significant funds in handling unemployment for the State of Iowa.

- Anticipated effect on state revenues:

No change is anticipated.

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

This chapter needs to be updated to better serve all Iowa employers and employees.

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

Not applicable.

6. Alternative methods considered by the agency:

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

Not applicable.

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

Not applicable.

Small Business Impact

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

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

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

This chapter attempts to make rulemaking less burdensome and more clear for all parties involved in unemployment.

Text of Proposed Rulemaking

ITEM 1. Rescind 871—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23
EMPLOYER'S CONTRIBUTION AND CHARGES

871—23.1(96) Definitions.

23.1(1) *Balancing account.* An account set up to receive benefit charges that by law are not chargeable to any employer. The purpose of the balancing account is to enable the department to properly account for all benefits paid out.

23.1(2) *Average annual taxable payroll.* See Iowa Code section 96.1A(2).

23.1(3) *Calendar quarter.* See Iowa Code section 96.1A(6).

23.1(4) *Computation date.* The date as of which employers' experience with respect to unemployment or unemployment risk is measured for the purpose of determining contribution rates.

23.1(5) *Employer's contribution and payroll report.* An employer's quarterly report of the wages paid to individual workers, the total and taxable wages paid and the amount of contributions due to a state unemployment insurance fund.

23.1(6) *Contributions.* See Iowa Code section 96.1A(8).

23.1(7) *Contributor rate.* The percent constituting the rate at which the employer's payroll is taxed.

23.1(8) *Employer.* See Iowa Code section 96.1A(14).

23.1(9) *Experience.* An employer's record with respect to contributions paid, benefits charged, and taxable wages reported.

23.1(10) *Experience rating.* A method for determining the contribution rates of individual employers on the basis of the factors specified in the state employment security law for measuring employers' experience with respect to unemployment or unemployment risk.

23.1(11) *Federal unemployment tax.* The tax imposed by the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

23.1(12) *Federal Unemployment Tax Act.* Subchapter C of Chapter 23 of the Internal Revenue Code which relates to the federal unemployment tax.

23.1(13) *Funds.*

a. Administrative funds. Funds made available from federal, state, local and other sources to meet the cost of state workforce development administration.

b. Contingency fund. An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state workforce development divisions arising from increases in workload or other specified causes.

c. Employment security administration fund. See Iowa Code section 96.13(1).

d. Special employment security contingency fund. See Iowa Code section 96.13(3).

e. Temporary emergency surcharge fund. See Iowa Code section 96.7(11).

f. Unemployment compensation fund. See Iowa Code section 96.9.

g. Unemployment trust fund. See Iowa Code section 96.9(2).

23.1(14) *Indian tribe.* See Iowa Code section 96.1A(24).

23.1(15) *Liability determination.* See Iowa Code section 96.7(4).

23.1(16) *Subject employer.* An employing unit which is subject to the contribution provisions of a state employment security law.

23.1(17) *Quarterly wage report.* A report that generates after the employer has electronically submitted its quarterly contribution and payroll.

23.1(18) *Quarterly wage detail.* A report listing workers and their wages by social security number.

This rule is intended to implement Iowa Code sections 96.7(2)*"c"*(3), 96.7(7)*"b,"* 96.11(1) and 96.19(1).

871—23.2(96) Definition of wages for employment during a calendar quarter. Unless the context otherwise requires, terms used in rules, forms, and other official pronouncements issued by the department have the following meaning:

23.2(1) Wages paid are wages paid to an individual during the calendar quarter. Wages earned but not paid during the calendar quarter are considered as wages for employment in the quarter paid. The employer's contribution and payroll is evidence of when the wages were paid. If the wages are not listed, they shall be considered as paid as of:

a. The date appearing on the check.

b. The date appearing on the notice of direct deposit.

c. The date the employee received the cash payment.

d. The date the employee received any other type of payment in lieu of cash.

23.2(2) Wages payable means wages earned and unpaid.

23.2(3) Remuneration paid in goods or services shall be computed on the basis of the fair value of the goods or services at the time of payment.

23.2(4) Cash value of room and board.

a. If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment, the reasonable cash value of same shall be deemed wages subject to contribution.

b. Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in paragraphs 23.2(4) *"d"* and *"e."*

c. In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in paragraph 23.2(4)*"d."*

Full board and room per week	$300.00
Meals (without lodging) per week	100.00
Meals (without lodging) per day	20.20
Lodging (without meals) per week	198.00
Lodging (without meals) per day	40.00
Individual meals:	
Breakfast	4.50
Lunch	5.30
Dinner	10.50
A meal not identifiable as breakfast, lunch or dinner	4.50

d. The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or group of instances, if it is determined that the values fixed in or arrived at in accordance with paragraph 23.2(4)*"c,"* or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

e. If the department determines that the reasonable cash value is other than prescribed in a contract of hire or in paragraph 23.2(4)*"c,"* the employer's quarterly payroll and contribution reports to the department shall thereafter show the value of such remuneration as determined by the department.

f. Notwithstanding the provisions of this paragraph, the cash value of meals which are provided by and for the convenience of the employer on the business premises of the employer shall not be deemed as insured wages under chapter 96 of the Iowa Employment Security Law. Lodging furnished by the employer, for the convenience and on the business premises of the employer, shall not be considered wages if the employee is required to accept the lodging as a condition of employment.

This rule is intended to implement Iowa Code section 96.19(41).

871—23.3(96) Wages.

23.3(1) Wages are as defined in provided in Iowa Code section 96.1A(40), with the additional clarifications.

23.3(2) The term "wages" shall not include:

a. The amount of payment in addition to the employee's regular wages paid for the sole purpose of compensating the employee for expenses inherent in the performance of services away from the regular base of operation.

b. Amounts paid specifically for travel or other ordinary and necessary expenses incurred or reasonably expected to be incurred in the employer's business are not wages. Travel and other reimbursed expenses must be identified either by making a separate payment or by specifically

indicating the separate amounts if both wages and expense allowances are combined in a single payment.

c. Cash payments, or the cash value of other remuneration, made voluntarily and without contractual obligation to, or in behalf of, an individual for periods during which such individual is in active service or training as a member of the national guard, or the military or naval forces of the United States, including the organized reserves.

d. Sick pay.

(1) "Wages" shall not include any amounts paid as sick pay if the payments are made by or on behalf of an employer under a plan or system. The plan or system must provide sick pay for the employees of the employer or a class or classes of the employer's employees. The plan may include dependents.

(2) In the absence of a plan or system providing sick pay, any amounts paid by or on behalf of an employer on account of sickness are not included after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

e. The amount of any payment by an employing unit for or on behalf of an individual in its employ, under a supplemental unemployment benefit plan established by such employing unit, with approval of the department. Such plan or system must make provision for payment to a trust fund or similar account on behalf of individuals performing services for it. The account must be used to pay supplemental unemployment benefits to such employing unit's employees over and above any sum to which such employees might be entitled under the provisions of the state employment security law. Such payments to employees are not remuneration for the purposes of reducing or preventing payment of unemployment benefits. Such plan shall contain the following features:

(1) The employer pays into a separately established trust fund or similar account an amount per hour (or equivalent) worked by the employees covered by the agreement until the maximum amount called for has been reached. The plan specifically provides for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument.

(2) These payments made by the employer into the trust fund or similar account are not subject to recovery by the employer before the satisfaction of all liabilities to employees covered by the plan.

(3) The trust fund or similar account is to be used to pay supplemental unemployment benefits to employees over and above any sum to which they might be entitled under the provisions of a state employment security law.

(4) That the agreement provides that such employee is not entitled to receive any payment from the trust fund or similar account unless the employee is also concurrently eligible for benefits under a state employment security law.

(5) The plan requires that benefits are to be determined according to objective standards. Thus a plan may provide similarly situated employees with benefits that differ in kind and amount but will not permit such benefits to be determined solely at the discretion of the administrator of the fund.

(6) That the employee has no vested right in any of the moneys paid into the trust fund or similar account except as the employee may qualify for benefits under the terms of the agreement.

(7) That any payment made to or on behalf of an employee be from and to a trust fund or similar account described in Section 401(a) of the Internal Revenue Code Title 26 of 1970, which is exempt from tax under Section 501(a) of said Code.

(8) An employer seeking approval of a supplemental unemployment benefit (SUB) plan should petition the department in the manner provided for petitioning for a declaratory ruling. The employer should include a written copy of its plan in the petition for declaratory ruling.

f. Remuneration paid to an officer of corporation if such officer is a majority stockholder:

(1) Unless such services are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) If such services are required to be covered under this chapter as a condition to receiving a full tax credit against the tax imposed by the FUTA (26 U.S.C. 3301-3309).

g. Remuneration paid by this state or any of its political subdivisions or by an Indian tribe to:

(1) An elected official,

(2) A member of a legislative body,

(3) A member of the judiciary of a state or political subdivision,

(4) A member of the state national guard or air national guard,

(5) An employee serving on a temporary duty basis for fire, storm, snow, earthquake, flood, or similar emergency, or

(6) A person serving in a nontenured policymaking capacity or advisory capacity pursuant to state law that ordinarily does not require duties of more than eight hours per week.

h. The term "wages" shall not include:

(1) Any amount of personal compensation withdrawn by a bona fide sole proprietor from the business or profession.

(2) Any amount of personal compensation withdrawn by a bona fide partner or partners from their partnership entity.

(3) Remuneration for services that are paid by a limited partnership to a limited partner is reportable. If a limited partner performs the duties of a general partner, remuneration is considered to be exempt.

i. Payments made by an employer to a deferred compensation plan, established to provide for an employee's retirement, are not wages subject to contributions unless the payments were deducted from the employee's pay through a salary reduction agreement. In circumstances where both the employer and the employee contribute to the plan, the employer's share is not wages unless the employee would receive a cash payment if the employee chose not to participate in the plan.

j. Remuneration paid to members of limited liability companies based on membership interest —see Iowa Code sections 96.1A(19)*"a"*(9) and 96.1A(40)*"b"*(5).

k. Remuneration paid for services performed by an inmate of a correctional institution. Persons in work release programs are considered inmates, and their wages are not reportable. Remuneration paid to residents of halfway houses is reportable.

23.3(3) The term "wages" shall include:

a. Small business corporation remuneration. Remuneration paid to officers of "subchapter S" corporations for services performed in Iowa shall be deemed to be wages. Any corporate dividends must be approved and recorded in the corporate minutes prior to payment of such dividends. Remuneration to shareholders shall not be deemed to be dividends if such remuneration is paid regularly, either weekly or monthly, and is not in proportion to such shareholder's amount of stock, or in proportion to such shareholder's investment in the corporation. Corporate dividends are not considered wages. Ordinary income distributions as reported on IRS Form K-1 will not be considered to be wages provided that distributions are made proportionate to stock ownership or shareholder's investment and provided that corporate officers performing services for the corporation have received appropriate remuneration for services performed as defined by the Internal Revenue Service and the remuneration is reported as wages. Paragraph 23.3(2)*"f"* describes possible exclusion of wages paid to corporate officers who are majority stockholders.

b. Wages of employees hired with equipment. Where an employee is hired with equipment, except where it is ordinary in custom and usage in the trade or business for employees to furnish such equipment at their own expense, the fair value of the remuneration for the employee's services, if specified in the contract of hire, shall be considered wages. If the contract of hire does not specify the employee's wages, or the value of the wages agreed upon under the contract of hire is not a fair value, the department shall determine the employee's wages, taking into consideration the prevailing wages for similar work under comparable conditions, and the wages thus determined shall apply as wages and be so reported by the employer.

c. Union members. Members of a union, subject to the direction and control of the union and acting on behalf of the union, are considered employees of the union with respect to the services

performed. Payments made to them by the union as reimbursement for time lost from their regular employment are considered wages.

d. Cafeteria plans. A cafeteria plan is a set of benefit options offered by the employer to employees or to a class of employees. A particular benefit in a cafeteria plan will be considered to be "wages" subject to contributions (tax) for Iowa unemployment insurance purposes if the employee has the option of receiving a cash payment in lieu of the benefit. If the employee does not have the option of receiving a cash payment, the benefit will still be considered "wages" subject to contributions unless the benefit is specifically excluded from the definition of "wages" in Iowa Code section 96.19(41).

e. Personal use of company vehicle. The cash value of personal use of a company automobile or other vehicle is "wages" subject to contributions (tax) for Iowa unemployment insurance purposes and shall be reported to the department as wages paid in the quarter in which the personal use occurred.

This rule is intended to implement Iowa Code sections 96.5(5)*"a,"*96.19(6)*"a"*(1) and (6), and 96.19(41).

871—23.4(96) Wages—back pay. A payment in the form of or in lieu of back pay to an individual (exclusive of legal fees and other litigation expenses) shall be reported by the employer as total and taxable wages paid to the individual in the quarter in which the employer actually made the payment in the form of or in lieu of back pay. A payment for back pay is taxable and recoverable if it meets the definition of wages. Punitive or liquidated damages for other than lost wages, and job search expenses, are not taxable, recoverable or deductible as a back pay award.

23.4(1) Where the back pay wages, award or a judgment are paid as remuneration for employment by an employer into an account for an individual, the amount is considered as wages paid in the quarter in which the employer or appointed party actually pays the amount to the individual.

23.4(2) Where the department, individual, and employer agree that the employer may remit to the department amounts to repay a benefit overpayment resulting from receipt of back pay, the employer is required to report this amount to the department as total and taxable wages paid to the individual in the calendar quarter in which the amount is actually paid.

This rule is intended to implement Iowa Code section 96.3(8).

871—23.5(96) Gratuities and tips.

23.5(1) Tips received by an individual from a person or persons other than the individual's employer, and not accounted for to the employer, are not wages unless required by subrule 23.5(2). If the employee makes an accounting to the employer listing the tips received, these tips must be reported to the department as total and taxable wages. Where the customer writes the amount of the tip on a bill and the employer pays the employee the amount so shown and charges it to the customer's account, such amounts are wages.

23.5(2) Tips are considered reportable and taxable as wages when taken into account by the employer in determining the employee's compensation under the federal wage and hour law, when paid by the customer as a service charge set by the employer, or when pooled and distributed to the employees by the employer. The employer shall keep sufficient detailed records so that it can be ascertained, if necessary, by audit or other authorized inspection which compensation is reportable as taxable tips and which compensation is reportable as compensation other than tips. For reporting purposes to the department, the tips and other reportable and taxable compensation may be submitted in aggregate on Form 65-5300, Employer's Contribution and Payroll Report.

23.5(3) An accounting as used in this rule means the reporting of tips as gratuities by an employee to the employer for the purpose of deducting social security taxes or withholding taxes with the employer reporting the same on Form 941, Employer's Quarterly Federal Tax Return.

This rule is intended to implement Iowa Code section 96.1A(40).

871—23.6(96) Taxable wages.

23.6(1) If an individual has more than one employer, each employer must pay contributions on the employee's wages up to the taxable wage base.

23.6(2) The employer may not deduct any part of the contributions due on taxable wages from an employee's pay.

23.6(3) Only wages reported to the Iowa unemployment insurance program may be used in computing the employee's reportable taxable wages in Iowa.

23.6(4) A successor employer may use the taxable wages paid and reported by the predecessor employer to determine the successor employer's taxable wages if the successor employer received a transfer of experience from the predecessor employer.

23.6(5) A successor employer that received a transfer of experience may, at the successor employer's option, use the taxable wages reported by the predecessor to compute the taxable wages for the balance of the calendar year or may compute the taxable wages as if the employees acquired from the predecessor were new employees.

This rule is intended to implement Iowa Code section 96.19(37).

871—23.7(96) New employer contribution rates.

23.7(1) The term contributory employer excludes reimbursable employers but includes employers with a "zero" rate.

23.7(2) For the purposes of this rule, an administrative contribution surcharge and a temporary emergency surcharge may be added to an employer's contribution rate.

23.7(3) For the purposes of this rule, the first quarter in which an employer's account will be considered chargeable with benefits will be the third quarter of the employer's liability unless the employer paid and reported no wages during the first two quarters of liability. In that case, the employer will not be considered chargeable with benefits until the first quarter in which the employer pays and reports wages. Once an employer's account has been chargeable with benefits, it will be considered chargeable for rate computation purposes until it is terminated.

23.7(4) For the purposes of this rule, any single employer that has two or more establishments or businesses engaged in different industrial classification activities, with one or more establishments or businesses engaged in construction activity as defined in rule 871—23.82(96), will be assigned the contribution rate applicable to construction if 50 percent or more of the combined business activity is derived from the establishments or businesses engaged in construction activities.

This rule is intended to implement Iowa Code section 96.7.

871—23.8(96) Due date of quarterly contribution and payroll.

23.8(1) *Due date.* All covered employers subject to Iowa Code section 96.7 shall file with the department quarterly contribution and payroll reports on or before the due date, and any employer failing to file a quarterly when due shall be considered delinquent.

a. Contributions are due quarterly on the last day of the month following the calendar quarter for which the contributions have accrued. The first payment of all employers becoming liable during a calendar year unless otherwise noted shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

b. If any due date listed in this rule falls on a Saturday, Sunday, or legal holiday, the due date is the next following business day. Quarterly wage detail, contributions, and payments in lieu of contributions, if mailed, shall be considered as received on the date shown on the postmark of the envelope in which they are received by the department.

23.8(2) *Due date for new employer.* The first contribution payment of any employer who becomes newly liable for contributions in any year are due on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of one or more workers were employed on any one day, or the last day of the month following that calendar quarter in which the first dollar in Iowa wages has been paid.

a. The first contribution payment of any agricultural employer who becomes newly liable for contributions in any year will become due on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of ten or more workers were employed on any one day, or the last day of the month following that calendar quarter in which a total of $20,000 in wages was paid.

b. The first contribution payment of any domestic employer who becomes newly liable for contributions in any year will become due and payable on the last day of the month following that quarter wherein the liability was established, or the last day of the month following that calendar quarter in which a total of $1,000 in wages was paid.

23.8(3) *Due date for elective coverage.* The first contribution payment of any employing unit that elects with the written approval of such election by the department to become an employer, or to have nonsubject services performed for it deemed employment, is due on the last day of the month next following the close of the calendar quarter in which the conditions of becoming an employer by election are satisfied, and includes contributions with respect to all wages paid for employment occurring on and after the date stated in such approval (as of which such employing unit becomes an employer), up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

23.8(4) *Due date for newly liable employer.* The first contribution payment of an employer who becomes newly liable for contributions in any year in any other manner is due on the last day of the month next following the quarter wherein such individual or employing unit became an employer.

23.8(5) *Delinquent date and penalty and interest.*

a. A quarterly wage detail or contribution payment or payment in lieu of contributions that is not received on or before the due date is delinquent. An employer who fails to timely file quarterly contribution and payroll is liable to the department, for each such delinquent quarter, subject to waiver for good cause shown, a penalty as provided in Iowa Code section 96.14(2). No penalty will apply to delinquent quarters when the employer proves to the satisfaction of the department that no wages were paid.

b. An employer who has not paid contributions or payments in lieu of contributions on or before the due date shall pay interest on the delinquent contribution at the rate of 1 percent per month, or 1/30 of 1 percent for each day or fraction thereof, from and after the due date until payment is received by the department unless good cause is shown why such interest shall be waived.

23.8(3) *Due date upon demand.* If the department finds that the collection of any contribution or payment in lieu of contributions will be jeopardized by delaying the collection thereof until the date otherwise described, upon written demand by the department, such contribution or payment in lieu of contribution shall become immediately due and delinquent.

23.8(4) *Extension of time.* Upon written request filed with the department before the due date of any contribution and payroll, the department may, for good cause shown, grant an extension in writing of the time for filing and the payment of the contributions, but no extension may exceed 30 days and no extension may postpone payment beyond the last day for filing tax returns under the Federal Unemployment Tax Act. If an employer who has been granted an extension fails to pay the contribution on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

This rule is intended to implement Iowa Code section 96.7(1).

871—23.9(96) Delinquency notice. If an employer has not submitted its quarterly contribution and payroll with 20 days of the due date, IWD will issue, via mail or email to the address on file, a delinquency notice stating the employer's name, account number, and experience rate and the quarter for which contribution and payroll is delinquent. If the employer has sold or dissolved the business, the employer is required to show the date of the last wages paid and the date of last employment. If the business was sold or transferred, the employer is required to provide the name and address of the successor and the employer's future mailing address.

This rule is intended to implement Iowa Code section 96.7(2).

871—23.10(96) Payments in lieu of contributions.

23.10(1) An employer who has qualified for reimbursement payments or has had an election to become a reimbursable employer approved shall pay to the department an amount equal to the amount of regular or extended benefits paid, including benefits that are based on wage credits transferred from another employer. If extended benefits are in effect, employers shall reimburse one-half of the extended benefits paid, except governmental employers and Indian tribes shall reimburse all extended benefits paid.

23.10(2) At the end of each calendar quarter, the department shall bill each reimbursable employer via a statement sent within 30 days of the quarter for which the benefits are charged. The statement will include the social security number, name of claimant and amount of benefits charged to the employer for each claimant as well as the amount of any previous amounts due. Payment for each quarter's charges is due within 30 days of the issuance of the statement. If the employer fails to reimburse the department within the period prescribed by these rules, the department may attempt collection of the amount due including any of the following methods:

a. Issuance of Notice of Jeopardy Assessment and Demand for Payment.

b. Issuance of Notice of Lien.

c. Any other actions as prescribed by the law or these rules, including collection by distress warrant. Interest on delinquent reimbursable benefits is charged at the rate of 1 percent per month or 1/30 of 1 percent per day from the date payment was due until the date of payment.

This rule is intended to implement Iowa Code section 96.7(8).

871—23.11(96) Identification of workers covered by the Iowa employment security law.

23.11(1) Each employer shall obtain the social security number of each of its employees subject to the Iowa employment security law.

23.11(2) An employer shall report the worker's social security number in making any report required by the department with respect to the worker.

23.11(3) If a worker failed to report to the employer a correct social security number or fails to show the employer a receipt issued by an office of the social security board acknowledging that the worker has filed an application for an account number, the employer shall inform the worker that Regulation 106 of the Internal Revenue Service, United States Treasury Department, under the Federal Insurance Contribution Act provides that:

a. Each worker shall report to every employer for whom the worker is engaged in employment a social security number with the worker's name exactly as shown on the social security card issued to the worker by the social security board.

b. Each worker who has not secured a social security number shall file an application for a social security account number on Form SS-5 of the Treasury Department, Internal Revenue Service. The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves employment if such date precedes such seventh day.

c. If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which the worker leaves the employ of the employer, whichever is the earlier, the worker does not have a social security account number, and has not shown the employer a receipt issued to the worker by an office of the social security board acknowledging that the worker has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, and worker's sex, and a statement as to whether the worker had previously filed an application on Form SS-5 and, if so, the date and place of such filing. Furnishing the employer

with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of the obligation to make an application on Form SS-5 as required in paragraph 23.11(3)*"b."*

871—23.12 Reserved.

871—23.13(96) Employer elections to cover multistate workers.

23.13(1) *Arrangement.* The following rule governs the department's administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as the arrangement. Unless and until the department approves the arrangement via the Employer's Election to Cover Multi-State Worker form or an accepted and approved form from another jurisdiction, employers are subject to localization of employment (rule 871—23.24(96)).

23.13(2) *Definitions.* As used in this rule unless the context clearly indicates otherwise:

"Agency" means any officer, board, department, division, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

"Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval, and "interested agency" means the agency of such jurisdiction.

"Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

"Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

23.13(3) *Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.*

a. Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily works for the employing unit in more than one participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

(1) Any part of the individual's services are performed;

(2) The individual resides; or

(3) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

b. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable, and notify the agency of the elected jurisdiction accordingly. In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of and have acquiesced in the election.

c. If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

d. Such an election is effective as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved is effective, as to any interested agency, only if it is approved by such agency.

e. In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

23.13(4) *Effective period of election.*

a. Commencement. An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved,

specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

b. Termination.

(1) The application of an election to any individual under this rule shall terminate if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed so that they are no longer customarily performed in more than one particular jurisdiction. Such termination becomes effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(2) Except as provided in subparagraph 23.13(4)*"b"*(1), each election approved hereunder remains in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(3) Whenever an election under this rule ceases to apply to any individual, under subparagraph 23.13(4)*"b"*(1) or 23.13(4)*"b"*(2), the electing unit shall notify the affected individual accordingly.

23.13(5) *Reports and notices by the electing unit.*

a. The electing unit shall promptly notify each individual affected by its approved election and furnish the elected agency a copy of such notice.

b. Whenever an individual covered by an election under this rule is separated from employment, the electing unit shall again notify the individual forthwith as to the jurisdiction under whose unemployment compensation law the individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

c. The electing unit shall immediately report to the elected jurisdiction any change that occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires such individual to perform services in a new participating jurisdiction.

This rule is intended to implement Iowa Code section 96.20.

871—23.14(96) Elective coverage of excluded services. An employing unit having services performed for it which are not subject to the compulsory coverage provisions of the Act may file an application for voluntary election to become an employer under the law or to extend its coverage to individuals performing services which do not constitute employment as defined in the law.

23.14(1) In no case shall an elective coverage agreement under Iowa Code section 96.8(3) be approved unless and until it has been established that the employing unit making application for elective coverage is normally and continuously engaged in a regular trade, business or occupation.

23.14(2) An application for elective coverage shall be disapproved if the department finds that the employing unit at the time of making the application was insolvent or expected to discontinue business for any reason within one year from the date the application is filed, or that the employing unit is not normally and continuously engaged in a regular trade, business or occupation.

23.14(3) The department may, on its own motion, request a written statement as to why an employing unit wishes to file an election to become a subject employer as provided for in Iowa Code section 96.8(3)*"a"* and may request evidence of financial stability.

23.14(4) Any written election for a period prior to the date of filing shall become binding upon approval by the department, and notification of the approval shall be forwarded to the employer. If for any reason the department does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

23.14(5) The effective date of the voluntary election is the date on which the individual or individuals with noncovered wages first elect to have covered wages.

23.14(6) Effect of election approval. The first contribution payment of any employing unit that elects to become a covered employer shall become due and shall be paid on or before the due date of the reporting period during which the conditions of becoming a covered employer by election are satisfied, and shall include employer contributions with respect to all wages paid on and after the date stated in such approval (as of which such employing unit becomes a covered employer), up to and including the last pay period in the reporting period in which the conditions of becoming a covered employer by election are satisfied.

This rule is intended to implement Iowa Code section 96.8(3).

871—23.15 to **23.17** Reserved.

871—23.18(96) Nature of relationship between employer-employee.

23.18(1) *Commission salespersons and insurance solicitors.* Commission salespersons are considered employees and wages are subject to unemployment tax unless there is a department-approved independent contractor agreement in place.

23.18(2) *Directors and officers of a corporation.* Directors who receive a reasonable fee for attending meetings and who perform no other services are not employees of the corporation. Officers of associations and corporations who perform services for the associations or corporations are employees.

23.18(3) *Members of family.*

a. Services performed by an individual in the employ of a son, daughter, or spouse, and services performed by a child under the age of 18 in the employ of a father or mother are exempt from the provisions of this chapter.

b. Services performed by a foster parent in the employ of a foster child, by a stepparent in the employ of a stepchild, and by a child under the age of 18 years in the employ of a stepparent or foster parents are exempt from the provisions of this chapter.

c. Services performed by a son or daughter over the age of 18 as an approved provider for consumer-directed care in the employ of a father or mother who is an approved consumer of a home- and community-based waiver services program are exempt from the provisions of Iowa Code chapter 96.

23.18(4) *Aliens.* This chapter makes no distinction between citizens and lawful aliens. Lawful aliens in nonexempt employment are counted in determining whether the employer is subject to the Act and are covered by the contribution and benefit provision.

23.18(5) *Aged and minor employees.* Contributions are payable upon services rendered by an employee regardless of the age of the employee.

23.18(6) *Family employment.* Parents, spouse and minor children under the age of 18 years working for an individual proprietor are exempt from the provisions of this chapter. If such individuals are employed by a partnership, the exemption only applies if such a relationship exists between the worker and each member of the partnership. This exemption is not applicable to corporations or to limited liability companies.

23.18(7) *Partners.* Bona fide partners are not considered employees even though they receive salaries.

23.18(8) *Apprentices-clerks.* This chapter makes no exceptions for persons serving a clerkship or other form of apprenticeship.

23.18(9) *Members of a limited liability company.* Members of a limited liability company that perform services other than for the purpose of acquiring membership in the limited liability company are employees.

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

871—23.19(96) Employer-employee and independent contractor relationship.

23.19(1) The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules.

23.19(2) The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

23.19(3) Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.

23.19(4) Employees are usually paid a fixed wage computed on a weekly, hourly or piece basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

23.19(5) The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.

23.19(6) Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor. Whether the relationship of employer and employee exists under the usual common law rules will be determined upon an examination of the particular facts of each case.

23.19(7) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

23.19(8) All classes or grades of employees are included within the relationship of employer and employee. For example, superintendents, managers and other supervisory personnel are employees.

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

871—23.20(96) Employment—student and spouse of student. Wages earned by a student who performs services in the employ of a school, college or university at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) are not covered wages.

Wages earned by an individual who is a full-time employee for a school, college or university whose academic pursuit is unrelated to the full-time employment are covered wages.

Wages earned by the spouse of such a student in employment with the educational institution attended by the student are not covered wages if the employee-spouse is told prior to starting employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance.

This rule is intended to implement Iowa Code section 96.1A(16)*"g"*(6).

871—23.21(96) Excluded employment—student. Wages earned by a student who is enrolled at a nonprofit or public educational institution under a program taken for credit that combines academic instruction with work experience are normally excluded from the definition of employment, provided that no work performed by such individual in excess of the hours called for in the contract between the school and the employer or performed in a period of time during which the institution is on a regularly scheduled vacation and for which such student receives no academic credit shall be excluded from said definition.

This rule is intended to implement Iowa Code section 96.1A(16)*"g"*(6).

871—23.22(96) Employees of contractors and subcontractors.

23.22(1) If one employer contracts with another employing unit for any work that is part of the first employer's usual business, the first employer is liable for any contributions based on wages paid by the second employing unit in connection with the work if the second employing unit is not liable to pay contributions.

23.22(2) Employees of the second contractor are counted as employees of the first contractor while performing services on the contract for the first contractor.

This rule is intended to implement Iowa Code section 96.1A(15).

871—23.23(96) Liability of affiliated employing units. A nonliable employer shall be liable if the employer owns one or more employing units (or business units) and the combined employment has paid wages for service in employment in a calendar quarter in either the current or preceding year.

This rule is intended to implement Iowa Code section 96.1A(15).

871—23.24(96) Localization of employment—employees covered—exemption. When workers perform services in more than one state, the department will review each case individually and make a determination whether wages are reportable to Iowa based on the following guidelines in sequence:

23.24(1) Services performed in only one state are considered localized in that state regardless of where the employer is located. The services do not have to cover the entire reporting period. The wages are reportable to the state where the services are performed.

23.24(2) Where services are performed among two or more states in a reporting period, the base of operations is considered. The base of operations is the point from which the workers start and finish their work on a regular basis, and that is the state to which the wages are reportable. In this type of case, the department has the right to waive Iowa coverage to another jurisdiction (state of the base of operations) as long as the employee is properly covered by the other state.

23.24(3) When workers perform services in more than one state and there is no base of operations in any one state, the state from which the worker is immediately directed and controlled is the state to which the wages are reportable provided that some services are performed by the worker in that state.

23.24(4) If the services of the workers are not localized in a state, the base of operations is not involved or the place where services are directed and controlled is not applicable, then the wages are reportable to the state in which the worker resides provided some services are performed in that state.

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

871—23.25(96) Domestic service.

23.25(1) Services of a household nature performed by an individual in or about the private home of the person by whom the individual is employed or performed in or about the club rooms or house of

a local college club or local chapter of a college fraternity or sorority by which the individual is employed are included within the term "domestic service."

23.25(2) A private home is the fixed place of abode or residence of an individual or family, including the house and the lands on which the house stands.

23.25(3) Services of a general household nature are those ordinarily and customarily performed as an integral part of the upkeep operation and maintenance of a dwelling, residence or private home. In general, covered services of a household nature in or about a private home include services rendered by workers such as cleaning persons, cooks, maids, housekeepers, caretakers, yard workers and similar domestic workers. In addition, services performed by babysitters, nannies, health aides and similar workers for members of the household are covered.

23.25(4) The services enumerated above are not covered under the term "domestic service" if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, offices or other commercial enterprises.

23.25(5) The term "domestic service" does not include the service of an individual engaged in recognized independent craft not habitually rendered as a part of ordinary household duties. In situations where it may be necessary to determine whether or not an employer-employee relationship exists between the householder and the household worker, the guidelines as set forth in rule 871—23.19(96) will be applied.

23.25(6) Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For the purpose of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university where the term "school, college, or university" is taken in its commonly or generally accepted sense.

23.25(7) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include but are not limited to services rendered by cooks, janitors, laundry persons, furnace persons, handy persons, gardeners and housekeepers.

23.25(8) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed there are not covered under the term "domestic service."

23.25(9) Where an individual is employed by a domestic service or home health care organization to perform domestic services in a private home, the individual is an employee of the service firm, not the householder.

This rule is intended to implement Iowa Code sections 96.1A(11) and 96.1A(14)*"m."*

871—23.26(96) Definition of a farm—agricultural labor.

23.26(1) "Farm" as used in Iowa Code section 96.1A(16)*"g"*(3) and in these rules means one or more plots of land not necessarily contiguous, including structures and buildings, used either primarily for raising or harvesting any agricultural or horticultural commodity, including caring for and the raising, shearing, feeding, training, and management of livestock, bees, poultry and furbearing animals and wildlife or both such uses, if the activities conducted have an agricultural purpose.

23.26(2) The definition of farm in subrule 23.26(1) includes but is not limited to nurseries, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities. A plot of land used primarily for the raising of nursery stock from seeds, cuttings or transplanted stock is a farm. If any plot of land is used both for the raising of nursery stock and for display of nursery stock or allied products for sale, the parcel or portion is not a farm if the raising is

not the primary operation. A parcel of real property or a portion of a parcel of real property that is used primarily to display nursery stock for sale or to display an allied product for sale, or both, is not a farm. Allied product, as used in this rule, includes but is not limited to garden supplies, lawn supplies, tools, equipment, fertilizers, sprays, insecticides or pottery.

23.26(3) If other than incidental sales of an allied product are made in connection with a nursery, the operations in connection with the sales area are commercial operations as distinguished from ordinary farm operations and services performed with respect to the sales areas are not agricultural labor.

23.26(4) A plot of land used primarily for the raising of Christmas trees is a farm.

23.26(5) The following shall be used to determine whether services are defined as agricultural labor.

a. Services performed by an individual on a farm, employed by the owner, tenant or operator, in connection with the operation constitutes agricultural labor if:

(1) The services are on the farm on which the materials in their raw or natural state were produced, and

(2) Processing, packing, packaging, transportation, or marketing is carried on as incidental to ordinary farming operation.

b. If the service performed is incidental to industrial, manufacturing or commercial operation, it does not constitute agricultural labor. EXAMPLE: Services performed for an insurance company in repair and construction of farm buildings do not constitute agricultural labor.

23.26(6) Services performed on nonfarm property by an employee of one who is not the owner, tenant or operator of the farm to which the operation relates or any service rendered in connection with the maintenance and repair of equipment, used in operation on the farm, as well as related collection, clerical and bookkeeping services, are not agricultural labor.

23.26(7) Services performed in the handling or processing of any agricultural or horticultural commodity are agricultural employment if performed by an employee of the owner, tenant, or other farm operator, only if the commodity is in a nonmanufactured state and only if the operator produced more than half of the commodity with respect to which the service was performed.

23.26(8) Aerial seeding, fertilizing, spraying, dusting, custom planting, cultivating or combining of farm acres by an employee of any agricultural enterprise is agricultural labor. This includes mixing or loading into an airplane the spraying or dusting material, as well as the measuring of the swaths and the marking and flagging of the fields, and is considered agricultural as long as it is performed on a farm. If any of these services are performed on property other than a farm, they are not agricultural labor and are covered by other provisions of the Iowa employment security law.

23.26(9) If the employer does not own or operate the farm that is being sprayed or dusted, any service related to employees in connection with maintenance and repair of the aircraft, trucks, or other equipment used in those operations, as well as related collection, clerical and bookkeeping services, are not agricultural labor and are not exempt under the Iowa employment security law.

23.26(10) Services performed on a farm by an employee of any person in connection with hatching poultry are agricultural labor. A plot of land together with the structures and buildings located off the farm, devoted to the hatching of poultry, is not considered to be a farm. Any service, under any contract of hire, performed off the farm in connection with the hatching of poultry is not considered agricultural labor.

23.26(11) Executive, supervisory, administrative, clerical, stenographic, and office work are not agricultural labor even if performed on a farm and in relation to a farm.

23.26(12) Services performed on a farm incidental to the overall commercial activities that are not incidental to ordinary farming operation or directly related to the farming operation are not agricultural labor.

23.26(13) Services performed in connection with the processing of agricultural commodities performed on a farm, for a farm operation, are not agricultural labor unless one-half or more of the commodities processed are produced by the farm operator.

23.26(14) Services performed in agricultural employment as defined in Iowa Code section 96.1A(16)*"g"*(3) or rule 871—23.26(96) by an agricultural employee for one-half or more of any calendar month are considered agricultural employment the whole of that calendar month.

This rule is intended to implement Iowa Code section 96.1A(16)*"g"*(3).

871—23.27(96) Exempt employment in the employ of a church, association of churches or an organization that is operated primarily for religious purposes.

23.27(1) The word "church" is used in its limited sense and is synonymous with an individual house of worship maintained by a particular congregation. Any service by an individual for a church, convention or association of churches is excluded from coverage. However, the exclusion does not apply to service performed for an organization that may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled or principally supported by a church (or a convention or association of churches). Thus, the service of the janitor of a church is excluded, but the service of a janitor for a separately incorporated college, although it may be church-related, is covered.

23.27(2) Service for a college devoted primarily to the preparation of students for the ministry is exempt, as is service for a novitiate or a house of study, training candidates to become members of religious orders. However, this chapter does not consider a church-related (separately incorporated) charitable organization (such as an orphanage or a home for the aged) to be operated primarily for religious purposes.

23.27(3) The exclusion of service performed by ministers in the exercise of their ministry and by members of a religious order in performing the duties required by such order applies only when such service is performed for nonprofit organizations ordinarily required to be covered by the Iowa employment security law.

23.27(4) A minister is ordained, commissioned, or licensed if such minister has been vested with ministerial status in accordance with the procedure followed by the particular church denomination. Such minister does not have to be connected with a congregation. Ministerial authority continues until revoked by the church.

23.27(5) The term "exercise of the ministry" includes the conduct of religious worship and the ministration of sacerdotal functions; service performed in the control, conduct, and maintenance of a religious organization under the authority of a religious body constituting a church or church denomination or an organization operated as an integral agency of such a religious organization or of a church or church denomination; service performed for any organization under an assignment or designation by a church (not including cases in which a church merely helps a minister by recommending such minister for a position involving nonministerial services for an organization not connected with the church); and missionary service or administrative work in the employ of a missionary organization. Control, conduct, and maintenance of an organization does not include services such as operating an elevator, or being a janitor, but refers to services performed in the directing, management, or promotion of the activities of the organization.

23.27(6) Accordingly, service of clergy as a chaplain in an orphanage or in an old-age home is excluded since such service is in the exercise of a ministry as is the service of members of a teaching or nursing order who are engaged in teaching or nursing. In the case of a member of a religious order, the criterion is whether the order requires the performance of such service.

23.27(7) School coverage.

a. Schools that are not separately incorporated and are affiliated with a church are exempt from insured employment because their employees are in the direct employ of a church or convention or association of churches.

b. Schools that are separately incorporated and are affiliated with a church are exempt from insured employment if such schools are operated primarily for religious purposes.

c. Schools that are not affiliated with a church are covered employers with covered employment.

"Affiliated" as used in this rule means operated, supervised, controlled, or principally supported by a church or convention or association of churches. A school that is operated primarily for religious purposes must have as its chief and principal purpose for operation a religious orientation. The school must have as its purpose of first or highest rank of importance the religious indoctrination of its students.

This rule is intended to implement Iowa Code section 96.1A(16)*"a"*(6)(a) and (c).

871—23.28(96) Successor.

23.28(1) "Successor employer" means an employing unit that:

a. Acquired, and continues to operate, the organization, trade or business, or substantially all the assets of an employing unit that was subject to the provisions of Iowa Code chapter 96 prior to the acquisition, regardless of whether the acquirer was an employing unit prior to the acquisition.

b. Acquired a severable portion of the business of an employer who is subject to Iowa Code chapter 96 if:

(1) The portion of the business or enterprise acquired would have qualified as an "employer" pursuant to Iowa Code section 96.1A(14)*"a."*

(2) A request for a transfer of experience of the severable portion was made within 90 days of the transfer date.

(3) The transfer request contains information required by the department and is approved by both the predecessor and department.

23.28(2) An "organization," "trade" or "business" as used in Iowa Code section 96.1A(14)*"b"* is acquired if an employing unit acquires factors of an employer's organization, trade or business sufficient to constitute an entire existing going business unit, not merely assets from which a new business may be built. Acquisition is determined by examining all of the factors of the transfer, including:

a. Place of business.
b. Employees.
c. Customers.
d. Good will.
e. Trade name.
f. Stock in trade.
g. Tools and fixtures.
h. Other assets.

23.28(3) As used in Iowa Code section 96.1A(14)*"b,"* "substantially all of the assets" means substantially all of the assets of any employer that generate substantially all of the employment, except those retained for liquidation.

23.28(4) A "segregable and identifiable part" of enterprise as used in Iowa Code section 96.7(3)*"b"* is acquired if an employing unit acquires factors of an existing organization, trade or business sufficient to constitute an existing separable going business unit, not merely assets from which a new business may be built. Acquisition of a distinct and severable portion is determined by examining all the factors, including:

a. Place of business.
b. Employees.
c. Customers.
d. Good will.
e. Trade name.
f. Stock in trade.
g. Accounts receivable.
h. Tools and fixtures.

23.28(5) "Successor liability" as used in Iowa Code chapter 96 and these rules occurs for the acquiring employing unit when there is a transfer of assets necessary to the continued operation of the

employing unit from the predecessor to the successor and the successor continues to operate the business as though there has been no change in ownership or control.

23.28(6) Successor liability will be found to occur if an enterprise or business is leased to a covered employer and any party or entity purchases or assumes the covered employer's lease, or any party or entity acquires a new lease and substantially all of the assets of the covered employer, and the new lessee continues the operation of the enterprise or business as though there had been no change in the ownership or control of the enterprise or business, such party or entity acquires the covered employer's experience.

23.28(7) The department will utilize the following general criteria when establishing successorship in specialized cases:

a. Where a covered employing unit is operating an enterprise or business under a lease agreement and it is terminated, there will be no transfer of the covered employing unit's experience unless the lessor takes over and continues to operate the enterprise or business in which case the lessor will be considered the successor to the covered employer's experience.

b. Where an enterprise or business is leased to a covered employing unit, and the lease agreement has terminated with the lessor acquiring a new lessee, the new lessee is not considered to be a successor to the experience of the predecessor lessee unless the new lessee acquires substantially all of the assets of the predecessor lessee and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business.

c. A franchise agreement will be treated the same as a lease agreement.

d. If the bankruptcy court closes an enterprise or business, the court becomes the agent for the bankrupt employer.

(1) Where the court closes the enterprise or business and starts liquidating procedures, the employer's account is placed in an inactive status subject to termination and no successorship or transfer of the employer's experience is involved, or

(2) If the court appoints a trustee or receiver to continue the operation of the enterprise or business, the account address will be corrected to include the name of the trustee or receiver for mailing purposes. If the trustee or receiver obtains a new federal identification number for this business, a new account number will be established for the trustee or receiver as a successor to the original enterprise or business. If the trustee or receiver sells the enterprise or business as a going enterprise, the new owner will be a successor to the predecessor's experience.

e. If a covered employer is forced out of business through foreclosure proceedings, there will be no transfer of the employer's experience unless the mortgagee takes over the operation of the business or enterprise and continues it to the same basic extent as though there had been no basic change in the ownership control.

This rule is intended to implement Iowa Code sections 96.7(3)*"b,"* 96.8 and 96.1A(14)*"b."*

871—23.29(96) Transfer of entire business.

23.29(1) *Notice of acquisition.*

a. Whenever an employing unit in any manner succeeds to or acquires from an employer either the organization, trade or business or substantially all the assets thereof, and continues such organization, trade or business, such employing unit shall notify the department to transfer the account of the predecessor employer to the successor employing unit. The notification must include the name and address of the predecessor, the date of transfer, and the name and address of the successor. When the department receives the notice, or alternatively, when the department receives through other means information establishing the acquisition, the actual contribution and benefit experience and taxable payrolls of the predecessor will be transferred to the successor employing unit to determine its rate of contribution. Thereafter, benefits chargeable are charged to the account of the successor. The predecessor must notify the department of the status change.

b. Where one or more employing units have been reorganized, merged or consolidated into a single employing unit and the successor employing unit continues to operate the merged or consolidated enterprise, the employing units involved shall notify the department within 30 days from the date of the transaction. All entities involved in the merger shall provide the articles of merger or, if there are no articles of merger, a statement advising of the merger.

(1) The predecessor business or businesses involved in the merger shall each file a final quarterly payroll report form as soon as possible after the merger has occurred but in no case later than 30 days after the close of the quarter in which the merger was effective.

(2) The successor entity shall indicate whether the experience rates of all accounts are to be combined and the rate recomputed for the balance of the calendar year in which the merger took place.

23.29(2) *Contribution rate.* The successor's contribution rate for the remainder of the calendar year in which an acquisition took place is determined as follows:

a. If the successor had no account prior to the transfer and the successor purchased the business of only one predecessor, or more than one predecessor with identical rates, the rate assigned will be the rate of the predecessor employer or employers.

b. If the successor had no account prior to the transfer and purchased the business of more than one predecessor with the same legal date of transfer, the rate assigned will be a computed rate based on the combined experience of all the predecessor employers.

c. If the successor in a merger had an account prior to the transfer, the rate assigned will be the successor's current rate. However, the successor may apply for a recomputed rate based on the combined experience of all predecessors and the experience of the successor only if the legal date of transfer is prior to October 1 in the year it took place.

This rule is intended to implement Iowa Code section 96.7(2)*"b."*

871—23.30(96) Successorship—liability for contributions and payments in lieu of contributions. Any employer who becomes a successor to an employer account is liable for any debt owed to the department by the predecessor at the time of the transfer. Any employer found to be successor to a reimbursable account is liable to reimburse the department for any benefits paid based on wages paid by the reimbursable employer, whether or not the successor has elected to be reimbursable or is qualified to be reimbursable.

This rule is intended to implement Iowa Code section 96.7.

871—23.31(96) Transfer of segregable portion of an enterprise or business.

23.31(1) *Application and required information.*

a. Partial experience will be transferred to an employing unit that has acquired such portion only if the successor employing unit:

(1) Submits a registration online within 90 days of the legal date of transfer;

(2) Provides necessary information showing the separate identity of the accounts within 30 days after request is made by the department unless the time has been extended for good cause; and

(3) Continues to operate the acquired part of the business or organization.

b. Information required to demonstrate the separate identity of the account includes but is not limited to:

(1) Predecessor signed department forms 68-0068 and 68-0065 report of employer on transfer of one of two or more employing units.

(2) Legal date of transfer for the portion of the business.

(3) Start date for the portion of the business by the predecessor.

(4) Names, social security numbers and wages of the employees acquired for the six calendar quarters prior to the quarter in which the acquisition took place.

(5) Predecessor and successor names, address, account numbers and total taxable wages and benefit charges being transferred by quarter for the 20 calendar quarters including and prior to the legal date of transfer.

c. It is the responsibility of the successor employer to decide whether to apply for a partial transfer of experience. A partial transfer request may be withdrawn prior to the department's notice that the transfer has been approved.

d. It is the responsibility of the predecessor employer to decide whether to grant the partial transfer of experience. Permission to grant the partial transfer of experience may be withdrawn prior to the department's notice that the transfer has been approved.

23.31(2) *Portion of reserve and payroll transferred.* When the requirements for partial transfer as defined in subrule 23.31(1) have been met, the transfer shall be made in accordance with one of the following:

a. If the predecessor's account has been in existence less than five years prior to the legal date of transfer (or more than five years when records are available), the information necessary to calculate future rates will be transferred; or

b. If the predecessor's account has been in existence more than five years (and records prior to five years are unavailable) and the acquired portion has also been in existence more than five years:

(1) The actual taxable wages, and benefit charges attributable to the acquired portion for the five-year period prior to the legal date of transfer will be transferred, plus

(2) The portion of the predecessor's benefit charges for the period commencing with the beginning date of the predecessor's account and ending five years prior to the legal date of transfer equal to the ratio of the taxable wages attributable to the acquired predecessor for the 12 completed calendar quarters immediately preceding the legal date of transfer to the total taxable wages reported by the predecessor for the same 12-quarter period, and

(3) The individual wage records attributable to the acquired portion; or

c. If the predecessor's account has been in existence more than five years but the acquired portion came into existence within the last five years, the actual taxable wages, benefit charges, and individual wage records attributable to the acquired portion will be transferred; or

d. In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

23.31(3) *Future benefit charges based on wages paid by the predecessor prior to the acquisition or purchase date.* The successor employer will be charged for future benefits based on the wage credits transferred to its account for the six-quarter period prior to the acquisition date plus any benefit charges based on wages attributable to the acquired portion prior to the six-quarter period on claims already filed on the date of the acquisition.

23.31(4) *Notification of approval or denial of transfer and appeals.*

a. Upon review of the application and information indicating a partial transfer, the department will issue a decision approving or denying the transfer. A determination approving a partial transfer request will include the current year's unemployment tax rates for both parties.

b. If the department finds that the acquisition of a business or a severable portion thereof was made solely or primarily for the purpose of obtaining a more favorable rate of contribution (e.g., the department fails to find any reasonable business purpose for the acquisition other than a more favorable contribution rate), the transfer will not be approved.

c. Any denial of a partial transfer is final and shall become conclusive and binding upon both the predecessor and successor unless one or both of them file an appeal according to this chapter.

23.31(5) *Liability of successor for contribution.* Any individual or organization, whether or not an employing unit, that is determined by the department to be a successor is liable for the payment of contribution, interest and penalty due from the predecessor if the department concludes that such contributions cannot be collected from the predecessor.

This rule is intended to implement Iowa Code section 96.7(3).

871—23.32(96) Mandatory and prohibited successorships.

23.32(1) This rule applies to the mandatory successorship in Iowa Code section 96.7(2)*"b"*(2) and the prohibited successorship in Iowa Code section 96.7(2)*"b"*(3). If one employing unit receives

the organization, trade or business, or a portion thereof of an employing unit and there is substantially common ownership, management or control of the two, the attributable unemployment experience will be transferred. This rule does not require a transfer of substantially all of the assets nor does it require the transferred portion to be segregable or identifiable. The acquiring employer must continue to operate the organization, trade or business or must transfer operation to an entity with substantially common ownership, management or control with the acquiring entity. Mandatory successorship also applies when the acquirer was not an employing unit prior to the transfer.

a. A transfer of staff and the business activity of that staff to an acquiring employer unit that continues to operate the portion of the business will establish mandatory successor liability.

b. The mandatory and prohibited successorships contained in Iowa Code section 96.7(2)*"b"*(2) and 96.7(2)*"b"*(3) apply to corporations, limited liability companies, government or governmental subdivisions or agencies, business trusts, estates, trusts, partnerships, sole proprietorships or associations, or any other legal entity as defined in Iowa Code chapter 96.

c. "Substantially common ownership, management or control" is determined from the facts of a particular case. Among the factors to be considered are:

(1) The authority to make policy decisions.

(2) The authority to perform personnel actions.

(3) Direction and control of the day-to-day operations.

(4) Financial investment.

(5) Substantial or complete ownership by the same legal entity or entities.

(6) Ability to conduct or liability for financial transactions on behalf of the business.

(7) Authority to commit the business assets.

(8) Common management, which may include direction or overall supervision by an individual or group of individuals.

d. For a mandatory full successorship, the tax rate shall be established as provided in subrule 23.29(2), and for a mandatory partial successorship, the tax rate shall be established as provided in subrule 23.32(4).

23.32(2) In determining whether or not an acquiring entity continues to operate an organization, trade or business as used in Iowa Code section 96.7(2)*"b"*(2), the following rules apply.

a. The acquiring entity continues the ongoing business operation (taking into account any seasonal or prior operational pattern) and continues the same business activity as the prior employer. A temporary cessation of the business activity by the acquiring entity will not constitute a discontinuance of the business.

b. The acquiring entity, not having operated the business, reassigns or otherwise transfers the operation of the business to a third-party entity that has substantially common ownership, management or control with the acquiring entity. The third party is considered to be continuing the operation of the original entity.

23.32(3) Prohibited successor liability. Successor liability is prohibited when the department finds that a legal entity that is not subject to Iowa Code chapter 96 at the time of acquisition (regardless of whether common ownership, management or control exists) acquires an organization, trade or business solely or primarily for the purpose of obtaining a lower rate of contribution. Factors to be considered include:

a. The existing employer account has a tax rate less than would be assigned to a new employer,

b. The cost of acquiring the organization, trade or business as compared with any potential savings in contributions costs,

c. The acquiring entity substantially changed the organization, trade or business after a short period of time, and

d. A substantial number of new employees were hired to perform duties unrelated to the organization, trade or business operated prior to the acquisition.

23.32(4) When a mandatory transfer of a portion of a business occurs, the successor's experience and contribution rate will be determined as follows:

a. The experience transferred to the acquiring employing unit will be based on the percentage of employees moving from the predecessor to that unit.

(1) The percentage will be computed by comparing the number of employees on the successor's first quarterly report covering a complete calendar quarter to the average number of employees on the four complete quarterly reports filed by the predecessor immediately preceding the transfer. The average number of employees will be computed using only the predecessor's reports that have wages paid during those four quarters.

(2) Using this percentage, taxable wages and benefit charges, commencing with the beginning date of the predecessor's account, will be transferred from the predecessor's account to the successor's account.

b. If the successor had no account prior to the transfer, the rate assigned will be the rate of the predecessor for the remainder of the calendar year beginning with the date of acquisition.

c. If the successor already had an account prior to the transfer, the rate for the balance of the year in which the transfer took place will be recomputed by combining the transferred experience with the employer's own experience as of the last computation date.

d. For the years following the year of acquisition, the rates will be computed using the experience of the employer combined with the transferred experience.

e. Future benefit(s) will be charged to the base period employer who reported the base period wages.

f. The department will issue a notification when the partial transfer has been completed. The determination will include notice to both parties as to their contribution rate for the current year.

g. Any rate determination resulting from a partial transfer will become final unless one or both of the parties file an appeal. Specific procedures and requirements for perfecting an employer liability determination appeal are contained in rule 871—23.52(96).

h. In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

23.32(5) Penalty contribution rate. The department may assess a penalty contribution rate of 2 percent for the current year and two subsequent years for an employer that the department finds has attempted to manipulate and circumvent the proper unemployment tax rate as provided in Iowa Code section 96.7(2)*"b"*(2) and 96.7(2)*"b"*(3) by deliberate nondisclosure of a material fact.

a. The employer will be notified of the penalty contribution rate.

b. If, after a liability determination has been issued, the department discovers, based upon new facts not available to the department at the time the determination was made, that a previously nonliable entity acquired a business solely or primarily to obtain a lower tax rate, the department will amend the original determination and assign a new employer rate and may provide a penalty contribution rate.

c. Interest will accrue on unpaid penalty contributions in the same manner as on regular contributions.

This rule is intended to implement Iowa Code sections 96.7(2)*"b"* and 96.16(5).

871—23.33 to **23.35** Reserved.

871—23.36(96) Predecessor—contribution rates for winding down a business. If a predecessor has transferred its organization, trade, or business, or substantially all assets, to a successor, and the predecessor continues to operate a part of the business in order to wind down or close the business after the legal date of transfer, the predecessor will be issued a new account number and treated as a new employer for wages paid beyond four quarters after the legal date of transfer. "Wind down wages" do not include wages earned before the sale or transfer of the business that were paid out within the four quarters after the quarter in which the sale or transfer took place.

This rule is intended to implement Iowa Code sections 96.8(1) and 96.8(4)*"a."*

871—23.37(96) Adjustments and refunds of contributions.

23.37(1) If an employer, after submitting a quarterly unemployment tax report, discovers an error that results in an overpayment of contribution due and owing, such employer may file an application for credit allowance or refund. If the department discovers that the contribution submitted by any employer is incorrect resulting in overpayment of contribution, it may on its own initiative refund or make a credit allowance. No refund or credit will be made after three years from the date on which the overpayment was made. The employer will submit a wage adjustment to show corrections for the employee wage lines impacted, corrected total and taxable wages, and an explanation for the wage adjustment.

23.37(2) If an employer submits a quarterly unemployment tax report that understates the amount of wages paid in a calendar quarter, the employer will submit a wage adjustment for the period and make payment for all additional contributions, penalty and interest due.

a. If it is apparent, upon review of wages reported or adjusted, that an employer has overpaid contribution, the department may make an adjustment and issue a credit within three years from the date of the overpayment. If an employer has multiple accounts, any credit may be moved to an account where there is a balance due.

b. If an employer discovers that it may have overpaid contribution, it may submit a request for credit within three years from the date on which the overpayment was made. The department will review the request and, if it determines an adjustment is required, shall issue a credit or refund for the overpayment.

23.37(3) A valid credit will be applied to an outstanding balance due on an unemployment tax account. If an employer has multiple accounts, a credit can be moved to a different account where debt might be owed. An employer may request a refund of the credit within three years from the date the credit was created. If the credit is not requested within three years, it will be canceled by the department. Upon request of the employer or at the discretion of the department, a refund can be issued for any overpayment. If the employer fails to utilize the credit as provided above, the department shall, three years from the date of issuance, cancel the credit and show it as a nonrefundable credit. Warrants are issued by the state comptroller.

This rule is intended to implement Iowa Code section 96.14(5).

871—23.38(96) Denial of claim for refund or credit. If the department requests proof of the validity of any claimed credit, and the employing unit fails to provide the proof within 30 days, the claim will be denied unless the department has provided an extension of time to provide the information.

This rule is intended to implement Iowa Code section 96.14(5).

871—23.39 Reserved.

871—23.40(96) Computation of rates for private sector employer. An employer's experience rate shall be computed by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding July 31 of each year by the employer's five-year average annual taxable payroll to determine its benefit ratio. This ratio is then applied to the current tax rate table to determine the employer's contribution rate for the next calendar year. Contributory Indian tribes are considered private sector employers for the purpose of computing their contribution rate.

This rule is intended to implement Iowa Code sections 96.7(2), 96.7(11), 96.7(12) and 96.19(8).

871—23.41(96) Computation date defined. The computation date for determining tax rates for future years is July 1. Rate computation includes all taxable wages and benefit charges for the quarters prior to and ending on June 30 immediately prior to the computation date. Delinquent reports filed after September 30 immediately following the computation date will not be used in the current year's tax rate computation.

This rule is intended to implement Iowa Code section 96.1A(7).

871—23.42 Reserved.

871—23.43(96) Charging of benefits to employer accounts.

23.43(1) *Benefits paid to an eligible claimant.* Benefits paid to an eligible claimant are charged against the base period wage credits in the same inverse chronological order in which the wages were paid to the claimant.

23.43(2) *Formula for charging employer accounts.*

a. Wage credits in the most recent quarter of the base period will be used first, and when wage credits in this quarter are exhausted, wage credits for the next most recent quarter will be used until each of the four quarters in the base period is exhausted or until the claimant is paid an amount not to exceed the claimant's maximum benefit amount.

b. Each employer who has wage credits in the quarter of the base period will be charged the employer's proportional share of each payment. The proportional share to be charged to each employer in a specific quarter will be based upon the total employer wage credits within that quarter.

23.43(3) *Rule of two affirmances.*

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board affirms the decision of an administrative law judge, allowing payment of benefits, such benefits will be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved will have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment will accrue to the claimant because of payment made prior to and during the period in which the department is processing the reversal decision.

23.43(4) *Supplemental employment.*

a. An individual who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges.

b. On a second benefit year claim where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer is not considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed, and the wages will be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

c. An individual who voluntarily quits supplemental part-time employment without good cause and who has not requalified for benefits following the voluntary quit of supplemental part-time employment, yet 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 without good cause the supplemental part-time employer.

d. The individual and the supplemental part-time employer that was voluntarily quit without good cause will be notified of the decision made by a department representative, via the Decision of the Workforce Development Representative form, that benefit payments that are based on the wages paid by the supplemental part-time employer shall not be made and benefit charges shall not be assessed against the supplemental part-time employer's account; however, once the individual meets the requalification requirements following the voluntary quit without good cause of the supplemental part-time employer, the wages paid in the supplemental part-time employment will be restored for benefit payment and charging purposes as determined by applicable requalification requirements.

23.43(5) *Sole purpose.* The claimant is 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. No charge will accrue to the account of the former voluntarily quit employer.

23.43(6) *Department-approved training.* A claimant who qualifies and is approved for department-approved training (rule 871—24.39(96)) shall continue to be eligible for benefit payments. No contributing employer shall be charged for benefits that are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid.

23.43(7) *Ten times the weekly benefit amount in insured work requalification.*

a. In order to meet the provision regarding ten times the weekly benefit amount in insured work requalification, the following criteria must be met:

Subsequent to leaving or refusing work, the individual shall have worked in (except in back pay awards) and been paid wages equal to ten times the claimant's weekly benefit amount.

b. An employer's account will not be charged with benefit payments to an eligible claimant who quit such employment without good cause attributable to the employer or who was discharged for misconduct or who failed without good cause either to apply for available, suitable work or to accept suitable work with that employer but shall be charged to the balancing account.

c. The requalification and transfer of charges will occur for the employer if the requalifying employment is earned with an out-of-state covered employer. The transfer of charges will be made to the balancing account.

d. Periods of insured employment with separate employers may be joined to collectively equal ten times the individual's weekly benefit amount when requalification cannot be accomplished by an individual insured employer. The employer from whom the individual left work or was discharged or with whom the individual failed to apply or accept suitable work will not accrue any charges.

e. Before benefits can be paid or the transfer of charges can occur, sufficient evidence must be present to establish the fact that the criteria in paragraph 23.43(8)*"a"* has been met. Verification of employment may be completed through the records of the department or by using any method establishing proof of the necessary wage credits, including the following:

(1) An employment verification form is an affidavit prepared in duplicate stating the insured employer's name, mailing address, the starting date of employment, and wages paid subsequent to that date. The form must be signed by the claimant alleging that the facts are correct. Any misrepresentation in the form may result in overpayment, fraud charges, an administrative penalty, or any or all thereof. A copy of the form must be mailed to the employer or employers for verification. The employer should review the information on the form and certify that it is either correct or in error. If the information is incorrect, the employer should give the proper information. If the employer fails to return the form within five days of date mailed, the information on the form will be presumed to be correct.

(2) Employment check stubs may be used in conjunction with the employment verification form to indicate the requalifying period.

23.43(8) *Combined wage claim transfer of wages.*

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state.

(1) No reimbursement so payable may be charged against a contributory employer's account for the purpose of Iowa Code section 96.7 unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges may not exceed the amount that would have been charged on the basis of a valid Iowa claim.

(2) An employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code

section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges are assessed to the employer that are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date on the notice to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges will go to the balancing account.

c. Requests received from the paying state for amounts in excess of an amount equal to potential charges of an Iowa claim will not be charged to the Iowa employer.

d. When Iowa is the paying state on an interstate claim and Iowa wage credits are insufficient to have a valid Iowa claim, charges will not be made against the Iowa employer's account but will be charged to the balancing account.

23.43(9) *Extended benefits.*

a. Fifty percent of the amount of each week of extended benefits paid to an individual in accordance with rule 871—24.46(96) shall be charged against the account of the employer that is chargeable for the extended benefits; however, 100 percent of the amount of each week of extended benefits paid to an individual shall be charged against the account of the Indian tribal and governmental contributory or reimbursable employer that is chargeable for the extended benefits.

b. The lack of a one-week waiting period prohibits this state from receiving a payment from the U.S. Department of Labor for 50 percent of the amount of the first week of extended benefits paid to an individual. This amount will not be charged against the account of the employer that is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

c. In the event that a payment from the U.S. Department of Labor for 50 percent of any week of extended benefits paid to an individual is reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the amount of the reduction may not be charged against the account of the employer that is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

23.43(10) *Charging of benefits paid to individuals employed by two or more employers.*

a. Whenever wage reports submitted to the department show the employment of an individual by more than one employer in the same calendar quarter, benefits shall be charged to each employer's account in the same proportion as wages paid in the quarter.

b. Benefits for partial unemployment shall be charged in the same manner as benefits for total unemployment.

23.43(11) *Government contributory charges.* For the purpose of determining the base rate for government contributory employers, a percentage of all benefits that are paid but are not chargeable to employer accounts because of various provisions of the law will be considered as belonging to government contributory employers. The percentage of the nonchargeable benefits considered to be attributable to government contributory employers for each calendar year will be determined by the ratio of the benefits actually charged to government contributory accounts for the year to the total benefits charged to all contributory accounts for the year.

23.43(12) *Removal of benefit charges upon the sale or transfer of a clearly segregable part of an employer's business or enterprise when the acquiring employer does not receive a partial transfer of experience.* Benefits based on wages earned with the transferring employer, paid to an individual who worked in and was paid wages for work with the acquiring employer, shall be transferred to the balancing account. The transferring employer must protest this issue on the Notice of Claim in a timely manner to receive relief from the charges. The relief of charges applies to both contributory and reimbursable employers.

23.43(13) *Disaster relief.* An employer will not be charged with benefits for unemployment that is directly caused by a disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act of 1974, if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of regular benefits. The employer may protest the charges on the Notice of Claim or the Quarterly Charge Statement within 30 days after the date of mailing of the Quarterly Charge Statement.

This rule is intended to implement Iowa Code sections 96.3(7), 96.5(1), 96.6(2), 96.7, 96.8(5), 96.9(5), 96.11(1), 96.16(4) and 96.29.

871—23.44(96) Benefits payments.

23.44(1) The employer may not be relieved of benefit charges for a payment of back pay until the amount of the overpayment is recovered by the department.

23.44(2) If the department determines that an overpayment has been made:

a. The charge for the overpayment against the employer's account shall be removed,

b. The account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund, and this credit shall include both contributory and reimbursable employers, and

c. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits unless the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, in which case the employer's account shall not be charged for the overpayment.

This rule is intended to implement Iowa Code sections 96.7(3), 96.11(1) and 96.20(2).

871—23.45 and **23.46** Reserved.

871—23.47(96) Termination of accounts because of no wage reports.

23.47(1) If an employer discontinues business or continues business without employment, the employer may request that the employer's account be placed in an inactive status. Upon verification of inactive status, the department shall notify the employer and the employer is not required to file quarterly reports.

23.47(2) If the department finds that an employer has discontinued business or is no longer paying wages, the department may on its own motion place the account in an inactive status.

23.47(3) If an employer has not reported wages for eight consecutive quarters, the account will be placed in inactive status.

23.47(4) An employer must notify the department if the employer resumes paying Iowa wages.

23.47(5) Inactive accounts will be reactivated, with an experience rate (if eligible), when the date first wages paid after employment resumed is less than or equal to ten consecutive calendar quarter from the quarter in which wages were last paid or when the tenth quarter falls within the same year as the date first wages paid after employment resumed. An employer shall provide all quarterly wage reports, including no wage reports.

This rule is intended to implement Iowa Code sections 96.7(2)*"c"* and *"d"* and 96.8(4)*"b."*

871—23.48(96) Previously liable employers. A new unemployment tax account and new employer rating will be given to reimbursable employers electing to become contributory and to formerly active contributory employers whose unemployment tax accounts have changed from inactive to active status.

This rule is intended to implement Iowa Code sections 96.7 and 96.8.

871—23.49 and **23.50** Reserved.

871—23.51(96) Reimbursable employer contributions. A nonprofit organization that has been approved to make payments in lieu of contributions (e.g., a reimbursable employer) will be billed each quarter for benefits paid during such quarter.

23.51(1) Charges billed to the employer's unemployment account are equal to the regular benefits and one-half of the extended benefits paid. Charges are paid to the unemployment fund.

23.51(2) Government and Indian tribal reimbursable employers will be charged an amount equal to all the extended benefits paid.

This rule is intended to implement Iowa Code section 96.8(5).

871—23.52(96) Employer liability appeal.

23.52(1) An employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker's status, and all questions regarding coverage of a worker or group of workers may be appealed to the department of workforce development for a hearing before an administrative law judge with the department of inspections, appeals, and licensing.

23.52(2) The appeal must be in writing, stating:

a. The name, address and Iowa employer account number of the employer.

b. The name and official position of the person filing the appeal.

c. The decision that is being appealed.

d. The grounds upon which the appeal is based.

23.52(3) The appeal shall be addressed or delivered to: Department of Workforce Development, Tax Bureau, 1000 East Grand Avenue, Des Moines, Iowa 50319. Appeals transmitted by facsimile that are received by the tax bureau after 11:59 p.m. central time will be deemed filed as of the next regular business day.

23.52(4) Unless otherwise required, all determinations by the tax bureau will be sent by regular mail or email, depending on how the employer elected to receive correspondence. The determination will be dated, and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a Notice of Reimbursable Benefit Charges.

23.52(5) If the department concludes, upon reviewing an appeal, that the original determination is correct, the tax bureau may write to the employer and further explain the decision. If the employer still desires a hearing before an administrative law judge, the employer should notify the department within 30 days of the date of the letter from the department.

23.52(6) Upon receipt of a request for hearing, the tax bureau will ask the department of inspections, appeals, and licensing to schedule a hearing for the employer. A copy of the request will be mailed to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the administrative law judge. Documents that may be sent to the administrative law judge include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the department, and the employer's letter requesting a hearing. All employer liability appeals shall be heard by an administrative law judge and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 871—26.5(17A,96).

23.52(7) In those cases in which the department finds that a genuine controversy exists or has existed regarding an employing unit's liability for contributions on all or a part of its employees or a rate appeal or other employer liability question and the case has been resolved against such employing unit, no interest or penalty will accrue from the date of such controversy between the department and the employing unit until 30 days after the decision becomes final.

This rule is intended to implement Iowa Code section 96.6(3).

871—23.53(96) Rate appeal and eligibility decision reversal. An employer who appeals a rate notice or corrected rate notice within 30 days may have its rate recomputed based upon the reversal of a benefit eligibility decision under the following circumstances:

23.53(1) An employer may appeal on the grounds that benefit charges against the employer's account have been reversed by a decision issued after the rate computation date. The department will investigate and, if warranted, remove benefit charges that were reversed by a later decision and issue a corrected rate notice.

23.53(2) The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed, but it will not become final and the appeal may be reopened by the employer, provided the employer submits a written request to reopen the appeal within 30 days of the next rate notice following the decision. If warranted, the charges will be removed from the computation of the original rate and a corrected rate notice will be issued. The employer must pay any contributions that become due at the disputed rate prior to the receipt of the decision reversing the benefit charges, but a refund of any overpayment of contributions and interest paid by the employer as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5).

23.53(3) An employer's payment of contributions at the disputed rate in the circumstances described in subrule 23.53(2) does not indicate the employer's acceptance of the disputed rate.

23.53(4) An employer must file a separate appeal of each rate notice received that contains the disputed benefit charges. If the employer does not file a timely appeal of each affected rate notice, any appeal filed following receipt of a decision reversing the allowance of benefits will be considered as applying only to rate notices that were timely appealed and to the next rate notice.

23.53(5) If the employer appeals on the grounds that the benefits charged against the employer's account were paid to an employee who was still working for the employer in the same employment as in the base period of the claim, the department will remove the charges and will issue a corrected rate notice if it finds the facts warrant such reversal. The employer's appeal must have been made within 30 days of the date on the first rate notice received that included any of the disputed charges, and the issue of charging of benefits will not have been previously adjudicated in either an appeal of the original claim notice or an appeal of a quarterly benefit charge statement.

This rule is intended to implement Iowa Code section 96.7.

871—23.54(96) Payment of disputed assessments.

23.54(1) Payment of a disputed assessment is held to be an acceptance of the assessment only when a timely appeal is not filed.

23.54(2) An employing unit that has appealed a determination of liability, or a payment of contributions due, shall submit full payment of any disputed assessment or amounts estimated to be due and file quarterly contribution and payroll for all quarters for which the employer is held liable regardless of any appeal.

This rule is intended to implement Iowa Code section 96.7.

871—23.55(96) Burden of proof.

23.55(1) The employer bears the burden of proof in all employer liability cases.

23.55(2) The burden of proof shall rest with an employing unit that employs any individual during any calendar year but that considers itself not an employer subject to the Act, to establish that it is not an employer subject to the Act by presenting proper records, including a record of the identity of the employees, number of individuals employed during each week, and the particular days of each week on which services have been performed, and the amount of wages paid to each employee.

23.55(3) The burden of proof in successorship and partial successorship cases for determinations, appeals, and licensing shall rest with the employer that is appealing the determination of the department.

This rule is intended to implement Iowa Code section 96.7.

871—23.56(96) Informal settlement.

23.56(1) Pursuant to Iowa Code chapter 17A, a controversy may, unless precluded by statute, at the discretion of the department be informally settled by mutual agreement of the department and the person or employer who is or is about to be engaged in the controversy. The settlement is effected by a written statement reciting the subject of the controversy and the proposed solution mutually agreed upon including a statement of the action to be taken, or to be refrained from, by each of the parties. The informal settlement constitutes a waiver, by all parties, of the formalities to which they are entitled under the terms of Iowa Code chapter 17A, with respect to the specific fact situation comprising the controversy.

Either party may initiate a proposal for informal settlement of the controversy by communicating a proposal to the other party before the contested hearing is convened.

23.56(2) If the parties agree to a settlement, the written statement is presented to the administrator of the division of unemployment insurance services for review and approval.

23.56(3) In the event a settlement is reached in a case that has been appealed to the courts, the formal settlement will be presented to the appropriate district court. If an assessment of contributions or a decision upon which an assessment is based has become final without appeal, the actual established contribution may be compromised by agreement of the parties and submission to the district court pursuant to Iowa Code section 96.14(5). Doubtful collectibility as contained in Iowa Code section 96.14(5) includes tax debts that are doubtful as to validity or as to collectibility. The department is not required to enter into any informal settlement or compromise with regard to any employer liability determination and may do so at its own discretion.

This rule is intended to implement Iowa Code sections 96.6(3) and 96.14(7).

871—23.57(96) Interest and penalty on contributions paid with adjustments submitted by employer.

23.57(1) If an employer, on its own motion, submits an adjustment for an error made on previously submitted wage detail and pays any additional contributions due on the adjustment when submitting the adjustment, no interest on the additional contributions will be charged if it is shown to the satisfaction of the department that the error and subsequent late payment were not the result of negligence, fraud, or intentional disregard of the law or rules of the department.

23.57(2) If an employer submits an adjustment without payment, and payment is due, the employer will be assessed for the additional contributions plus interest as provided by law.

This rule is intended to implement Iowa Code section 96.14.

871—23.58 Reserved.

871—23.59(96) Determination and assessment of estimated contributions and errors in reporting.

23.59(1) If the department finds from the examination of the employer's account that contributions have been underpaid because of a department error in assigning the contribution rate, the additional contributions shall be paid within 30 days after the department notifies the employer. No interest or penalty will accrue until 30 days after the notification.

23.59(2) Assessment—failure to file quarterly contribution and payroll.

a. If any employing unit fails to file quarterly contribution and payroll reports as required, the department may file estimated wage reports based on the available information. The employer is responsible for all tax, interest and penalties on estimated wage reports.

b. Whenever the department determines that the collection of contributions from an employer is in jeopardy and the employer has not timely filed the necessary quarterly wage reports, the department shall prepare estimated reports.

c. Estimates made by authorized personnel shall be referred to the collection unit.

This rule is intended to implement Iowa Code section 96.7.

871—23.60(96) Accrual of interest and penalties.

23.60(1) An employer who fails to file timely and accurate quarterly wage reports shall pay to the department a penalty in accordance with Iowa Code section 96.14(2).

23.60(2) The amount of the penalty for a delinquent or insufficient quarterly contribution and payroll is based on the total wages paid by the employer in the period for which the report was due. The penalty may not be less than $35 for the delinquency or the insufficient wage detail not made sufficient within 30 days of a request to do so. Insufficient wage detail is defined as a quarterly submission that does not have all social security numbers, all corresponding names, total wages for each employee, or a reporting unit number. Wage detail submitted without a correct account number, federal employer identification number, labor market information, or wage detail submitted for an unemployment account that has not yet been established by the employer or agent may be considered insufficient.

23.60(3) Interest and penalty will not accrue with respect to contributions required from an employer based upon wages for employment in those cases in which the employer's liability is based solely upon the provisions of Iowa Code section 96.1A(14)*"g"* until 30 days after determination of such liability under FUTA.

23.60(4) Interest and penalty may not accrue in those cases where the department finds that, as a matter of equity and good conscience, the employer should not be required to pay interest.

23.60(5) Interest as provided under Iowa Code section 96.14 accrues 30 days after the quarterly billing to reimbursable employers.

23.60(6) The penalties applicable to contributory employers are applicable to employers who have been approved to make payments in lieu of contributions.

23.60(7) Payment checks not honored by bank. An employer is liable for interest for a check in payment of contributions that is not honored by the bank upon which it is drawn.

This rule is intended to implement Iowa Code section 96.14(2).

871—23.61(96) Collection of interest and penalties. When quarterly wage reports are filed with contributions paid, but without payment of penalties and interest due, penalties and interest may be assessed and a lien filed in the same manner as for unpaid contributions.

This rule is intended to implement Iowa Code section 96.16(4).

871—23.62(96) Rescission of interest and penalty.

23.62(1) Interest and penalty charges may be rescinded whenever an employer can provide documentary evidence to the satisfaction of the department that an inquiry in writing was directed to the department within 15 days following the end of the quarter for the contribution or payroll, untimely filed or paid, and such contributions are paid in full.

23.62(2) Penalty charges only may be rescinded whenever the employer can show documentary evidence that the wages paid to employees used to determine liability to the department were reported to another state in good faith and the contributions thereon were properly paid to the state to which the wages were reported and that said employees were fully insured during the period of unreported liability to this department.

This rule is intended to implement Iowa Code section 96.14(2).

871—23.63(96) Cancellation of interest and penalty. The department may, at its discretion and for good cause, cancel interest and penalty upon written request from the employer or its agent. Requests should be directed to the department at its administrative office. The employer will be advised if the request is denied.

In determining whether good cause has been shown, the department shall consider all relevant factors including but not limited to whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received

timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party that prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party's physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action.

This rule is intended to implement Iowa Code section 96.14(2).

871—23.64(96) Refund of interest and penalty.

23.64(1) Interest or penalty may be refunded only when it has been erroneously paid or overpaid. Interest or penalty erroneously collected in excess of the amount due may be credited or refunded to the employing unit or other person(s) who paid such interest or penalty subject to the following limitations.

23.64(2) If the department determines that a claim for refund or credit is allowable in accordance with the Iowa Code and these rules, it shall make necessary adjustments as follows:

a. The amount of the overpayment is first applied against any unpaid liability then due from or accrued against the employing unit.

b. The remainder of any such overpayment will be refunded to the employing unit or other person(s) by whom it was paid, or its or their successor, administrators or executors.

This rule is intended to implement Iowa Code section 96.14(2).

871—23.65(96) Liens for unpaid contributions, interest, and penalties.

23.65(1) Filing of liens and notice of jeopardy assessments.

a. If wages are filed by an employer for the purpose of determining the amount of contribution due, or an assessment of contribution due, and the employer fails to pay any part of the contributions, interest and penalties due, a Notice of Assessment and Lien will be issued to the employer.

b. If, 30 days after a Notice of Assessment and Lien or a Notice of Jeopardy Assessment, has been issued (subrule 23.59(2)) and the employer has failed to make payment in full of the amounts that were assessed, the department may file a lien with the county recorder of the county in which the employer has its principal place of business or with the county recorder of any county in which the employer has real or personal property.

c. The lien, known as a Notice of Lien, shall state the date of assessment; the employer's name, address and account number; and the amount due. The recorder shall record the Notice of Lien as provided in Iowa Code section 96.14(3).

23.65(2) When the Notice of Lien is duly filed and recorded, the amount stated shall be a lien upon the entire interest of the employer, legal or equitable, in any real property, and upon any personal property, tangible or intangible, located in any county where the Notice of Lien or copy is filed.

23.65(3) As provided in Iowa Code section 96.14(3), the lien shall attach as of the date the assessment is issued to the employer.

23.65(4) The transfer, through sale, exchange, or other method, of a major portion of the assets of a delinquent employer shall not defeat or impair the lien in favor of the department, and the person acquiring such assets shall be held liable for payment of all delinquent contributions, interest, and penalties due from the delinquent employer. The department shall be made a party to any foreclosure action involving any real or personal property against which the department has or may claim a lien.

23.65(5) Liens against out-of-state employers and resident employers who remove themselves from the state of Iowa may be obtained in accordance with Iowa Code section 96.14(6).

23.65(6) The department may, at its discretion and in accordance with Iowa Code section 96.14(3), make an assessment and file a lien in the recorder's office in the county or state where the employer resides. Liens shall be recorded in accordance with the law governing liens in the state where filed, and the costs shall be borne by the employer.

23.65(7) No employment security lien(s) shall be released without payment of the contributions secured except as follows:

a. It is shown to the department's satisfaction that the lien(s) was filed in error. If this is shown, the lien shall be at the expense of the department.

b. Release of the lien(s) is ordered by a judge having jurisdiction over same.

c. A release is necessary to facilitate payment to the department from proceeds of sale in an equity action.

d. A foreclosure action has been initiated by a secured creditor and it is demonstrated to the department's satisfaction all of the following:

(1) The lien of the secured creditor is properly perfected and is senior to the employment security lien.

(2) The property, both real and personal, does not exceed in value the amount of the secured lien on which the foreclosure is taken.

23.65(8) In such cases, the department may release its lien(s) but such release shall be only in respect to the property foreclosed upon by the secured creditor.

23.65(9) Interest and penalty secured by a lien may be compromised by the department at its discretion.

23.65(10) Upon payment of contributions, interest, penalty, and costs, the department shall execute a Satisfaction of Lien by filing it with the recorder's office for the county where the lien was filed. A copy of this satisfaction shall be provided to the employer.

This rule is intended to implement Iowa Code section 96.14(3).

871—23.66(96) Jeopardy assessments.

23.66(1) If the department believes the collection of any contribution will be jeopardized by delay, the department may, whether or not the time otherwise prescribed by rule 871—23.8(96) for filing and paying any contribution has expired, immediately assess the contributions, together with all interest and penalty. The contributions, penalty and interest shall become immediately due and payable. The jeopardy assessment may be made by personal service upon the employer or the employer's agent by a representative of the department or civil officer of the state. Should immediate personal service not be possible, the jeopardy assessment shall be sent by mail to the employer's address of record and such mailing shall be a satisfactory service.

23.66(2) If, after a jeopardy assessment has been served, the amount assessed remains unpaid and no appeal has been filed by the employer, a notice of lien shall be recorded in the recorder's office for the county or counties in which the employer resides or owns property. A copy of the lien shall be mailed to the employer at the address of record.

23.66(3) If, at the time of service of a jeopardy assessment, the employer protests or disputes the correctness of the assessment, the employer may furnish to the department and the department may accept a bond in an amount the department deems necessary but not to exceed double the amount of contributions due, provided the department is satisfied as to the security of the bond. So long as the bond remains in force and the assessment remains in dispute, the department shall not issue a distress warrant. If, after final adjudication of the jeopardy assessment, the employer fails to pay the assessed amount in full, the bond shall be forfeited to the extent necessary to satisfy the jeopardy assessment plus any accrued interest. Any overage shall be refunded to the employer by warrant or credit. If the bond is insufficient to pay the jeopardy assessment in full, the department may issue a distress warrant as provided in rule 871—23.67(96).

23.66(4) After a lien has been filed and the amount or any portion of the amount assessed and any additional accrued interest remains unpaid, the department may at any time issue a distress warrant instructing a sheriff or peace officer to levy upon and seize or attach any real or personal property of the employer in satisfaction of the amount assessed and secured by the lien.

This rule is intended to implement Iowa Code section 96.7(7).

871—23.67(96) Distress warrants.

23.67(1) In addition to and as an alternative to any other remedy provided by the Iowa Code and these rules, the department may proceed to enforce its lien by issuing to the sheriff of any county or to any civil officer of the state of Iowa having proper jurisdiction a distress warrant commanding the sheriff or civil officer to levy upon and sell any real or personal property that may be found within its jurisdiction belonging to an employer who has defaulted in the payment of any sum determined by the department to be due from the employer and to pay the proceeds of the sale over to the clerk of district court in and for the county in which the property is found. All costs of the execution shall be charged to the employer.

23.67(2) The sale shall be held after the property has been levied upon, the period of redemption has expired, and the department has petitioned for and been granted a condemnation order in the district court in and for the county in which the property was levied upon, in accordance with the Iowa Code and the Iowa Rules of Civil Procedure.

23.67(3) No property belonging to the employer is exempt from execution.

23.67(4) Whenever a warrant is returned not satisfied in full, the department may proceed to issue a new warrant in the amount remaining unsatisfied, together with any additional interest, penalties, and costs, as provided above.

This rule is intended to implement Iowa Code section 96.7(6).

871—23.68(26U.S.C.6402) Collection of covered unemployment compensation. Pursuant to 26 U.S.C. 6402(f), the department shall utilize the Treasury Offset Program to collect covered unemployment compensation.

This rule is intended to implement 26 U.S.C. 6402(f).

871—23.69(96) Injunction for nonpayment or failure to provide required information.

23.69(1) In addition or as an alternative to any other remedy provided in Iowa Code chapter 96 and this rule, the department may proceed to enjoin an employer who has refused or failed to pay any contributions, interest, or penalty or who has failed to file or provide any information required by the department.

23.69(2) The department retains discretion as to whether or not to seek an injunction.

23.69(3) When the department determines that an injunction should be obtained, the department will send by certified mail or by personal service to the employer at the last-known address for the employer a notice containing the following information:

a. That the department plans to seek an injunction against the employer.

b. The period(s) for which there are delinquent contributions, interest, and penalty due or for which required information has not been provided.

c. The amount of indebtedness.

d. That the injunction will enjoin the employer from operating any businesses in the state of Iowa until one of the following conditions is met:

(1) The entire indebtedness is paid.

(2) The employer files a full and sufficient bond.

(3) The employer has entered into a court-approved plan providing for payment of the indebtedness.

(4) Requested information has been provided.

e. The employer has ten days in which to respond to the department.

23.69(4) Upon expiration of the ten days following the notice, if the employer has not responded satisfactorily, the department may file with the district court for the county in which the employer resides a petition requesting a hearing and an order granting the injunction.

23.69(5) Upon the issuance of a court order granting the injunction, the department will proceed to periodically check to ensure that the employer is complying with the injunction order. Should the

department find that the employer is not in compliance, it will ask the court for a finding of contempt and ask the court to impose appropriate punishment.

23.69(6) Upon payment in full of the delinquent contributions, interest, and penalty and the filing of all delinquent wage detail, the department shall have the injunction dissolved.

23.69(7) If the employer, as the result of a court-approved payment plan, is relieved by the court of the injunction and the employer fails to perform strictly as set out in the plan, the department may, at its discretion, ask the court to reinstate the injunction upon notice and hearing.

23.69(8) Any costs of these actions shall be borne by the employer.

This rule is intended to implement Iowa Code section 96.14(16).

871—23.70(96) Nonprofit organizations.

23.70(1) Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7 the election to reimburse the fund with the department for its consideration.

23.70(2) The election to reimburse must be signed by an authorized official of the nonprofit organization and be accompanied by:

a. A letter of intent indicating the organization's desire to be considered for reimbursable status.

b. A copy of the organization's letter of 501(c)(3) exemption from the Internal Revenue Service. If the organization does not have a 501(c)(3) letter at the time of the filing of its election to become a reimbursable employer, it may file a written request with the department for an extension of time setting forth the reason for the request, and the department may grant an extension not to exceed 180 days. Included with this extension request should be a copy of the application for exemption, Election to Make Payments in Lieu of Contributions, or evidence that the request for 501(c)(3) exemption has been made.

c. A corporate charter or other foundational documents.

23.70(3) All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's 501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the tax bureau. The request for reimbursable status will be examined by an authorized representative.

23.70(4) An organization not possessing a 501(c)(3) nonprofit tax exemption at the time its election is submitted shall be granted reimbursable status provided that the exemption is obtained and a copy is filed with the department within 180 days of the date the election is submitted. Should the organization fail to obtain an exemption within 180 days, the election shall be invalid and the organization required to pay contributions upon all taxable wages paid during the period covered by the invalid election at the contribution rate it would have had if the invalid election had not been made. A new election may not be made by the organization until it has obtained a 501(c)(3) nonprofit tax exemption and has filed a new election. The new election shall not be retroactive to cover the period of the invalid election. Benefits reimbursed during the invalid election shall be used to offset the contributions due, and any excess shall be refunded to the organization.

23.70(5) Any nonprofit organization that terminates its election to reimburse the fund shall continue to be liable to reimburse the fund for benefits that are paid based on wages earned during the effective period of the employer's Election to Make Payments in Lieu of Contributions. All benefits charges based on wages paid after the date of the approval of the change of status to a contributory employer shall be charged to the employer's contributory account.

a. A nonprofit organization changing its tax status from reimbursable to contributory or contributory to reimbursable will be given a new employer account number. A nonprofit organization terminating its election to reimburse the fund shall be treated as a newly covered employer for the purpose of establishing a contribution rate, except as provided in paragraph 23.70(4)*"b."*

b. The experience, while under each tax status, will not be combined for rate computation purposes unless the department finds, or has reason to believe, that the nonprofit organization changing from a reimbursable status to a contributory status is unable to reimburse the fund for benefits outstanding at the time of the change in status, plus any benefits paid after the change in status that are based on wages paid while the nonprofit organization was still in a reimbursable status. The department may then, at its own option, use the unreimbursed benefits in the computation of the nonprofit organization's contribution rate and transfer any contributions collected, above what the nonprofit organization would have paid as a newly covered employer, from the nonprofit organization's contributory account to the reimbursable account to apply against the unreimbursed benefits.

23.70(6) Any nonprofit organization that elects to change its status from contributory to reimbursable shall continue to be liable for charges on all benefits based on wages paid when the nonprofit organization was a contributory employer. These charges will be charged to the nonprofit organization's contributory account. The experience of the contributory account will not be merged with the nonprofit organization's reimbursable account.

23.70(7) In the event that a reimbursable nonprofit organization succeeds to a contributory employer, such successor employer shall not receive a transfer of account balance from the predecessor account. The account balance shall remain with the predecessor account and be used as an offset against any claims attributable to that account. If an employer, whether or not the employer may elect to be reimbursable, becomes a successor to a reimbursable nonprofit organization, the successor employer shall become obligated for the reimbursable nonprofit organization's unpaid benefit charges in the event that the reimbursable nonprofit organization cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the reimbursable nonprofit organization prior to the date of the sale or transfer.

23.70(8) In the event a reimbursable nonprofit organization discontinues business, the reimbursable nonprofit organization will continue to be liable to reimburse the fund in an amount equivalent to the amount of regular unemployment benefits and one-half of the extended benefits paid to an individual that is attributable to wages paid by the reimbursable nonprofit organization prior to the discontinuance of business.

This rule is intended to implement Iowa Code section 96.7(9).

871—23.71(96) Governmental entity—definition.

23.71(1) The definition of a governmental entity is held to include but not be limited to:

a. An organization or any division, department, agency, commission, or board of a state or political subdivision established by proper authorities, authorized and created under constitutional provisions or statutes, for the purpose of carrying out a portion of the function of government, including both governmental and proprietary functions.

b. An instrumentality is one that is organized to carry on some function or purpose of government for a state or a political subdivision. There is expressed or implied statutory or other authority creating it. It is an independent legal entity with power to hire, supervise, and discharge its own employees. Generally, it can sue or be sued in its own name, to hold, convey real and personal property and borrow money.

c. Political subdivisions include counties, cities, municipalities, towns, villages, and townships, as well as irrigation, flood control, sanitation, utility, reclamation, drainage, improvement, and public school districts and authorities or any combination of these and similar governmental entities within the state of Iowa.

d. Instrumentalities shall include departments, boards, agencies, commissions, county or municipal corporations, associations and organizations of a state or a political subdivision of the state when it is operated by virtue of the authority, power, or powers conferred upon it by a state or political

subdivision of the state, or when they are controlled, supervised or receive direction, expressed or implied, from a state or political subdivision of a state or such rights are vested in public authority or authorities, or the state or the political subdivision of a state has the right, expressed or implied, to control or direct the policy, operation or to influence the organizations or action of individuals, parties or interests that control those who manage or administer the affairs of such organizations.

23.71(2) In cases involving the status of an organization as to whether it is a state, a state instrumentality, a political subdivision of a state or a political subdivision instrumentality, the following factors may be taken into account:

a. Whether the revenues are subject to control by a state, a political subdivision of a state or an instrumentality of either.

b. They may have broad powers of taxation, appropriation or authority to levy special assessments on the land located in the district that will stand as a lien upon the property assessed.

c. It is created or existing by virtue of a state, a political subdivision of the state or instrumentality of either, which operates in the public interest, without profit to private persons, and whose purpose is presumed to be a public benefit and conducive to the public health, convenience and welfare.

d. Whether it is organized or used for a governmental purpose or an aid in the function of government or it performs a governmental function.

e. Whether there is an expressed or implied statutory or other authority necessary or existing for the creation or use of the organization.

23.71(3) The term "employment" does not apply to services performed for this state, a political subdivision of this state, an Indian tribe or an instrumentality of either by an individual who is an elected official; a member of a legislative body; a member of the judiciary of a state or political subdivision; a member of the state national guard, air national guard, or armed forces reserve; an employee on a temporary-duty basis in the case of fire, storm, snow, earthquake, flood or similar emergency; or in a position designated as a major nontenured policymaking or advisory position pursuant to state law if the position does not ordinarily require duties of more than eight hours per week.

a. The exclusion for a governmental entity or Indian tribe from coverage of unemployment of the services of an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency applies only to those individuals who are hired or pressed into service to assist directly with an emergency or urgent distress associated with an emergency, including such temporary tasks as firefighting, rescue, removal of storm debris, cleaning up mud and flood debris, restoration of public facilities, snow removal and road clearance. Volunteer firefighters and police officers, and snow removal personnel, who are called to duty in emergency situations such as fires, floods, emergency snow removal or similar public emergency to perform services on a temporary basis for which they receive pay, are excluded from coverage. The exclusion does not apply to permanent employees whose usual responsibilities include emergency situations.

b. The provision that excludes an individual employed by a governmental entity or Indian tribe who exercises duties in a position defined in state law as a major nontenured policymaking or advisory position, or a policymaking or advisory position that ordinarily does not require duties of more than eight hours per week, covers those individuals holding positions designated by, or pursuant to, state law as a policymaking or advisory position. Political subdivisions that have authority to enact ordinances or resolutions without recourse to the state legislature but under authority of state law may also establish and define such positions. The positions may qualify for the exclusion if the political subdivision has enacted an ordinance or resolution creating or designating one of its positions as policymaking or advisory, provided power to make the ordinance or resolution is authorized or permitted by the laws of the state. If the state law or local ordinance or resolution properly designated the positions as policymaking or advisory, the exclusion is clearly applicable. Where the law or the ordinance does not clearly and specifically so categorize or label the position, other pertinent factors such as job descriptions, the qualification of individuals considered for and appointed to the position,

and the responsibilities involved shall be taken into account in determining the character of the position for purposes of applying the exclusion.

(1) "Policymaker" is defined as generally referring to the determination of the direction, emphasis and scope of action in the development of, and the administration of, governmental programs. Such responsibilities are confined to and inherent in jobs of the higher echelons of government.

(2) An "advisory position" is one that advises established governmental agencies and officers with respect to policy, program and administration without having authority to implement the recommendations.

(3) The word "major" in the phrase "major nontenured policymaking or advisory position" refers to high level governmental positions usually filled by appointment by the chief executive of the political entity (governor, mayor, etc.), or a council, and that involves responsibilities affecting the entire political entity, whether it be the state, county or city.

(4) The term "nontenured" is used in its usual meaning to mean that the position is not covered by merit system or civil service law or rules with respect to duration of appointment to the service.

(5) Service in a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours per week is exempted. It makes no difference whether the position is tenured. If the position ordinarily requires more than eight hours per week, the exclusion does not apply. The number of hours required should be determined by reference to the law establishing the position and the actual time spent by incumbents.

c. An elected official includes an individual appointed to serve the unexpired term of an elected position. Such an individual's services for such period are excluded because the individual is performing excluded services.

d. An official elected by a body other than the public, such as by a vote by the legislature, board of supervisors, council, school board or trustees, to perform services for a government entity, such individual is not excluded from coverage.

e. Services performed for the state national guard or the air national guard are excluded from coverage of the employment security law only as to the services in the individual's "military" capacity. It does not apply to any service performed in any other capacity.

f. If a member of the state national guard or air national guard is employed in a civilian capacity performing services for either organization as distinguished from "military" service, the civilian service would be covered as an employee of a governmental entity to the same extent as any other employee.

23.71(4) Exemption from "employment" for individuals performing services for a governmental entity or Indian tribe as part of an unemployment work relief or work training program. Services performed by an individual for a government entity or Indian tribe for the purpose of qualifying or repaying a welfare or relief grant will not be considered "employment" provided that:

a. The major purpose of the program under which the work is performed is to relieve individuals from their unemployment or poverty.

b. The government entity does not pay the welfare or relief grant directly to the individual but instead pays items such as rent, power bills, medical bills, etc., for the individual.

c. The services performed by the individuals do not displace regularly employed workers of the government entity.

This rule is intended to implement Iowa Code sections 96.7(8) and 96.1A(16)*"a"*(6).

871—23.72(96) Governmental entity—elective coverage and liability.

23.72(1) Any governmental entity may elect to be a governmental contributory employer by filing for elective coverage as a governmental contributory employer. The rules governing the selection of coverage status for governmental entities apply to Indian tribes. Any governmental entity failing to file such an election will be considered as a governmental reimbursable employer. The

application must be signed by a duly constituted governmental official. The election shall be approved if the department finds that:

a. It is an application for all employees of the entity.

b. The applicant is a "governmental entity."

c. It sets forth the name and address of the entity.

23.72(2) The effective date of an elective coverage agreement filed by a government entity is the first day of the calendar year in which the election was filed.

23.72(3) An agreement for elective coverage shall be continued in effect from period to period unless a written application for termination has been filed with the department 30 days before the beginning of the taxable year for which such termination shall first be effective following the initial one-year period of coverage.

23.72(4) An applicant may withdraw an application for elective coverage prior to final approval of the application. The department may, upon written request of the applicant, cancel an elective coverage agreement that has been finally approved if the applicant shows that the application was submitted through justifiable mistake, or error, or was submitted by a person not having proper authorization to bind the applicant.

23.72(5) If a governmental entity is succeeded in whole or in part by another governmental entity, the successor may elect to continue the elective coverage agreement of the predecessor or may elect to terminate the elective coverage agreement of the predecessor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity under an approved elective coverage agreement, the elective coverage agreement of the predecessor shall be continued to the same extent as the elective coverage agreement of the successor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity not under an approved elective coverage agreement, the successor shall meet the requirements of this rule if it elects to continue the elective coverage agreement of the predecessor.

23.72(6) The contribution rate of a governmental contributory employer shall be determined by the ranking of the governmental contributory employer's percentage of excess when compared to all other governmental contributory employers' percentage of excesses and the rate assigned to each rank as determined by the base rate of all governmental contributory employers. The base rate is determined by adding or subtracting the difference between the benefits charged and the contributions paid by governmental contributory employers since January 1, 1980 (adjusted if necessary by excess contributions from calendar years 1978 and 1979), to or from the total benefits charged to governmental contributory employers during the preceding calendar year and dividing this sum by the total taxable wages reported by governmental contributory employers during the same calendar year. The contribution rate of a governmental contributory employer shall be payable on the taxable wages paid by the governmental contributory employer.

23.72(7) Liability upon the sale, transfer or discontinuance of a reimbursable governmental employer.

a. If a governmental reimbursable employer sells or otherwise transfers its enterprise, business, or operation to a subsequent employing unit, and the subsequent employing unit is determined to be a successor employer, the successor employer shall become liable to the department for the predecessor governmental reimbursable employer's benefit charges that are unpaid as of the date of the sale or transfer in the event that the predecessor governmental reimbursable employer cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the predecessor governmental reimbursable employer prior to the date of the sale or transfer.

b. If a reimbursable instrumentality of either a state or a political subdivision is discontinued other than by sale or transfer, the state or the political subdivision shall reimburse the department for the reimbursable instrumentality's benefit charges that are unpaid at the time the reimbursable instrumentality was discontinued. In addition, the state or the political subdivision shall be liable to

reimburse the department for benefits paid after the discontinuance of the reimbursable instrumentality that are based on wages paid by the reimbursable instrumentality prior to the discontinuance.

This rule is intended to implement Iowa Code section 96.7(8).

871—23.73(96) Governmental entities—delinquent accounts.

23.73(1) Any governmental entity that is an employer and that becomes delinquent in the payment of contributions or the reimbursement of benefits shall be assessed for the same together with any interest and penalty due thereon.

23.73(2) Contributions are due within 30 days of the end of the quarter for which they are incurred. Reimbursable benefit payments are due 30 days after the date of the statement.

This rule is intended to implement Iowa Code section 96.14(3).

871—23.74 to **23.81** Reserved.

871—23.82(96) Definition of construction employer.

23.82(1) Construction. The department will utilize the North America Industry Classification System manual (2022 edition) to determine which employers will be classified as construction. The manual is available on the Internet to view or download at www.census.gov/naics.

a. The construction sector is comprised of establishments primarily engaged in the construction of buildings and other structures, heavy construction (except buildings), additions, alterations, reconstruction, installation, maintenance and repairs. Establishments engaged in demolition or wrecking of buildings and other structures, clearing of building sites, and sale of materials from demolished structures are also included. This sector also includes those establishments engaged in blasting, test drilling, landfill, leveling, earthmoving, excavating, land drainage, and other land preparation. The industries within this sector have been defined on the basis of their unique production processes. As with all industries, the production processes are distinguished by their use of specialized human resources and specialized physical capital. Construction activities are generally administered or managed at a relatively fixed place of business, but the actual construction work is performed at one or more different project sites. Employers that provide workers primarily for construction will be classified as construction employers.

b. This sector is divided into three subsectors of construction activities:

(1) Building construction and land subdivision and land development;

(2) Heavy construction (except buildings), such as highways, power plants, and pipelines; and

(3) Construction activity by special trade contractors.

c. Establishments classified in Subsector 233, Building, Developing, and General Contracting, and Subsector 234, Heavy Construction, usually assume responsibility for an entire construction project and may subcontract some or all of the actual construction work. Operative builders who build on their own account for sale and land subdividers and land developers who engage in subdividing real property into lots for sale are included in Subsector 233, Building, Developing, and General Contracting. (Special trade contractors are included in Subsector 234, Heavy Construction, if they are engaged in activities primarily relating to heavy construction, such as grading for highways.) Establishments included in these subsectors operate as general contractors, design-builders, engineer-constructors, joint-venture contractors, and turnkey construction contractors. Establishments identified as construction management firms are also included.

d. Establishments classified in Subsector 235, Special Trade Contractors, are primarily engaged in specialized construction activities, such as plumbing, painting, and electrical work and work for builders and general contractors under subcontract or directly for project owners. Establishments engaged in demolition or wrecking of buildings and other structures, dismantling of machinery, excavating, shoring and underpinning, anchored earth retention activities, foundation drilling, and grading for buildings are also included in this subsector.

e. "Force account" construction is construction work performed by an establishment primarily engaged in some business other than construction, for its own account and use, and by employees of the establishment. This activity is not included in this industry sector unless the construction work performed is the primary activity of a separate establishment of the enterprise.

f. The installation of prefabricated building equipment and materials, such as elevators and revolving doors, is classified in the construction sector. Installation work incidental to sales by employees of a manufacturing or retail establishment is classified as an activity of those establishments.

23.82(2) The term "construction" includes but is not limited to:

a. Land subdividing and land development. Establishments primarily engaged in subdividing real property into lots or developing lots for sale.

b. Residential building construction.

(1) Single-family housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations, and repairs) of single-family residential housing units.

Building alterations, single-family—general contractors
Building construction, single-family—general contractors
Custom builders, single-family houses—general contractors
Designing and erecting, combined: single-family houses—general contractors
Home improvements, single-family—general contractors
House construction, single-family—general contractors
House: shell erection, single-family—general contractors
Mobile home repair, on site—general contractors
Modular housing, single-family (assembled on site)—general contractors
One-family house construction—general contractors
Prefabricated single-family houses erection—general contractors
Premanufactured housing, single-family (assembled on site)—general contractors
Remodeling buildings, single-family—general contractors
Renovating buildings, single-family—general contractors
Repairing buildings, single-family—general contractors
Residential construction, single-family—general contractors
Row house (single-family) construction—general contractors
Town house construction—general contractors

(2) Multifamily housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of multifamily residential housing units.

Apartment building construction—general contractors
Building alterations, residential: except single-family—general contractors
Building construction, residential: except single-family—general contractors
Custom builders, residential: except single-family—general contractors
Designing and erecting, combined: residential, except single-family—general contractors
Dormitory construction—general contractors
Home improvements, residential: except single-family—general contractors
Prefabricated building erection, residential: except single-family—general contractors
Remodeling buildings, residential: except single-family—general contractors
Renovating buildings, residential: except single-family—general contractors
Repairing buildings, residential: except single-family—general contractors
Residential construction, except single-family—general contractors

c. Nonresidential building construction.

(1) Manufacturing and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of manufacturing and industrial buildings.

Building alterations, industrial and warehouse—general contractors
Building components manufacturing plant construction—general contractors
Building construction, industrial and warehouse—general contractors
Clean room construction—general contractors
Cold storage plant construction—general contractors
Commercial warehouse construction—general contractors
Custom builders, industrial and warehouse—general contractors
Designing and erecting, combined: industrial—general contractors
Dry cleaning plant construction—general contractors
Factory construction—general contractors
Food products manufacturing or packing plant construction—general contractors
Grain elevator construction—general contractors
Industrial building construction—general contractors
Industrial plant construction—general contractors
Paper pulp mill construction—general contractors
Pharmaceutical manufacturing plant construction—general contractors
Prefabricated building erection, industrial—general contractors
Remodeling buildings, industrial and warehouse—general contractors
Renovating buildings, industrial and warehouse—general contractors
Repairing buildings, industrial and warehouse—general contractors
Truck and automobile assembly plant construction—general contractors
Warehouse construction—general contractors

(2) Commercial and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of commercial and industrial buildings.

Administration building construction—general contractors
Amusement building construction—general contractors
Auditorium construction—general contractors
Bank building construction—general contractors
Building alterations, nonresidential: except industrial and warehouses—general contractors
Building construction, nonresidential: except industrial and warehouses—general contractors
Casino construction—general contractors
Church, synagogue and related building construction—general contractors
Civic center construction—general contractors
Commercial building construction—general contractors
Custom builders, nonresidential: except industrial and warehouses—general contractors
Designing and erecting, combined: commercial—general contractors
Dome construction—general contractors
Farm building construction, except residential—general contractors
Fire station construction—general contractors
Garage construction—general contractors
Hospital construction—general contractors
Hotel construction—general contractors
Institutional building construction, nonresidential—general contractors
Mausoleum construction—general contractors
Motel construction—general contractors
Municipal building construction—general contractors
Museum construction—general contractors

Office building construction—general contractors
Passenger and freight terminal building construction—general contractors
Post office construction—general contractors
Prefabricated building erection, nonresidential: except industrial and warehouses—general contractors
Prison construction—general contractors
Remodeling buildings, nonresidential: except industrial and warehouses—general contractors
Renovating buildings, nonresidential: except industrial and warehouses—general contractors
Repairing buildings, nonresidential: except industrial and warehouses—general contractors
Restaurant construction—general contractors
School building construction—general contractors
Service station construction—general contractors
Shopping center construction—general contractors
Silo construction, agricultural—general contractors
Stadium construction—general contractors
Store construction—general contractors

d. Highway, street, bridge and tunnel construction.

(1) Highway and street construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of highways (except elevated), streets, roads, or airport runways, and establishments identified as highway and street construction management firms, and establishments identified as special trade contractors engaged in performing subcontract work primarily related to highway and street construction.

Airport runway construction—general contractors
Alley construction—general contractors
Asphalt paving; roads, public sidewalks and streets—contractors
Concrete construction; roads, highways, public sidewalks, and streets—contractors
Grading for highways, streets and airport runways—contractors
Guardrail construction on highways—contractors
Highway construction, except elevated—general contractors
Highway signs, installation of—contractors
Parkway construction—general contractors
Paving construction—contractors
Resurfacing streets and highways—contractors
Road construction, except elevated—general contractors
Sidewalk construction, public—contractors
Street maintenance or repair—contractors
Street paving—contractors

(2) Bridge and tunnel construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of bridges, viaducts, elevated highways and tunnels, and establishments identified as bridge and tunnel construction management firms, and establishments identified as special trade contractors primarily engaged in performing subcontract work related to bridge and tunnel construction.

Abutment construction—general contractors
Bridge construction—general contractors
Causeway construction on structural supports—general contractors
Highway construction, elevated—general contractors
Overpass construction—general contractors
Trestle construction—general contractors
Tunnel construction—general contractors
Underpass construction—general contractors
Viaduct construction—general contractors

e. Other heavy construction.

(1) Water, sewer, and pipeline construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of water mains, sewers, drains, gas mains, natural gas pumping stations, and gas and oil pipelines, and establishments identified as water, sewer and pipeline construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to water, sewer, and pipeline construction.

Aqueduct construction—general contractors
Conduit construction—contractors
Distribution lines (oil and gas field) construction—general contractors
Gas main construction—general contractors
Manhole construction—contractors
Natural gas compressing station construction—general contractors
Pipe laying—general contractors
Pipeline construction—general contractors
Pipeline wrapping—contractors
Pumping station construction—general contractors
Sewage collection and disposal line construction—general contractors
Sewer construction—general contractors
Water main line construction—general contractors

(2) Power and communication transmission line construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of electric power and communication transmission lines and towers, radio and television transmitting/receiving towers, cable laying, and cable television lines, and establishments identified as power and communication transmission line construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to power and communication line construction.

Cable laying construction—contractors
Cable television line construction—contractors
Pole line construction—general contractors
Power line construction—general contractors
Telegraph line construction—general contractors
Telephone line construction—general contractors
Television and radio transmitting tower construction—general contractors
Transmission line construction—general contractors

(3) Industrial nonbuilding structure construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of heavy industrial nonbuilding structures, such as chemical complexes, or facilities, cement plants, petroleum refineries, industrial incinerators, ovens, kilns, power plants (except hydroelectric plants), and nuclear reactor containment structures, and establishments identified as industrial nonbuilding construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to industrial nonbuilding construction.

Chemical complex or facilities construction—general contractors
Coke oven construction—general contractors
Discharging station construction, mine—general contractors
Furnace construction for industrial plants—general contractors
Industrial incinerator construction—general contractors
Industrial plant appurtenance construction—general contractors
Kiln construction—general contractors
Light and power plant construction—general contractors
Loading station construction, mine—general contractors
Mine loading and discharging station construction—general contractors

Mining appurtenance construction—general contractors
Nuclear reactor containment structure construction—general contractors
Oil refinery construction—general contractors
Oven construction, bakers'—general contractors
Oven construction for industrial plants—general contractors
Petrochemical plant construction—general contractors
Petroleum refinery construction—general contractors
Power plant construction—general contractors
Tipple construction—general contractors
Washeries construction, mining—general contractors

(4) All other heavy construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction or repairs) of heavy nonbuilding construction projects (except highway, street, bridge, tunnel, water lines, sewer lines, pipelines, and power and communication transmission lines), and industrial nonbuilding structures, and establishments identified as all other heavy construction management firms, and establishments primarily engaged in construction equipment rental with an operator, and establishments identified as special trade contractors engaged in activities primarily related to all other heavy construction.

Athletic field construction—general contractors
Blasting, except building demolition—contractors
Breakwater construction—general contractors
Bridle path construction—general contractors
Brush clearing or cutting—contractors
Caisson drilling—contractors
Canal construction—general contractors
Channel construction—general contractors
Channel cutoff construction—general contractors
Clearing of land—general contractors
Cofferdam construction—general contractors
Cutting right-of-way—general contractors
Dam construction—general contractors
Dike construction—general contractors
Dock construction—general contractors
Drainage project construction—general contractors
Dredging—general contractors
Earthmoving, not connected with building construction—general contractors
Flood control project construction—general contractors
Golf course construction—general contractors
Harbor construction—general contractors
Heavy equipment rental with an operator—contractors
Hydroelectric plant construction—general contractors
Irrigation projects, construction—general contractors
Jetty construction—general contractors
Land clearing—contractors
Land drainage—contractors
Land leveling (irrigation)—contractors
Land reclamation—contractors
Levee construction—general contractors
Lock and waterway construction—general contractors
Marine construction—general contractors
Missile facilities construction—general contractors
Pier construction—general contractors

Pile driving—general contractors
Pond construction—general contractors
Railroad construction—general contractors
Railway roadbed construction—general contractors
Reclamation projects construction—general contractors
Reservoir construction—general contractors
Revetment construction—general contractors
Rock removal-underwater—contractors
Sewage treatment plant construction—general contractors
Ski tow erection—general contractors
Soil compacting service—contractors
Submarine rock-removal—general contractors
Subway construction—general contractors
Tennis court construction, outdoor—general contractors
Timber removal-underwater—contractors
Trail building—general contractors
Trailer camp construction—general contractors
Trenching—contractors
Waste disposal plant construction—general contractors
Water power project construction—general contractors
Water treatment plant construction—general contractors
Waterway construction—general contractors
Wharf construction—general contractors

f. Plumbing, heating and air conditioning contractors. Establishments primarily engaged in one or more of the following: (1) installing plumbing, heating, and air-conditioning equipment; (2) servicing plumbing, heating, and air-conditioning equipment; and (3) the combined activity of selling and installing plumbing, heating, and air-conditioning equipment. The plumbing, heating, and air-conditioning work performed includes new work, additions, alterations, and maintenance and repairs.

Air system balancing and testing—contractors
Air conditioning, with or without sheet metal work—contractors
Boiler cleaning—contractors
Boiler erection and installation—contractors
Drainage system installation (cesspool and septic tank)—contractors
Dry well (cesspool) construction—contractors
Fuel oil burner installation and servicing—contractors
Furnace repair—contractors
Gasline hookup—contractors
Heating equipment installation—contractors
Heating, with or without sheet metal work—contractors
Lawn sprinkler system installation—contractors
Mechanical contractors
Piping, plumbing—contractors
Plumbing and heating—contractors
Plumbing repair—contractors
Plumbing, with or without sheet metal work—contractors
Solar heating apparatus—contractors
Sprinkler system installation—contractors
Steam fitting—contractors
Sump pump installation and servicing—contractors
Ventilating work, with or without sheet metal work—contractors
Water pump installation and servicing—contractors

Water system balancing and testing—contractors

Work combined with heating or air conditioning—contractors

g. Painting and wall covering contractors. Establishments primarily engaged in interior or exterior painting and interior wall covering. The painting and wall covering work includes new work, additions, alterations, and maintenance and repairs.

Bridge painting—contractors

Electrostatic painting on site (including lockers and fixtures)—contractors

House painting—contractors

Painting of buildings and other structures, except roofs—contractors

Paper hanging—contractors

Ship painting—contractors

Traffic lane painting—contractors

Wallpaper removal—contractors

Whitewashing—contractors

h. Electrical contractors. Establishments primarily engaged in one or more of the following: (1) performing electrical work at the site; (2) servicing electrical equipment at the site; and (3) the combined activity of selling and installing electrical equipment. The electrical work performed includes new work, additions, alterations, and maintenance and repairs.

Cable splicing, electrical—contractors

Cable television hookup—contractors

Communication equipment installation—contractors

Electric work—contractors

Electrical repair at site of construction—contractors

Electronic control system installation—contractors

Highway lighting and electrical signal construction—contractors

Intercommunication equipment installation—contractors

Sound equipment installation—contractors

Telecommunications equipment installation—contractors

Telephone and telephone equipment installation—contractors

i. Masonry, stone work, tile setting and plastering.

(1) Masonry and stone contractors. Establishments primarily engaged in masonry work, stone setting, and other stone work. The masonry work, stone setting and other stone work performed includes new work, additions, alterations, and maintenance and repairs.

Bricklaying—contractors

Cement block laying—contractors

Chimney construction and maintenance—contractors

Concrete block laying—contractors

Foundations, building of: block, stone or brick—contractors

Marble work, exterior construction—contractors

Masonry—contractors

Refractory brick construction—contractors

Retaining wall construction: block, stone or brick—contractors

Stone setting—contractors

Stone work erection—contractors

Tuck pointing—contractors

(2) Drywall, plastering, acoustical, and insulation contractors. Establishments primarily engaged in drywall, plaster work, acoustical and building insulation work. The drywall, plaster work, acoustical and insulation work performed includes new work, additions, alterations, and maintenance and repairs.

Acoustical work—contractors

Ceilings, acoustical installation—contractors

Drywall construction—contractors
Insulation installation, buildings—contractors
Lathing—contractors
Plastering, plain or ornamental—contractors
Solar reflecting insulation film—contractors
Stucco construction—contractors
Taping and finishing drywall—contractors

(3) Tile, marble, terrazzo, and mosaic contractors. Establishments primarily engaged in (1) setting and installing ceramic tile, marble (interior only), terrazzo, and mosaic, or (2) mixing marble particles and cement to make terrazzo at the job site. The tile, marble, terrazzo, and mosaic work performed includes new work, additions, alterations, and maintenance and repairs.

Fresco work—contractors
Mantel work—contractors
Marble installation, interior; including finishing—contractors
Mosaic work—contractors
Terrazzo work—contractors
Tile installation, ceramic—contractors
Tile setting, ceramic—contractors

j. Carpentering and floor contractors.

(1) Carpentry contractors. Establishments primarily engaged in framing, carpentry, and finishing work. The carpentry work performed includes new work, additions, alterations, and maintenance and repairs.

Carpentry work—contractors
Folding door installation—contractors
Framing—contractors
Garage door installation—contractors
Joinery, ship—contractors
Ship joinery—contractors
Store fixture installation—contractors
Trim and finish—contractors
Window and door (prefabricated) installation—contractors

(2) Floor laying and other floor contractors. Establishments primarily engaged in the installation of resilient floor tile, carpeting, linoleum, and wood or resilient flooring. The floor laying and other floor work performed includes new work, additions, alterations, and maintenance and repairs.

Asphalt tile installation—contractors
Carpet laying or removal service—contractors
Fireproof flooring construction—contractors
Floor laying, scraping, finishing and refinishing—contractors
Flooring, wood—contractors
Hardwood flooring—contractors
Linoleum installation—contractors
Parquet flooring—contractors
Resilient floor laying—contractors
Vinyl floor tile and sheet installation—contractors

k. Roofing, siding, and sheet metal contractors. Establishments primarily engaged in the installation of roofing, siding, sheet metal work, and roof drainage-related work, such as downspouts and gutters. The roofing, siding and sheet metal work performed includes new work, additions, alterations, and maintenance and repairs.

Architectural sheet metal work—contractors
Ceilings, metal; erection and repair—contractors
Coppersmithing, in connection with construction work—contractors

Downspout installation, metal—contractors
Duct work, sheet metal—contractors
Gutter installation, metal—contractors
Roof spraying, painting or coating—contractors
Roofing work, including repairing—contractors
Sheet metal work: except plumbing, heating or air conditioning—contractors
Siding—contractors
Skylight installation—contractors
Tinsmithing, in connection with construction work—contractors

l. Concrete contractors. Establishments primarily engaged in the use of concrete and asphalt to produce parking areas, building foundations, structures, and retaining walls and the use of all materials to produce patios, private driveways and private walks. The concrete work performed includes new work, additions, alterations, and maintenance and repairs.

Asphalting of private driveways and private parking areas—contractors
Blacktop work; private driveways and private parking areas—contractors
Concrete finishers—contractors
Concrete work: private driveways, sidewalks, and parking areas—contractors
Culvert construction—contractors
Curb construction—contractors
Foundations, building of: poured concrete—contractors
Grouting work—contractors
Gunite work—contractors
Parking lot construction—contractors
Patio construction, concrete—contractors
Sidewalk construction, except public—contractors

m. Water well drilling contractors. Establishments primarily engaged in drilling, tapping, and capping of water wells and geothermal drilling. The water well drilling work performed includes new work, additions, alterations, and maintenance and repairs.

Drilling water wells—contractors
Geothermal drilling—contractors
Servicing water wells—contractors
Well drilling, water: except oil or gas field water intake—contractors

n. Other special trade contractors.

(1) Structural steel erection contractors. Establishments primarily engaged in one or more of the following: (1) erecting metal, structural steel and similar products of prestressed or precast concrete to produce structural elements of building exterior, and elevator fronts; (2) setting rods, bars, rebar, mesh and cages to reinforce poured-in-place concrete; and (3) erecting cooling towers and metal storage tanks. The structural steel erection work performed includes new work, additions, alterations, reconstruction, and maintenance and repairs.

Building front installations, metal—contractors
Concrete products, structural precast or prestressed: placing of—contractors
Concrete reinforcement, placing of—contractors
Curtain wall installation—contractors
Elevator front installation, metal—contractors
Iron work, structural—contractors
Metal furring—contractors
Steel work, structural—contractors
Storage tanks, metal; erection—contractors
Storefront installation, metal—contractors

(2) Glass and glazing contractors. Establishments primarily engaged in installing glass or tinting glass. The glass work performed includes new work, additions, alterations, and maintenance and repairs.

Glass installation, except automotive—contractors

Glass work, except automotive—contractors

Glazing work—contractors

Tinting glass—contractors

(3) Excavation contractors. Establishments primarily engaged in preparing land for building construction. The excavation work performed includes new work, additions, alterations, and repairs.

Excavation work—contractors

Foundation digging (excavation)—contractors

Grading: except for highways, streets and airport runways—contractors

(4) Wrecking and demolition contractors. Establishments primarily engaged in wrecking and demolition of buildings and other structures.

Concrete breaking for streets and highways—contractors

Demolition of buildings or other structures, except marine—contractors

Dismantling steel oil tanks, except oil field work—contractors

Underground tank removal—contractors

Wrecking of building or other structures, except marine—contractors

(5) Building equipment and other machinery installation contractors. Establishments primarily engaged in one or more of the following: (1) the installation or dismantling of building equipment, machinery or other industrial equipment; (2) machine rigging; and (3) millwrighting. The building equipment and other machinery installation work performed includes new work, additions, alterations, and maintenance and repairs.

Conveyor system installation—contractors

Dismantling of machinery and other industrial equipment—contractors

Dumbwaiter installation—contractors

Dust collecting equipment installation—contractors

Elevator installation, conversion, and repair—contractors

Incinerator installation, small—contractors

Installation of machinery and other industrial equipment—contractors

Machine rigging—contractors

Millwrights

Pneumatic tube system installation—contractors

Power generating equipment installation—contractors

Revolving door installation—contractors

Vacuum cleaning systems, built-in—contractors

(6) All other special trade contractors. Establishments primarily engaged in specialized construction work. The other specialized work performed includes new work, additions, alterations, and maintenance and repairs.

Antenna installation, except household type—contractors

Artificial turf installation—contractors

Awning installation—contractors

Bathtub refinishing—contractors

Boring for building construction—contractors

Bowling alley installation and service—contractors

Cable splicing service, nonelectrical—contractors

Caulking (construction)—contractors

Cleaning building exteriors—contractors

Cleaning new buildings after construction—contractors

Coating of concrete structures with plastic—contractors

Core drilling for building construction—contractors
Countertop installation—contractors
Dampproofing buildings—contractors
Dewatering—contractors
Diamond drilling for building construction—contractors
Epoxy application—contractors
Erection and dismantling of forms for poured concrete—contractors
Fence construction—contractors
Fire escape installation—contractors
Fireproofing buildings—contractors
Forms for poured concrete, erection and dismantling—contractors
Gas leakage detection—contractors
Gasoline pump installation—contractors
Glazing of concrete surfaces—contractors
Grave excavation—contractors
House moving—contractors
Insulation of pipes and boilers—contractors
Lead burning—contractors
Lightning conductor erection—contractors
Mobile home site setup and tie down—contractors
Ornamental metal work—contractors
Paint and wallpaper stripping—contractors
Plastic wall tile installation—contractors
Posthole digging—contractors
Sandblasting of building exteriors—contractors
Scaffolding construction—contractors
Service and repair of broadcasting stations—contractors
Service station equipment installation, maintenance and repair—contractors
Shoring and underpinning work—contractors
Spectator seating installation—contractors
Steam cleaning of building exteriors—contractors
Steeplejacks
Swimming pool construction—contractors
Television and radio stations, service and repair of—contractors
Test boring for construction—contractors
Tile installation, wall: plastics—contractors
Waterproofing—contractors
Weatherstripping—contractors
Welding contractors, operating at site of construction
Window shade installation—contractors

23.82(3) *The assignment of standard industrial codes.* Each operating establishment is assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Ideally, the principal product or service should be determined by its relative share of value added at the establishment. Since this is not possible for all sectors of the economy, the following is used as a guide for determining industry codes:

Division	Data Measure
Agriculture, forestry and fishing (except agricultural services)	Value of production
Mining	Value of production

Division	Data Measure
Construction	Value of production
Manufacturing	Value of production
Transportation, communication, electric, gas and sanitary services	Value of receipts or revenues
Wholesale trade	Value of sales
Retail trade	Value of sales
Finance, insurance, and real estate	Value of receipts
Service (including agricultural services)	Value of receipts or revenues
Public administration	Employment or payroll

In some cases it will not be possible to determine even on an estimated basis the value of production or similar appropriate measure for each product or service. In other cases an industrial classification based on measures of output will not accurately reflect the importance of the diversified activities. In these cases, employment or payroll should be used in lieu of the normal basis for determining the primary activity and subsequent code assignment of the establishment.

This rule is intended to conform to federal changes in the North American Industry Classification System and implements Iowa Code sections 96.7(2), 96.7(3), 96.7(4) and 96.11(1).

ARC 8232C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rulemaking related to multifamily housing and providing an opportunity for public comment

The Iowa Finance Authority hereby proposes to rescind Chapter 3, "Multifamily Housing," 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 16.5 and 16.5C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 16.5C.

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind and adopt a new Chapter 3. The chapter describes the policies and procedures applicable to the Multifamily Loan Program. The purpose of the program is to preserve the existing supply of affordable rental units at risk of being lost and to foster the production of new affordable rental units in the state. This chapter also includes a multifamily loan program specifically for workforce housing loan assistance. The new chapter will be more concise and reflect current program policies regarding eligible applicants, eligible projects, and loan terms.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on July 10, 2024. A public hearing was held on the following date(s):

- July 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

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 Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

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 Authority no later than 4:30 p.m. on October 24, 2024. Comments should be directed to:

Lisa Connell
Iowa Finance Authority
1963 Bell Avenue, Suite 200

Des Moines, Iowa 50309
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 22, 2024 10:15 to 10:30 a.m.	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review
October 24, 2024 2:15 to 2:30 p.m.	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.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 the Authority 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 265—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
MULTIFAMILY HOUSING

265—3.1(16) Purpose. Through the multifamily loan program (program) established pursuant to this chapter, the authority seeks to preserve the existing supply of affordable rental units at risk of being lost and to foster the production of new affordable rental units in the state.

265—3.2(16) Application procedure. Applications will be reviewed by the authority upon receipt.

265—3.3(16) Eligibility.

3.3(1) Eligible applicants. As determined by the authority, to be eligible for a loan under the program, applicants shall:

a. Demonstrate a market need for the units.

b. Agree to observe certain compliance measures, including a recorded agreement to ensure long-term affordability.

c. Obtain a local contributing effort in an amount of up to 1 percent of the proposed loan when requested by the authority.

d. Agree to a change of management, general partner, or managing member when requested by the authority.

e. Agree to Multifamily Accelerated Processing (MAP) of the U.S. Department of Housing and Urban Development (HUD), when requested by the authority.

f. Agree to participate in the HUD Risk-Sharing Program, when requested by the authority.

g. Execute such documents and instruments as may be required by the authority.

h. Provide such information, certificates and other items requested by the authority.

i. Obtain a title guaranty certificate from the authority's title guaranty division protecting the authority's interest in the real property securing the loan, including any endorsements required by the authority, unless specifically waived by the authority.

3.3(2) Eligible projects. As determined by the authority, to be eligible for a loan under the program, projects shall:

a. Be financially feasible for at least the term of the assistance.

b. Have adequately funded replacement and operating reserve funds.

c. Consist of at least five housing units.

d. For the term of the loan, reserve at least 75 percent of the housing units for tenants whose income is at or below 80 percent of the area median income and whose rent is no more than 30 percent of the income of a family whose annual income is 80 percent or less of the area median income.

3.3(3) Loan terms.

a. Loans under this program may have a maximum loan term of 24 months for construction financing and 40 years for permanent financing.

b. Other terms and conditions of loans under this program may vary from project to project.

3.3(4) Maximum loan fees are as follows:

a. Commitment fee (construction period) - 1.0 percent of total development costs.

b. Commitment fee (permanent loan) - 2.0 percent of loan amount.

c. Inspection fee (construction period) - $500 per inspection; inspections will typically occur with each draw or on a monthly basis during construction.

d. Application fee - 0.3 percent of proposed loan amount.

e. Asset management fee - calculated as $25 per unit × number of total project units; submitted annually on or before January 31.

f. The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program.

265—3.4(16) Multifamily loan program for workforce housing loan assistance.

3.4(1) *Eligible applicants.* To be eligible for a loan under this rule (the "primary loan"), applicants shall:

a. Be an Iowa city or county (the "borrower").

b. Agree to use the primary loan proceeds to make a loan to a third party to build housing in the applicant's jurisdiction that meets the requirements of this rule and subrules 3.3(1), 3.3(3), and 3.3(4) (the "secondary loan").

3.4(2) *Eligible projects.* As determined by the authority, to be eligible for a loan under this rule, projects shall:

a. Be financially feasible for at least the term of the assistance.

b. Have adequately funded replacement and operating reserve funds.

c. Consist of at least five housing units.

d. For the term of the loan, reserve at least 50 percent of the housing units rehabilitated or created with the proceeds of the secondary loan for families whose annual income at the time of leasing is at or below 120 percent of the area median income and whose rent is no more than 30 percent of the income of a family whose annual income is 120 percent or less of the area median income unless the authority agrees otherwise.

e. Preference shall be given to cities and counties that can document an increased need for housing as the result of new job creation within the city's or the county's jurisdiction.

3.4(3) *Loan terms.*

a. The primary loan is a general obligation of the borrower, but may be unsecured.

b. The borrower shall use funds received in repayment of the secondary loan first to make the scheduled principal and interest payments on the primary loan. Any secondary loan payments remaining

after all then-due scheduled payments on the primary loan have been repaid may be reloaned by the borrower on the same basis as if such secondary loan payment amounts were proceeds of the primary loan.

265—3.5(16) Authority analysis of applications. Authority staff will analyze and underwrite each potential project and will make recommendations for funding assistance to the board of directors of the authority. Meeting the eligibility criteria in these rules is not a guaranty of receiving funds. Authority staff will determine the necessary and appropriate procedures and processes for underwriting and analysis to further the purposes of this program. In addition, the authority anticipates that because of the complex nature of each transaction, and the particular sets of circumstances attributable to each particular application/transaction, the terms and conditions of loans will vary from project to project. The authority will make available its general operating procedures and guidelines for this program, as such may be revised from time to time.

These rules are intended to implement Iowa Code section 16.5C(1).

ARC 8233C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rulemaking related to rescission of chapters and providing an opportunity for public comment

The Iowa Finance Authority hereby proposes to rescind Chapter 12, "Low-Income Housing Tax Credits," Chapter 20, "Senior Living Revolving Loan Program," Chapter 22, "Iowa Aftercare Services Rent Subsidy Program," Chapter 23, "Transitional Housing Revolving Loan Program," Chapter 31, "Council On Homelessness," Chapter 36, "Public Service Shelter Grant Fund," and Chapter 40, "Iowans Helping Iowans Housing Assistance Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 16.2D, 16.5, 16.35, 16.40 and 16.48 and 2009 Iowa Acts, Senate File 376.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 16.2D, 16.35, 16.40, 16.46 and 16.48 and 2009 Iowa Acts, Senate File 376.

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to permanently rescind the following obsolete and unnecessary chapters:

- Chapter 12, which describes the policies applicable to low-income housing tax credits (LIHTC) administered by IFA. 2024 Iowa Acts, Senate File 2387, amended Iowa Code section 16.35 so that the Authority is no longer required to adopt rules specifying the application procedure and allowance of low-income housing tax credits. Those aspects of program administration are addressed in the qualified allocation plan (QAP) adopted by the Authority pursuant to Internal Revenue Code Section 42 and the applicable Treasury regulations.
- Chapter 20, which describes the policies and procedures applicable to the Senior Living Revolving Loan Program. The policies and procedures of the program are established pursuant to Iowa Code section 16.46, and the applicable QAP adopted by the Authority pursuant to Iowa Code section 16.35.
- Chapter 22, which describes the policies and procedures applicable to the Iowa Aftercare Services Rent Subsidy Program. The program was discontinued effective June 30, 2024.

- Chapter 23, which describes eligibility requirements and administration of the Transitional Housing Revolving Loan Program Fund. The fund assisted in the development of affordable housing for parents completing or participating in substance abuse treatment pursuant to Iowa Code section 16.48. The ongoing obligations of two loan recipients are addressed in a comprehensive loan agreement. The requirements of the program are sufficiently described in Iowa Code section 16.48 if there is interest in the fund in the future, and the Iowa Code section does not require the authority to promulgate rules.
- Chapter 31, which describes the council on homelessness and its duties. 2024 Iowa Acts, Senate File 2385, amended Iowa Code section 16.2D to eliminate the council and assign its duties to the Authority.
- Chapter 36, which describes the Public Service Shelter Grant Fund. The fund was established pursuant to 2009 Iowa Acts, Senate File 376, section 28, and discontinued in 2011.
- Chapter 40, which describes the Iowans Helping Iowans Housing Assistance Program. The program was established to provide financial assistance to eligible residents for the purpose of either repairing or rehabilitating eligible residents' disaster-affected homes or to purchase a home. The last loan issued under this program was in 2012, and loan agreements issued under this program have expired.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on July 10, 2024. A public hearing was held on the following date(s):

- July 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

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 Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

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 Authority no later than 4:30 p.m. on October 24, 2024. Comments should be directed to:

Lisa Connell
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50309
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 22, 2024 10:30 to 10:45 a.m.	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review
October 24, 2024 2:30 to 2:45 p.m.	Suite 200 1963 Bell Avenue

Des Moines, Iowa
Registration information for online participation may be found at
www.iowafinance.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 the Authority 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 and reserve **265—Chapter 12**.

ITEM 2. Rescind and reserve **265—Chapter 20**.

ITEM 3. Rescind and reserve **265—Chapter 22**.

ITEM 4. Rescind and reserve **265—Chapter 23**.

ITEM 5. Rescind and reserve **265—Chapter 31**.

ITEM 6. Rescind and reserve **265—Chapter 36**.

ITEM 7. Rescind and reserve **265—Chapter 40**.

ARC 8231C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rulemaking related to home and community-based services rent subsidy program and providing an opportunity for public comment

The Iowa Finance Authority hereby proposes to rescind Chapter 24, "Home and Community-Based Services Rent Subsidy Program," and to adopt a new Chapter 24, "Home- and Community-Based Services Rent Subsidy Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 16.5 and 16.55.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 16.55.

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 24 and adopt a new chapter in lieu thereof. The chapter describes the Home- and Community-Based Services Rent Subsidy Program. The program is designed to provide rent assistance to help participants in certain other programs live in the community.

The new chapter eliminates language that is duplicative of statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language. Additionally, the following changes are proposed:

- Existing rule 265—24.4(16) is updated to be consistent with the current application and approval process for the program.
- Existing rule 265—24.5(16) is updated to replace references to "applicants" with references to "recipients." The rule also clarifies that payments may be made directly to a recipient's landlord.
- Existing rule 265—24.7(16) is updated to be consistent with current program practices relating to termination of payments.

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 Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

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 Authority no later than 4:30 p.m. on October 24, 2024. Comments should be directed to:

Lisa Connell
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50309
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 22, 2024 10 to 10:15 a.m.	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review
October 24, 2024 2 to 2:15 p.m.	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.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 the Authority 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 265—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
HOME- AND COMMUNITY-BASED SERVICES RENT SUBSIDY PROGRAM

265—24.1(16) Definitions.

"Applicant" means a person aged 18 or over who participates in one of the home- and community-based services waiver programs, habilitation services, or Money Follows the Person.

"Authority" means the Iowa finance authority created in Iowa Code section 16.1A.

"Habilitation services" means an Iowa Medicaid program designed to provide home- and community-based services to Iowans with the functional impairments typically associated with chronic mental illnesses.

"Home- and community-based services waiver program" means any of the waiver programs administered by the department of health and human services under the provisions set forth in 441—Chapter 83, the habilitation services waiver, or Money Follows the Person.

"Housing Choice Voucher program" or *"HCV program"* means the federal government's program created in the Housing and Community Development Act of 1974, 42 U.S.C. Ch. 69, §5301 et seq. (1974).

"HUD" means the U.S. Department of Housing and Urban Development.

"Legal guardian" means a person lawfully invested with the power, and charged with the obligation, of taking care of and managing the property and rights of a recipient who, because of age, understanding, or self-control, is considered incapable of administering the recipient's own affairs.

"Money Follows the Person" or *"MFP"* means Iowa's Money Follows the Person partnership for community integration program.

"Program" means the home- and community-based rent subsidy program as defined and structured under this chapter.

"Qualified dependent" means the applicant's child who is claimed as a dependent of the applicant for federal income tax purposes.

"Qualified rental unit" means a housing unit subject to the provisions of Iowa Code chapter 562A and for which a signed written rental agreement exists.

"Recipient" means an applicant approved for and receiving rent subsidy payments under the program.

"Representative payee" means a person who is appointed for a recipient unable to receive and manage the recipient's own benefits due to mental or physical impairments. The representative payee is to use the benefits in the recipient's best interest and is personally liable for misuse of funds.

265—24.2(16) Eligibility requirements.

24.2(1) *Demonstrated need.* An eligible applicant will demonstrate need for rent subsidy by meeting all of the following requirements:

a. The applicant will provide a copy of an executed rental agreement showing the applicant as a tenant, with signatures by the landlord and the applicant or the applicant's legal guardian;

b. The applicant will provide evidence that the applicant pays more than 30 percent of the applicant's gross income for rent, with a minimum contribution of $25 per month;

c. The applicant will not receive any other rental assistance while receiving rent subsidy payments under the program;

d. The applicant will not use this program to substitute for any other ongoing rent subsidy being received at the time of application to this program; and

e. The applicant's rental unit must be a qualified rental unit and must not be owned by someone who lives in the unit.

24.2(2) *Ineligible for other rent subsidies.* An eligible applicant for rent subsidy payments under this program will have been determined ineligible for the HCV program, be on the HCV program waiting list, or document that the HCV program waiting list is closed. If the HCV waiting list is currently closed, the applicant is responsible for monitoring the status of the waiting list application period and must apply at the first available opportunity and provide documentation of an HCV application submission to the local public housing authority. If the authority determines an applicant failed to apply for HCV at the first available opportunity, the authority may remove the applicant from the program or the program waiting list.

265—24.3(16) Application. Applications for the program may be obtained on the authority's website. An applicant shall complete the application and provide all required documentation. For the purposes of this rule, the application date means the date the completed application, including all required documentation, is received by the authority.

24.3(1) The authority will review each completed application and determine whether the applicant is eligible for the program. The applicant may elect to have any of the following notified: legal guardian, case manager or representative payee.

24.3(2) The authority will maintain and administer a statewide waiting list for the program. When an application is received, the applicant will be placed on the waiting list according to the application date unless the provisions of Iowa Code section 16.55 apply.

24.3(3) When funding allows additional applicants to be added to the program, the authority will request updated documentation from the next applicant on the waiting list, and each applicant's eligibility will be determined based upon the updated documentation. If the completed application is not received by the deadline specified by the authority, the applicant may be removed from the waiting list. If the authority determines an applicant is eligible for the program, the authority will notify the applicant of the amount of monthly rent subsidy within 30 days of making the determination.

265—24.4(16) Rent subsidy.

24.4(1) *Use of subsidy.* Assistance shall be used for rental expense.

24.4(2) *Maximum monthly payment for rent.* Assistance for rent will be equal to the lesser of the rent paid by the recipient or the current applicable fair market rent as published by HUD for the area where the recipient's residence is located, less 30 percent of the recipient's gross monthly income. The fair market rent used will be that for a one-bedroom unit or a proportionate share of the fair market rent in living units containing more than one bedroom. When the recipient resides with one or more qualified dependents, the proportionate share may consist of additional bedrooms, applying the same maximum monthly payment standard.

24.4(3) *Monthly payment.* Recipients approved for rent subsidy payments will receive an ongoing monthly payment equal to the amount determined pursuant to subrule 24.4(2). Payments may be made on behalf of a recipient directly to the recipient's landlord.

265—24.5(16) Redetermination of eligibility.

24.5(1) *Time of completion.* A redetermination of eligibility for rent subsidy payments will be completed annually unless one of the following conditions occurs:

a. A change in circumstances that affects eligibility in accordance with rule 265—24.2(16).

b. The recipient moves from the residence stated on the approved application.

c. There is a change greater than $100 in the recipient's gross monthly income.

24.5(2) *Renewal notice.* The authority will send a renewal notice to the recipient and, if applicable, the recipient's legal guardian, case manager or representative payee at least 30 days before the annual redetermination deadline. The renewal notice will specify the annual redetermination deadline and the documentation that must be submitted to the authority.

a. The recipient shall submit the completed application and required documents to the authority as directed on the application.

b. If the authority does not receive the completed application and required documents by the annual redetermination deadline, the recipient's rent subsidy will be terminated.

265—24.6(16) Termination of rent subsidy payments.

24.6(1) *Reasons for termination.* The authority may terminate the rent subsidy at the end of a month in which any of the following occur:

a. The recipient does not meet one or more of the eligibility criteria listed in rule 265—24.2(16).

b. The recipient fails to submit documentation required pursuant to subrule 24.5(2) by the deadline established by the authority.

c. Rent subsidy program funds are exhausted for the fiscal year.

d. The recipient, case manager, legal guardian or representative payee threatens physical violence or injury toward authority staff.

e. The recipient provides false information.

f. The recipient, legal guardian or representative payee misuses rent subsidy payments for purposes other than rent assistance.

g. The recipient is not in compliance with any other programs offered or administered by the authority while receiving rent subsidy payments.

24.6(2) *Notification to recipient.* If the authority terminates a recipient's rent subsidy, the authority will notify the recipient in writing.

24.6(3) *Reporting of changes.* The recipient or the recipient's legal guardian or representative payee, as applicable, is required to report to the authority any changes that may affect eligibility within ten business days of the occurrence of the change, including changes in circumstance listed under subrule 24.5(1). Failure to do so may result in the recipient's responsibility to repay rent subsidy funds dating back to the recipient's failure to report the change and termination of the rent subsidy.

These rules are intended to implement Iowa Code section 16.55.

ARC 8237C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Proposing rulemaking related to rules of practice for OSHA variances and providing an opportunity for public comment

The Labor Commissioner hereby proposes to rescind Chapter 5, "Rules of Practice for Variances," and to adopt a new Chapter 5, "Rules of Practice for OSHA Variances," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 88.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Executive Order 10.

Purpose and Summary

This rulemaking, in accordance with Executive Order 10, proposes a new Chapter 5 that provides procedures for variances from Iowa Occupational Safety and Health Administration (OSHA) requirements.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on August 21, 2024. A public hearing was held on the following date(s):

- September 10, 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 Labor Services Division for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Division no later than 4:30 p.m. on November 6, 2024. Comments should be directed to:

Mitchell Mahan
Labor Services Division
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

November 5, 2024 8:30 to 9 a.m.	Dial: 312.626.6799 Meeting ID number: 813 6327 9319 Pass code: 590253
November 6, 2024 8:30 a.m.	Dial: 312.626.6799 Meeting ID number: 813 6327 9319 Pass code: 590253

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 Division 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 875—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
RULES OF PRACTICE FOR OSHA VARIANCES

875—5.1(17A,88) Purpose and scope. This chapter contains rules of practice for administrative proceedings to grant variances and other relief under Iowa Code sections 17A.9A, 88.5(3), 88.5(6), and 88.5(7).

875—5.2(17A,88) Definitions. The definitions and interpretations contained in Iowa Code section 88.3 are applicable to the terms when used in this chapter. As used in this chapter unless the context clearly requires otherwise:

"Affected employee" means an employee who would be affected by the grant or denial of a variance, or any one of the employee's authorized representatives, such as the collective bargaining agent.

"Commissioner" means the labor commissioner of the department of inspections, appeals, and licensing, division of labor services.

"Hearing examiner" means the commissioner or the commissioner's designee.

"Party" means a person admitted to participate in a hearing conducted in accordance with rules 875—5.14(88) through 875—5.21(88). An applicant for relief and any affected employee are entitled to be named parties. For the purpose of special variance hearing procedures under Iowa Code section 88.5(7), the conflicting federal regulatory agency is also a party. The department of inspections, appeals, and licensing, division of labor services, is a party without the necessity of being named.

"Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority or instrumentality of the state of Iowa.

"Variance" means waivers or variances pursuant to Iowa Code sections 17A.9A, 88.5(3), 88.5(6), and 88.5(7) unless otherwise specified.

875—5.3 Reserved.

875—5.4(88) Effect of variances. All variances granted pursuant to this chapter have only future effect. The commissioner may discretionarily decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved, and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the employment appeal board until the completion of such proceedings.

875—5.5(17A,88) Submission of waiver information. Information about all orders granting or denying a variance petition are submitted to the legislative services agency through the designated Internet site within 60 days of the granting or denying of the petition. The information submitted is available to the public via the website.

875—5.6 Reserved.

875—5.7(88) Temporary variance.

5.7(1) *Application for variance.* Any employer or class of employers desiring a variance from a standard, or portion thereof, authorized by Iowa Code section 88.5(3) may file a written application containing the information specified in subrule 5.7(2) with the commissioner.

5.7(2) *Contents.* An application filed pursuant to subrule 5.7(1) includes:

a. The name and address of the applicant;

b. The address of the place or places of employment involved;

c. Any request for a hearing as provided in this chapter;

d. The statements and certifications required by Iowa Code section 88.5(3); and

e. The signature of the applicant or the applicant's authorized representative.

5.7(3) *Interim order.*

a. Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule ex parte upon the application.

b. Notice of denial of application. If an application filed pursuant to paragraph 5.7(3)*"a"* is denied, the applicant will be given prompt notice of the denial, which will include, or be accompanied by, a brief statement of the grounds therefor.

c. Notice of the grant of an interim order. If an interim order is granted, a copy of the order will be served upon the applicant for the order and other parties and notice of the terms of the order will be made in accordance with the notice requirements of rule 875—5.5(88). It shall be a condition of the order that the affected employer shall give notice thereof to affected employees.

This rule is intended to implement Iowa Code section 88.3.

875—5.8(88) Permanent variance.

5.8(1) *Application for variance.* Any employer or class of employers desiring a variance authorized by Iowa Code section 88.5(6) may file a written application containing the information specified in subrule 5.8(2) with the commissioner.

5.8(2) *Contents.* An application filed pursuant to subrule 5.8(1) includes:

a. The name and address of the applicant;

b. The address of the place or places of employment involved;

c. A description of the conditions, practices, means, methods, operations or processes used or proposed to be used by the applicant;

d. A statement showing how the conditions, practices, means, methods, operations or processes used or proposed to be used would provide employment and places of employment to employees that are as safe and healthful as those required by the standard from which a variance is sought;

e. A certification that the applicant has informed affected employees of the application by (1) giving a copy thereof to their authorized representative; (2) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and (3) other appropriate means when necessary;

f. Any request for a hearing, as provided in this chapter;

g. A description of how employees have been informed of the application and of their right to petition the commissioner for a hearing; and

h. The signature of the applicant or the applicant's authorized representative.

5.8(3) *Interim order.* Procedures for applications and for notifications of a denial or grant of interim orders are in the same manner as provided for in subrule 5.7(3).

This rule is intended to implement Iowa Code section 88.6.

875—5.9(88) Special variance.

5.9(1) *Application for variance.* Any employer, or class of employers, desiring a special variance authorized by Iowa Code section 88.5(7) may file a written application containing the information specified in subrule 5.9(2) with the commissioner.

5.9(2) *Contents.* An application filed pursuant to subrule 5.9(1) includes:

a. The name and address of the applicant;

b. The address of the place or places of employment involved;

c. The name of the federal agency and a designation of the standard, rule, or regulation allegedly in conflict with a standard, rule, or regulation of the division of labor services;

d. A designation of the standard, rule, or regulation of the division of labor services allegedly in conflict;

e. A description of the conditions, means, methods, operations, and procedures used and a specific detailed statement as to how and where the conflict exists between federal agency or agencies and the division of labor services;

f. A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

g. A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would take into consideration the safety and health of the employees involved;

h. A certification that the applicant has informed employees affected of the application by (1) giving a copy thereof to their authorized representative; (2) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and (3) other appropriate means where necessary;

i. Any request for a hearing, as provided in this chapter;

j. A description of how employees have been informed of the application and of their right to petition the commissioner for a hearing; and

k. The signature of the applicant or the applicant's authorized representative.

5.9(3) *Interim order.* Procedures for applications and for notifications of a denial or grant of interim orders are in the same manner as provided for in subrule 5.7(3).

This rule is intended to implement Iowa Code section 88.7.

875—5.10(88) Modification and revocation of rules or orders.

5.10(1) An affected employer or an affected employee may apply in writing to the commissioner for a modification or revocation of a rule or order issued under Iowa Code section 88.5(3), 88.5(6), or 88.5(7). The application contains:

a. The name and address of the applicant;

b. A description of the relief that is sought;

c. A statement setting forth with particularity the grounds for relief;

d. If the applicant is an employer, a certification that the applicant has informed affected employees of the application by: (1) giving a copy thereof to their authorized representative; (2) posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and (3) other appropriate means when necessary;

e. If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

f. Any request for a hearing as provided in this chapter.

5.10(2) The commissioner may move to modify or revoke a rule or order issued under Iowa Code section 88.5(3), 88.5(6), or 88.5(7). In such event, the commissioner will cause a notice of intention to be published in accordance with the notice requirements of rule 875—5.5(88), affording interested persons an opportunity to submit written data, views or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and other action as may be appropriate to notify the affected employer and employees. Any request for a hearing shall include a short and plain statement of:

a. How the proposed modification or revocation would affect the requesting party; and

b. What the requesting party would seek to show on the subjects or issues involved.

875—5.11(88) Action on applications. If an application filed pursuant to subrule 5.7(1), 5.8(1), 5.9(1), or 5.10(1) does not conform to the applicable rule, the commissioner may deny the application. Prompt notice of the denial of an application will be given to the applicant and will include, or be accompanied

by, a brief statement of the grounds for the denial. A denial of an application pursuant to this rule shall be without prejudice to the filing of another application.

875—5.12(88) Requests for hearings on applications.

5.12(1) *Request for hearing.* Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the commissioner a request for a hearing on the application.

5.12(2) *Contents of a request for a hearing.* A request for a hearing filed pursuant to subrule 5.12(1) includes:

a. A concise statement of facts showing how the employer or employee would be affected by the requested relief;

b. A specification of any statement or representation in the application that is denied and a concise summary of the evidence that would be adduced in support of each denial; and

c. Any views or arguments on any issue of fact or law presented.

875—5.13(88) Consolidation of proceedings. The commissioner may move or any party may move to consolidate or contemporaneously consider two or more proceedings that involve the same or closely related issues.

875—5.14(88) Notice of hearing.

5.14(1) *Contents.* A notice of hearing includes:

a. The time, place, and nature of the hearing;

b. The legal authority under which the hearing is to be held; and

c. A specification of issues of fact and law.

5.14(2) Reserved.

875—5.15(88) Manner of service. Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last-known address of the party. The person serving the document certifies the manner and the date of the service.

875—5.16(88) Hearing examiner; powers and duties.

5.16(1) *Powers.* The commissioner or the commissioner's designee presides over the hearing and has all powers necessary or appropriate to conduct a fair, full, and impartial hearing.

5.16(2) *Private consultation.* Except to the extent required for the disposition of ex parte matters, the hearing examiner may not consult a person or a party on any fact at issue unless upon notice and opportunity for all parties to participate.

5.16(3) *Disqualification.* When the commissioner or the commissioner's designee deems appropriate to be disqualified to preside, or to continue to preside, over a particular hearing the commissioner or the commissioner's designee will withdraw therefrom by notice on the record, and the commissioner shall designate another.

Any party who deems the commissioner or commissioner's designee for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the commissioner a motion for disqualification and removal, supported by affidavits setting forth the alleged ground for disqualification. The commissioner's ruling on the motion is final for the purposes of judicial review under rule 875—5.24(88).

5.16(4) *Contumacious conduct; failure or refusal to appear or obey the rulings of the hearing examiner.* Contumacious conduct at any hearing before the hearing examiner is a ground for exclusion from the hearing.

If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

5.16(5) *Referral to Iowa rules of civil procedure.* On any procedural question not regulated by Iowa Code chapter 88 or this chapter, the hearing examiner is guided by the Iowa Rules of Civil Procedure.

875—5.17(88) Prehearing conferences.

5.17(1) *Convening conference.* Upon the commissioner's own motion or the motion of a party, the commissioner or the commissioner's designee may direct the parties or the parties' counsel to meet with the commissioner for a conference to consider:

a. Simplification of the issues;

b. Necessity or desirability of amendments to documents for purpose of clarification, simplification, or limitation;

c. Stipulations, admissions of fact and of contents and authenticity of documents;

d. Limitation of the number of parties and of expert witnesses; and

e. Such other matters as may tend to expedite the disposition of the proceeding and to ensure a just conclusion thereof.

5.17(2) *Record of conference.* The commissioner or the commissioner's designee shall make an order that recites the action taken at the conference.

875—5.18(88) Consent findings and rules or orders.

5.18(1) *Negotiation by parties.* A reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding.

5.18(2) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the hearing examiner may accept such agreement by issuing a decision based upon the agreed findings.

875—5.19(88) Discovery. Whenever appropriate to a just disposition of any issue in a hearing, the hearing examiner may allow discovery by appropriate procedures, such as by written interrogatories upon a party, depositions, production of documents by a party, or by entry for inspection of the employment or place of employment involved. Iowa Rules of Civil Procedure are applicable to such authorized discovery procedures.

875—5.20(88) Hearings.

5.20(1) *Order of proceeding.* Except as may be ordered otherwise by the hearing examiner, the party applicant for relief proceeds first at a hearing.

5.20(2) *Burden of proof.* The party applicant has the burden of proof.

5.20(3) *Evidence.*

a. Proof for a special variance. Before a special variance may be granted, there must be proof that an actual conflict does exist. The proof required to establish such conflict is information in writing or oral testimony from a representative of the involved federal regulatory agency or agencies, substantiated by evidence, that there is a conflict between the standards, rules or regulations of the federal agency and those of the division of labor services. Also, the applicant must prove that compliance with the standard, rule or regulation of the division of labor services would subject the applicant to probable citation, penalty, or prosecution for violating such federal agency standard, rule or regulation.

b. Reserved.

5.20(4) *Transcript.* Hearings are stenographically reported or audio-recorded. Copies of the transcript may be obtained by the parties upon written application filed with the reporter and upon the payment of fees at the rate provided in the agreement with the reporter.

875—5.21(88) Decisions of hearing examiner.

5.21(1) *Proposed findings of fact, conclusions, and rules or orders.* Within ten days after receipt of notice that the transcript of the testimony has been filed or such additional time as the hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law,

and rule or order, together with supporting briefs served on all other parties, and refer to all portions of the record and to all authorities relied upon in support of each proposal.

5.21(2) *Decision.* Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the hearing examiner will issue a decision that will be reviewed and countersigned by the commissioner. The commissioner will serve the decision upon each party, and the decision is final upon the twentieth day after service thereof. The decision will include: (1) a statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record, and (2) the appropriate rule, order, relief or denial thereof.

5.21(3) *Grant of a special variance.* The grant of a special variance is renewable upon review by the commissioner at six-month intervals beginning on the date the decision becomes final under subrule 5.21(2). If at the time of the review the commissioner finds that there has been a change in the standard, rule, or regulation or a change in the interpretation of such standard, rule or regulation of the federal agency or the division of labor services affecting or resolving the conflict on which the special variance was granted, the commissioner will set the case for an evidentiary hearing in accordance with rules 875—5.14(88) through 875—5.21(88). Enforcement is stayed during review and hearing procedures under this rule.

Affected employees shall be notified by their employer of a renewal or a refusal to renew by: (1) giving a copy of the commissioner's notice to the authorized employee representative; (2) posting a copy of the commissioner's notice at the place or places where notices to employees are normally posted; and (3) other appropriate means.

875—5.22(88) Motion for summary decision.

5.22(1) Any party may, at least 20 days before the date fixed for any hearing, move with or without supporting affidavits for a summary decision in favor of the moving party on all or any part of the proceeding. Any other party may, within ten days after service of the motion, serve opposing affidavits or countermove for summary decision. The hearing examiner may discretionarily set the matter for argument and call for the submission of briefs.

5.22(2) The filing of any documents under subrule 5.22(1) shall be with the commissioner, and copies of any such documents shall be served in accordance with rule 875—5.15(88).

5.22(3) The hearing examiner may grant the motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

5.22(4) Affidavits shall set forth such facts as would be admissible in evidence in the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this rule, a party opposing the motion may not rest upon the mere allegations or denials of its own pleading. The response of the party opposing the motion must set forth specific facts showing that there is a genuine issue of fact for the hearing.

5.22(5) Should it appear from the affidavits of a party opposing the motion that the opposing party cannot for reasons stated present by affidavit facts essential to justify the opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

875—5.23(88) Summary decision.

5.23(1) *No genuine issue of material fact.*

a. Where no genuine issue of a material fact is found to have been raised, the hearing examiner may issue a decision to become final 20 days after service thereof.

b. A decision made under subrule 5.23(1) includes a statement of: (1) findings and conclusions, and the reasons or bases therefor, on all issues presented; and (2) the terms and conditions of the rule or order made.

5.23(2) *Hearings on issues of fact.* Where a genuine material question of fact is raised, the hearing examiner will, and in any other case may, set the case for an evidentiary hearing in accordance with rules 875—5.14(88) through 875—5.21(88).

875—5.24(88) Finality for purposes of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

These rules are intended to implement Iowa Code sections 17A.9A and 88.5.

ARC 8234C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Proposing rulemaking related to general industry safety and health rules and providing an opportunity for public comment

The Labor Commissioner hereby proposes to rescind Chapter 10, "General Industry Safety and Health Rules," 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 88.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 29 CFR 1910.

Purpose and Summary

This rulemaking, in accordance with Executive Order 10, proposes a new Chapter 10 that adopts federal rules applicable to general industry so that the Iowa Occupational Safety and Health Administration (OSHA) may monitor and, when necessary, investigate workplaces to determine work safety compliance. This rulemaking also adopts a mandatory federal rule relating to the classification and labeling of hazardous chemicals.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on August 21, 2024. A public hearing was held on the following date(s):

- September 10, 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 Labor Services Division for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Division no later than 4:30 p.m. on October 23, 2024. Comments should be directed to:

Mitchell Mahan
Labor Services Division
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 22, 2024 9:30 to 9:45 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa
October 23, 2024 9:30 to 9:45 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Division 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 875—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
GENERAL INDUSTRY SAFETY AND HEALTH RULES

875—10.1(88) Applicability of standards. None of the standards in this chapter shall apply to working conditions of employees with respect to which federal agencies other than the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

875—10.2(88) Incorporation by reference. The standards of agencies of the U.S. Government, and organizations that are not agencies of the U.S. Government that are incorporated by reference in this chapter, have the same force and effect as other standards in this chapter. Only mandatory provisions (i.e., provisions containing the word "shall" or other mandatory language) of standards incorporated by reference are adopted under the Act.

875—10.3(88) Definitions and requirements for a nationally recognized testing laboratory. The federal regulations adopted at 29 CFR, Chapter XVII, Part 1910, regulation 1910.7 and Appendix A, as published at 53 Fed. Reg. 12120 (April 12, 1988) and amended at 53 Fed. Reg. 16838 (May 11, 1988), 54 Fed. Reg. 24333 (June 7, 1989) and 65 Fed. Reg. 46818 (July 31, 2000) are adopted by reference.

875—10.4(88) Adoption by reference. The rules beginning at 1910.20 and continuing through 1910, as adopted by the United States Secretary of Labor, shall be the rules for implementing Iowa Code chapter 88. This rule adopts the Federal Occupational Safety and Health Standards of 29 CFR, Chapter XVII, Part 1910, as published at 37 Fed. Reg. 22102 to 22324 (October 18, 1972) and as amended at:
37 Fed. Reg. 23719 (November 8, 1972)
37 Fed. Reg. 24749 (November 21, 1972)
38 Fed. Reg. 3599 (February 8, 1973)
38 Fed. Reg. 9079 (April 10, 1973)
38 Fed. Reg. 10932 (May 3, 1973)
38 Fed. Reg. 14373 (June 1, 1973)
38 Fed. Reg. 16223 (June 21, 1973)
38 Fed. Reg. 19030 (July 17, 1973)
38 Fed. Reg. 27048 (September 28, 1973)
38 Fed. Reg. 28035 (October 11, 1973)
38 Fed. Reg. 33397 (December 4, 1973)
39 Fed. Reg. 1437 (January 9, 1974)
39 Fed. Reg. 3760 (January 29, 1974)
39 Fed. Reg. 6110 (February 19, 1974)
39 Fed. Reg. 9958 (March 15, 1974)
39 Fed. Reg. 19468 (June 3, 1974)
39 Fed. Reg. 35896 (October 4, 1974)
39 Fed. Reg. 41846 (December 3, 1974)
39 Fed. Reg. 41848 (December 3, 1974)
40 Fed. Reg. 3982 (January 27, 1975)
40 Fed. Reg. 13439 (March 26, 1975)
40 Fed. Reg. 18446 (April 28, 1975)
40 Fed. Reg. 23072 (May 28, 1975)
40 Fed. Reg. 23743 (June 2, 1975)
40 Fed. Reg. 24522 (June 9, 1975)
40 Fed. Reg. 27369 (June 27, 1975)
40 Fed. Reg. 31598 (July 28, 1975)
41 Fed. Reg. 11504 (March 19, 1976)
41 Fed. Reg. 13352 (March 30, 1976)
41 Fed. Reg. 35184 (August 20, 1976)
41 Fed. Reg. 46784 (October 22, 1976)
41 Fed. Reg. 55703 (December 21, 1976)
42 Fed. Reg. 2956 (January 14, 1977)
42 Fed. Reg. 3304 (January 18, 1977)
42 Fed. Reg. 45544 (September 9, 1977)
42 Fed. Reg. 46540 (September 16, 1977)
42 Fed. Reg. 37668 (July 22, 1977)
43 Fed. Reg. 11527 (March 17, 1978)
43 Fed. Reg. 19624 (May 5, 1978)
43 Fed. Reg. 27394 (June 23, 1978)
43 Fed. Reg. 27434 (June 23, 1978)
43 Fed. Reg. 28472 (June 30, 1978)
43 Fed. Reg. 28473 (June 30, 1978)

43 Fed. Reg. 31330 (July 21, 1978)
43 Fed. Reg. 35032 (August 8, 1978)
43 Fed. Reg. 45809 (October 3, 1978)
43 Fed. Reg. 49744 (October 24, 1978)
43 Fed. Reg. 51759 (November 7, 1978)
43 Fed. Reg. 53007 (November 14, 1978)
43 Fed. Reg. 56893 (December 5, 1978)
43 Fed. Reg. 57602 (December 8, 1978)
44 Fed. Reg. 5447 (January 26, 1979)
44 Fed. Reg. 50338 (August 28, 1979)
44 Fed. Reg. 60981 (October 23, 1979)
44 Fed. Reg. 68827 (November 30, 1979)
45 Fed. Reg. 6713 (January 29, 1980)
45 Fed. Reg. 8594 (February 8, 1980)
45 Fed. Reg. 12417 (February 26, 1980)
45 Fed. Reg. 35277 (May 23, 1980)
45 Fed. Reg. 41634 (June 20, 1980)
45 Fed. Reg. 54333 (August 15, 1980)
45 Fed. Reg. 60703 (September 12, 1980)
46 Fed. Reg. 4056 (January 16, 1981)
46 Fed. Reg. 6288 (January 21, 1981)
46 Fed. Reg. 24557 (May 1, 1981)
46 Fed. Reg. 32022 (June 19, 1981)
46 Fed. Reg. 40185 (August 7, 1981)
46 Fed. Reg. 2632 (August 21, 1981)
46 Fed. Reg. 42632 (August 21, 1981)
46 Fed. Reg. 45333 (September 11, 1981)
46 Fed. Reg. 60775 (December 11, 1981)
47 Fed. Reg. 39161 (September 7, 1982)
47 Fed. Reg. 51117 (November 12, 1982)
47 Fed. Reg. 53365 (November 26, 1982)
48 Fed. Reg. 2768 (January 21, 1983)
48 Fed. Reg. 9641 (March 8, 1983)
48 Fed. Reg. 9776 (March 8, 1983)
48 Fed. Reg. 29687 (June 28, 1983)
49 Fed. Reg. 881 (January 6, 1984)
49 Fed. Reg. 4350 (February 3, 1984)
49 Fed. Reg. 5321 (February 10, 1984)
49 Fed. Reg. 25796 (June 22, 1984)
50 Fed. Reg. 1050 (January 9, 1985)
50 Fed. Reg. 4648 (February 1, 1985)
50 Fed. Reg. 9800 (March 12, 1985)
50 Fed. Reg. 36992 (September 11, 1985)
50 Fed. Reg. 37353 (September 13, 1985)
50 Fed. Reg. 41494 (October 11, 1985)
50 Fed. Reg. 51173 (December 13, 1985)
51 Fed. Reg. 22733 (June 20, 1986)
51 Fed. Reg. 24325 (July 3, 1986)
51 Fed. Reg. 25053 (July 10, 1986)
51 Fed. Reg. 33033 (September 18, 1986)
51 Fed. Reg. 33260 (September 19, 1986)
51 Fed. Reg. 34560 (September 29, 1986)

51 Fed. Reg. 45663 (December 19, 1986)
52 Fed. Reg. 16241 (May 4, 1987)
52 Fed. Reg. 17753 (May 12, 1987)
52 Fed. Reg. 34562 (September 11, 1987)
52 Fed. Reg. 36026 (September 25, 1987)
52 Fed. Reg. 36387 (September 28, 1987)
52 Fed. Reg. 46291 (December 4, 1987)
52 Fed. Reg. 49624 (December 31, 1987)
53 Fed. Reg. 6629 (March 2, 1988)
53 Fed. Reg. 8352 (March 14, 1988)
53 Fed. Reg. 11436 (April 6, 1988)
53 Fed. Reg. 12120 (April 12, 1988)
53 Fed. Reg. 16838 (May 11, 1988)
53 Fed. Reg. 17695 (May 18, 1988)
53 Fed. Reg. 27346 (July 20, 1988)
53 Fed. Reg. 27960 (July 26, 1988)
53 Fed. Reg. 34736 (September 8, 1988)
53 Fed. Reg. 35625 (September 14, 1988)
53 Fed. Reg. 37080 (September 23, 1988)
53 Fed. Reg. 38162 (September 29, 1988)
53 Fed. Reg. 39581 (October 7, 1988)
53 Fed. Reg. 45080 (November 8, 1988)
53 Fed. Reg. 47188 (November 22, 1988)
53 Fed. Reg. 49981 (December 13, 1988)
54 Fed. Reg. 2920 (January 19, 1989)
54 Fed. Reg. 6888 (February 15, 1989)
54 Fed. Reg. 9317 (March 6, 1989)
54 Fed. Reg. 12792 (March 28, 1989)
54 Fed. Reg. 28054 (July 5, 1989)
54 Fed. Reg. 29274 (July 11, 1989)
54 Fed. Reg. 29545 (July 13, 1989)
54 Fed. Reg. 30704 (July 21, 1989)
54 Fed. Reg. 31456 (July 28, 1989)
54 Fed. Reg. 36687 (September 1, 1989)
54 Fed. Reg. 36767 (September 5, 1989)
54 Fed. Reg. 37531 (September 11, 1989)
54 Fed. Reg. 41364 (October 6, 1989)
54 Fed. Reg. 46610 (November 6, 1989)
54 Fed. Reg. 47513 (November 15, 1989)
54 Fed. Reg. 49971 (December 4, 1989)
54 Fed. Reg. 50372 (December 6, 1989)
54 Fed. Reg. 52024 (December 20, 1989)
55 Fed. Reg. 3146 (January 30, 1990)
55 Fed. Reg. 3300 (January 31, 1990)
55 Fed. Reg. 3723 (February 5, 1990)
55 Fed. Reg. 4998 (February 13, 1990)
55 Fed. Reg. 7967 (March 6, 1990)
55 Fed. Reg. 12110 (March 30, 1990)
55 Fed. Reg. 12819 (April 6, 1990)
55 Fed. Reg. 13696 (April 11, 1990)
55 Fed. Reg. 14073 (April 13, 1990)
55 Fed. Reg. 19259 (May 9, 1990)

55 Fed. Reg. 25094 (June 10, 1990)
55 Fed. Reg. 26431 (June 28, 1990)
55 Fed. Reg. 32014 (August 6, 1990)
55 Fed. Reg. 38677 (September 20, 1990)
55 Fed. Reg. 46053 (November 1, 1990)
55 Fed. Reg. 46949 (November 8, 1990)
55 Fed. Reg. 50686 (December 10, 1990)
56 Fed. Reg. 15832 (April 18, 1991)
56 Fed. Reg. 24686 (May 31, 1991)
56 Fed. Reg. 43700 (September 4, 1991)
56 Fed. Reg. 64175 (December 6, 1991)
57 Fed. Reg. 6403 (February 24, 1992)
57 Fed. Reg. 7847 (March 4, 1992)
57 Fed. Reg. 7878 (March 5, 1992)
57 Fed. Reg. 22307 (May 27, 1992)
57 Fed. Reg. 24330 (June 8, 1992)
57 Fed. Reg. 24701 (June 10, 1992)
57 Fed. Reg. 27160 (June 18, 1992)
57 Fed. Reg. 29204 (July 1, 1992)
57 Fed. Reg. 29206 (July 1, 1992)
57 Fed. Reg. 35666 (August 10, 1992)
57 Fed. Reg. 42388 (September 14, 1992)
58 Fed. Reg. 4549 (January 14, 1993)
58 Fed. Reg.15089 (March 19, 1993)
58 Fed. Reg. 16496 (March 29, 1993)
58 Fed. Reg. 21778 (April 23, 1993)
58 Fed. Reg. 34845 (June 29, 1993)
58 Fed. Reg. 35308 (June 30, 1993)
58 Fed. Reg. 35340 (June 30, 1993)
58 Fed. Reg. 40191 (July 27, 1993)
59 Fed. Reg. 4435 (January 31, 1994)
59 Fed. Reg. 6169 (February 9, 1994)
59 Fed. Reg. 16360 (April 6, 1994)
59 Fed. Reg. 26115 (May 19, 1994)
59 Fed. Reg. 33661 (June 30, 1994)
59 Fed. Reg. 33910 (July 1, 1994)
59 Fed. Reg. 36699 (July 19, 1994)
59 Fed. Reg. 40729 (August 9, 1994)
59 Fed. Reg. 41057 (August 10, 1994)
59 Fed. Reg. 43270 (August 22, 1994)
59 Fed. Reg. 51741 (October 12, 1994)
59 Fed. Reg. 65948 (December 22, 1994)
60 Fed. Reg. 9624 (February 21, 1995)
60 Fed. Reg. 11194 (March 1, 1995)
60 Fed. Reg. 33344 (June 28, 1995)
60 Fed. Reg. 33984 (June 29, 1995)
60 Fed. Reg. 47035 (September 8, 1995)
60 Fed. Reg. 52859 (October 11, 1995)
61 Fed. Reg. 5508 (February 13, 1996)
61 Fed. Reg. 9230 (March 7, 1996)
61 Fed. Reg. 9583 (March 8, 1996)
61 Fed. Reg. 19548 (May 2, 1996)

61 Fed. Reg. 21228 (May 9, 1996)
61 Fed. Reg. 31430 (June 20, 1996)
61 Fed. Reg. 43456 (August 23, 1996)
61 Fed. Reg. 56831 (November 4, 1996)
62 Fed. Reg. 1600 (January 10, 1997)
62 Fed. Reg. 29668 (June 2, 1997)
62 Fed. Reg. 40195 (July 25, 1997)
62 Fed. Reg. 42018 (August 4, 1997)
62 Fed. Reg. 42666 (August 8, 1997)
62 Fed. Reg. 43581 (August 14, 1997)
62 Fed. Reg. 48175 (September 15, 1997)
62 Fed. Reg. 54383 (October 20, 1997)
62 Fed. Reg. 65203 (December 11, 1997)
62 Fed. Reg. 66276 (December 18, 1997)
63 Fed. Reg. 1269 (January 8, 1998)
63 Fed. Reg. 13339 (March 19, 1998)
63 Fed. Reg. 17093 (April 8, 1998)
63 Fed. Reg. 20098 (April 23, 1998)
63 Fed. Reg. 33467 (June 18, 1998)
63 Fed. Reg. 50729 (September 22, 1998)
63 Fed. Reg. 66038 (December 1, 1998)
63 Fed. Reg. 66270 (December 1, 1998)
64 Fed. Reg. 13700 (March 22, 1999)
64 Fed. Reg. 13908 (March 23, 1999)
64 Fed. Reg. 22552 (April 27, 1999)
65 Fed. Reg. 76567 (December 7, 2000)
66 Fed. Reg. 5324 (January 18, 2001)
66 Fed. Reg. 18191 (April 6, 2001)
67 Fed. Reg. 67961 (November 7, 2002)
68 Fed. Reg. 75780 (December 31, 2003)
69 Fed. Reg. 7363 (February 17, 2004)
69 Fed. Reg. 31881 (June 8, 2004)
69 Fed. Reg. 46993 (August 4, 2004)
70 Fed. Reg. 53929 (September 13, 2005)
70 Fed. Reg. 1140 (January 5, 2005)
71 Fed. Reg. 10373 (February 28, 2006)
71 Fed. Reg. 36008 (June 23, 2006)
71 Fed. Reg. 63242 (October 30, 2006)
72 Fed. Reg. 7190 (February 14, 2007)
72 Fed. Reg. 64428 (November 15, 2007)
72 Fed. Reg. 71068 (December 14, 2007)
73 Fed. Reg. 75583 (December 12, 2008)
68 Fed. Reg. 32638 (June 2, 2003)
74 Fed. Reg. 46355 (September 9, 2009)
74 Fed. Reg. 40447 (August 11, 2009)
75 Fed. Reg. 12685 (March 17, 2010)
76 Fed. Reg. 33606 (June 8, 2011)
76 Fed. Reg. 75786 (December 5, 2011)
77 Fed. Reg. 17764 (March 26, 2012)
76 Fed. Reg. 80738 (December 27, 2011)
77 Fed. Reg. 37598 (June 22, 2012)
77 Fed. Reg. 46949 (August 7, 2012)

78 Fed. Reg. 9313 (February 8, 2013)
78 Fed. Reg. 69549 (November 20, 2013)
79 Fed. Reg. 20629 (April 11, 2014)
79 Fed. Reg. 56960 (September 24, 2014)
80 Fed. Reg. 60036 (October 5, 2015)
81 Fed. Reg. 16090 (March 25, 2016)
81 Fed. Reg. 16861 (March 25, 2016)
81 Fed. Reg. 82981 (November 18, 2016)
82 Fed. Reg. 2735 (January 9, 2017)
83 Fed. Reg. 19948 (May 7, 2018)
84 Fed. Reg. 21457 (May 14, 2019)
84 Fed. Reg. 50755 (September 26, 2019)
84 Fed. Reg. 68795 (December 17, 2019)
85 Fed. Reg. 8731 (February 18, 2020)
86 Fed. Reg. 32620 (June 21, 2021)
86 Fed. Reg. 32620 (June 22, 2021)
83 Fed. Reg. 31045 (July 3, 2018)
85 Fed. Reg. 42625 (July 14, 2020)
89 Fed. Reg. 44144 (May 20, 2024)

These rules are intended to implement Iowa Code section 88.5.

ARC 8238C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Proposing rulemaking related to construction safety and health rules and providing an opportunity for public comment

The Labor Commissioner hereby proposes to rescind Chapter 26, "Construction Safety and Health Rules," 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 88.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Executive Order 10.

Purpose and Summary

This rulemaking, in accordance with Executive Order 10, proposes a new Chapter 26 that adopts federal rules for work safety in construction so that the Iowa Occupational Safety and Health Administration (OSHA) may monitor and, when necessary, investigate worksites to determine work safety compliance.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on August 21, 2024. A public hearing was held on the following date(s):

- September 10, 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 Labor Services Division for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Division no later than 4:30 p.m. on November 6, 2024. Comments should be directed to:

Mitchell Mahan
Labor Services Division
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

November 5, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa
November 6, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Division 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 875—Chapter 26 and adopt the following **new** chapter in lieu thereof:

CHAPTER 26
CONSTRUCTION SAFETY AND HEALTH RULES

875—26.1(88) Adoption by reference. Federal Safety and Health Regulations for Construction beginning at 29 CFR 1926.16 and continuing through 29 CFR, Chapter XVII, Part 1926, are hereby adopted by reference for implementation of Iowa Code chapter 88. These federal rules shall apply and be interpreted to apply to the Iowa Occupational Safety and Health Act, Iowa Code chapter 88, not the

Contract Work Hours and Safety Standards Act, and shall apply and be interpreted to apply to enforcement by the Iowa labor commissioner, not the United States Secretary of Labor or the Federal Occupational Safety and Health Administration. The amendments to 29 CFR 1926 are adopted as published at:
38 Fed. Reg. 16856 (June 27, 1973)
38 Fed. Reg. 27594 (October 5, 1973)
38 Fed. Reg. 33397 (December 4, 1973)
39 Fed. Reg. 19470 (June 3, 1974)
39 Fed. Reg. 24361 (July 2, 1974)
40 Fed. Reg. 23072 (May 28, 1975)
41 Fed. Reg. 55703 (December 21, 1976)
42 Fed. Reg. 2956 (January 14, 1977)
42 Fed. Reg. 37668 (July 22, 1977)
43 Fed. Reg. 56894 (December 5, 1978)
45 Fed. Reg. 75626 (November 14, 1980)
51 Fed. Reg. 22733 (June 20, 1986)
51 Fed. Reg. 25318 (July 11, 1986)
52 Fed. Reg. 17753 (May 12, 1987)
52 Fed. Reg. 36381 (September 28, 1987)
52 Fed. Reg. 46291 (December 4, 1987)
53 Fed. Reg. 22643 (June 16, 1988)
53 Fed. Reg. 27346 (July 20, 1988)
53 Fed. Reg. 29139 (August 2, 1988)
53 Fed. Reg. 35627 (September 14, 1988)
53 Fed. Reg. 35953 (September 15, 1988)
53 Fed. Reg. 36009 (September 16, 1988)
53 Fed. Reg. 37080 (September 23, 1988)
54 Fed. Reg. 15405 (April 18, 1989)
54 Fed. Reg. 23850 (June 2, 1989)
54 Fed. Reg. 30705 (July 21, 1989)
54 Fed. Reg. 41088 (October 5, 1989)
54 Fed. Reg. 45894 (October 31, 1989)
54 Fed. Reg. 49279 (November 30, 1989)
54 Fed. Reg. 52024 (December 20, 1989)
54 Fed. Reg. 53055 (December 27, 1989)
55 Fed. Reg. 3732 (February 5, 1990)
55 Fed. Reg. 42328 (October 18, 1990)
55 Fed. Reg. 47687 (November 14, 1990)
55 Fed. Reg. 50687 (December 10, 1990)
56 Fed. Reg. 2585 (January 23, 1991)
56 Fed. Reg. 5061 (February 7, 1991)
56 Fed. Reg. 41794 (August 23, 1991)
56 Fed. Reg. 43700 (September 4, 1991)
57 Fed. Reg. 7878 (March 5, 1992)
57 Fed. Reg. 24330 (June 8, 1992)
57 Fed. Reg. 29119 (June 30, 1992)
57 Fed. Reg. 35681 (August 10, 1992)
57 Fed. Reg. 42452 (September 14, 1992)
58 Fed. Reg. 21778 (April 23, 1993)
58 Fed. Reg. 26627 (May 4, 1993)
58 Fed. Reg. 35077 (June 30, 1993)
58 Fed. Reg. 35310 (June 30, 1993)

58 Fed. Reg. 40468 (July 28, 1993)
59 Fed. Reg. 215 (January 3, 1994)
59 Fed. Reg. 6170 (February 9, 1994)
59 Fed. Reg. 36699 (July 19, 1994)
59 Fed. Reg. 40729 (August 9, 1994)
59 Fed. Reg. 41131 (August 10, 1994)
59 Fed. Reg. 43275 (August 22, 1994)
59 Fed. Reg. 65948 (December 22, 1994)
60 Fed. Reg. 9625 (February 21, 1995)
60 Fed. Reg. 11194 (March 1, 1995)
60 Fed. Reg. 33345 (June 28, 1995)
60 Fed. Reg. 34001 (June 29, 1995)
60 Fed. Reg. 36044 (July 13, 1995)
60 Fed. Reg. 39255 (August 2, 1995)
60 Fed. Reg. 50412 (September 29, 1995)
61 Fed. Reg. 5509 (February 13, 1996)
61 Fed. Reg. 9248 (March 7, 1996)
61 Fed. Reg. 31431 (June 20, 1996)
61 Fed. Reg. 41738 (August 12, 1996)
61 Fed. Reg. 43458 (August 23, 1996)
61 Fed. Reg. 46104 (August 30, 1996)
61 Fed. Reg. 56856 (November 4, 1996)
61 Fed. Reg. 59831 (November 25, 1996)
62 Fed. Reg. 1619 (January 10, 1997)
63 Fed. Reg. 1295 (January 8, 1998)
63 Fed. Reg. 1919 (January 13, 1998)
63 Fed. Reg. 3814 (January 27, 1998)
63 Fed. Reg. 13340 (March 19, 1998)
63 Fed. Reg. 17094 (April 8, 1998)
63 Fed. Reg. 20099 (April 23, 1998)
63 Fed. Reg. 33468 (June 18, 1998)
63 Fed. Reg. 35138 (June 29, 1998)
63 Fed. Reg. 66274 (December 1, 1998)
64 Fed. Reg. 22552 (April 27, 1999)
66 Fed. Reg. 5265 (January 18, 2001)
66 Fed. Reg. 37137 (July 17, 2001)
67 Fed. Reg. 57736 (September 12, 2002)
69 Fed. Reg. 31881 (June 8, 2004)
70 Fed. Reg. 1143 (January 5, 2005)
71 Fed. Reg. 2885 (January 18, 2006)
70 Fed. Reg. 76985 (December 29, 2005)
71 Fed. Reg. 10381 (February 28, 2006)
71 Fed. Reg. 36008 (June 23, 2006)
71 Fed. Reg. 76985 (August 24, 2006)
72 Fed. Reg. 64428 (November 15, 2007)
73 Fed. Reg. 75583 (December 12, 2008)
75 Fed. Reg. 12685 (March 17, 2010)
75 Fed. Reg. 27429 (May 17, 2010)
75 Fed. Reg. 48130 (August 9, 2010)
76 Fed. Reg. 33606 (June 8, 2011)
77 Fed. Reg. 17764 (March 26, 2012)
76 Fed. Reg. 80738 (December 27, 2011)

77 Fed. Reg. 23118 (April 18, 2012)
77 Fed. Reg. 37598 (June 22, 2012)
77 Fed. Reg. 42988 (July 23, 2012)
77 Fed. Reg. 46949 (August 7, 2012)
78 Fed. Reg. 23841 (April 23, 2013)
78 Fed. Reg. 32116 (May 29, 2013)
79 Fed. Reg. 20629 (April 11, 2014)
79 Fed. Reg. 56960 (September 24, 2014)
79 Fed. Reg. 57798 (September 26, 2014)
80 Fed. Reg. 25518 (May 4, 2015)
80 Fed. Reg. 60039 (October 5, 2015)
81 Fed. Reg. 16092 (March 25, 2016)
81 Fed. Reg. 16875 (March 25, 2016)
83 Fed. Reg. 56244 (November 9, 2018)
84 Fed. Reg. 21574 (May 14, 2019)
85 Fed. Reg. 8735 (February 18, 2020)
85 Fed. Reg. 53997 (August 31, 2020)
85 Fed. Reg. 57122 (September 15, 2020)

This rule is intended to implement Iowa Code sections 84A.1, 84A.2, 88.2 and 88.5.

875—26.2(88) Beryllium exposure limits. The eight-hour time-weighted average permissible exposure limit for beryllium is 0.2 micrograms per cubic liter, and the short-term exposure limit for beryllium is 2.0 micrograms per cubic meter over a 15-minute sampling period.

This rule is intended to implement Iowa Code section 88.5.

ARC 8239C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Proposing rulemaking related to occupational safety and health standards for agriculture and providing an opportunity for public comment

The Labor Commissioner hereby proposes to rescind Chapter 28, "Occupational Safety and Health Standards for Agriculture," 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 88.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Executive Order 10.

Purpose and Summary

This rulemaking, in accordance with Executive Order 10, proposes a new Chapter 28 that adopts federal rules for work safety in agriculture so that the Iowa Occupational Safety and Health Administration (OSHA) may monitor and, when necessary, investigate worksites to determine work safety compliance.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on August 21, 2024. A public hearing was held on the following date(s):

- September 10, 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 Labor Services Division for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Division no later than 4:30 p.m. on November 6, 2024. Comments should be directed to:

Mitchell Mahan
Labor Services Division
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

November 5, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa
November 6, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Division 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 875—Chapter 28 and adopt the following **new** chapter in lieu thereof:

CHAPTER 28
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

875—28.1(88) Adoption by reference. Rules 1928.1, 1928.21, 1928.51 through 1928.53 and 1928.57, as adopted by the United States Secretary of Labor, shall be rules for implementing Iowa Code chapter 88. This rule adopts the federal Occupational Safety and Health Standards for Agriculture, 29 CFR 1928 as published at 40 Fed. Reg. 18253-18268 (April 25, 1975) and as amended at:

41 Fed. Reg. 10190 (March 9, 1976)
41 Fed. Reg. 11022 (March 16, 1976)
41 Fed. Reg. 22268 (June 2, 1976)
41 Fed. Reg. 46598 (October 22, 1976)
42 Fed. Reg. 37668 (July 22, 1977)
42 Fed. Reg. 38569 (July 29, 1977)
43 Fed. Reg. 27463 (June 23, 1978)
43 Fed. Reg. 28474 (June 30, 1978)
43 Fed. Reg. 35036 (August 8, 1978)
46 Fed. Reg. 32022 (June 19, 1981)
52 Fed. Reg. 16095 (May 1, 1987)
58 Fed. Reg. 21778 (April 23, 1993)
59 Fed. Reg. 6170 (February 9, 1994)
59 Fed. Reg. 36699 (July 19, 1994)
59 Fed. Reg. 51748 (October 12, 1994)
61 Fed. Reg. 5510 (February 13, 1996)
61 Fed. Reg. 9255 (March 7, 1996)
70 Fed. Reg. 77003 (December 29, 2005)
76 Fed. Reg. 33606 (June 8, 2011)

These federal rules shall apply and be interpreted to apply to the Iowa occupational safety and health Act, Iowa Code chapter 88, and enforcement by the labor commissioner.

This rule is intended to implement Iowa Code sections 84A.1, 84A.2, 88.2 and 88.5.

ARC 8229C

UTILITIES COMMISSION[199]

Notice of Intended Action

Proposing rulemaking related to service supplied by water, sanitary sewage, and storm water drainage utilities and providing an opportunity for public comment

The Utilities Commission hereby proposes to rescind Chapter 21, "Service Supplied by Water, Sanitary Sewage, and Storm Water Drainage Utilities," 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, 474.5, 476.1 and 476.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 476.

Purpose and Summary

The Commission commenced this proposed rulemaking under the provisions of Executive Order 10. This chapter is intended to ensure there are clear rules and procedures for rate-regulated water system utilities providing water, sanitary sewage, and storm water drainage service. The Commission is proposing to rescind the existing Chapter 21 and repromulgate a new version of Chapter 21 with the removal of unnecessary and unneeded language and the reduction of restrictive terms.

Prior to submission of this Notice of Intended Action, the Commission held two technical conferences with stakeholders, which included a discussion regarding the proposed new version of Chapter 21. The first technical conference was held on April 30, 2024, and was attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and Iowa-American Water (Iowa-American). The second technical conference was held on June 25, 2024, and was attended by OCA, Iowa-American, and the Iowa Association of Municipal Utilities. The Commission also accepted written comments, which were filed by OCA and Iowa-American.

Based on the written and oral comments received, the Commission modified Chapter 21 to produce this Notice.

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 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 proposed 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 22, 2024. Comments should be directed to:

IT Support
Iowa Utilities Commission
Phone: 515.725.7300
Email: ITSupport@iuc.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2024 2 to 4 p.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa
November 4, 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 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
SERVICE SUPPLIED BY WATER, SANITARY SEWAGE, AND STORM WATER DRAINAGE UTILITIES

DIVISION I
GENERAL PROVISIONS

199—21.1(476) Application of rules.

21.1(1) *Purpose.* These rules establish standards of service to the public by utilities providing water by piped distribution systems and utilities providing sanitary sewage or storm water drainage disposal by piped collection systems that are subject to the jurisdiction of the Iowa utilities commission, and to provide standards for uniform practices by those utilities.

21.1(2) *Utility.* The term "utility" or "utilities," when not more specifically described, means a water, sanitary sewage, or storm water drainage public utility as defined in Iowa Code section 476.1(2) *"c"* and *"d."* The term does not include a county or an entity organized pursuant to Iowa Code chapter 28E, which is composed entirely of counties.

199—21.2(476) Records and reports for water, sanitary sewage, and storm water drainage utilities.

21.2(1) *Tariffs.* The utility shall maintain its tariff filing in a current status.

The rates and rules of all utilities subject to the rules in this chapter shall be filed with the commission in accordance with these rules.

a. Form and identification.

(1) The tariff shall conform to the following requirements:

1. Be on 8½ × 11-inch pages so as to result in a clear and permanent record.
2. Be filed electronically in compliance with 199—Chapter 14.
3. The first page is the title page, which will show the name of the utility, the type of utility service being provided, and the words "Iowa Utilities Commission."
4. When a tariff is to be superseded or replaced in its entirety, the replacing tariff will show on the upper right corner of its title page that it is a revision of a tariff on file and the number being superseded or replaced.
5. When a tariff sheet in a tariff is revised, amended, or eliminated, the tariff sheet will indicate in the upper right corner the number of the revision to that tariff sheet.
6. Any tariff sheet modifications will be marked in the right margin with symbols as described below to indicate the place, nature, and extent of the change in text. The marked version will show all added language marked with underlined text and all deleted language with strike-through.

- (C)—Change in regulation.
- (D)—Discontinued rate or regulation.
- (I)—Increase in rate or new treatment resulting in increased rate.
- (L)—Changed text location.
- (N)—New rate, treatment, or regulation.

- (R)—Reduction in rate or new treatment resulting in reduction in rate.
- (T)—Change in text only.

7. All sheets except the title page will have the following information located at the upper left corner of the tariff sheet:

- Company name.
- Type of utility tariff.
- The words "Filed with commission."

8. All sheets except the title page will have the following information located at the upper right corner of the tariff sheet:

- Tariff part identification, if any.
- Tariff sheet number, original or revised.
- Canceled tariff sheet number, original or revised.

9. All sheets except the title page will have the following information located at the lower left corner of the tariff sheet:

- The issued date.
- The name of the person responsible for the issuance.

10. All sheets except the title page will have the following information located at the lower right corner of the tariff sheet:

- An effective date field.
- Proposed effective date.

(2) The issued date is the date the tariff or the revised sheet content was filed by the utility in the commission's electronic filing system.

(3) The effective date may be left blank by the utility and will be determined by the commission.

b. Content of tariffs. A tariff filed with the commission shall contain a table of contents; rates, including all rates of utilities for service with indication for each rate of the type of service and the class of customers to which each rate applies as approved by the commission; prices per unit of service; number of units per billing period to which the prices apply; period of billing; minimum bill; method of measuring demands and consumptions, including method of calculating or estimating loads or minimums; and any special terms and conditions applicable. Any discount for prompt payment or penalty for late payment and the period during which the net amount may be paid will be specified and be in accordance with subrule 21.4(4).

21.2(2) *List of persons authorized to receive commission inquiries.* Each utility shall file with the commission in the annual report required by rule 199—23.1(476) a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the commission in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; (4) meter tests and repairs, if meters are used; and (5) interruptions of service 24 hours a day. The contact information required by this subrule will be kept current.

DIVISION II
WATER UTILITIES

199—21.3(476) General water service requirements.

21.3(1) *Water service.*

a. Metered measurement of water. All water sold by a utility shall be on the basis of metered measurement except that the utility may at its option provide flat rate or estimated service for the following:

(1) Temporary service where the water use can be readily estimated.

(2) Public and private fire protection service.

(3) Water used for street sprinkling and sewer flushing.

(4) In unusual circumstances.

b. Separate metering for premises. Separate premises will be separately metered and billed. Submetering is not permitted.

21.3(2) *Temporary service.* When the utility renders temporary service to a customer, it may require that the customer bear all the costs of installing and removing the service in excess of any salvage realized.

21.3(3) *Water meter requirements.*

a. Water meter installation. Each water utility shall adopt a written standard method of meter installation, copies of which are available upon request. All meters will be set in place by the utility.

b. Records of water meters and associated metering devices. Each water utility shall maintain for each meter and associated metering device the following applicable data:

(1) Meter identification.

1. Manufacturer.
2. Meter type, catalog number, and serial number.
3. Meter capacity.
4. Registration unit of measurement (gallons or cubic feet).
5. Number of moving digits or dials on register.
6. Number of fixed zeros on register.
7. Pressure rating of the meter.

(2) Meter location history.

1. Dates of installation and removal from service.
2. Location of installations.
3. All customer names with readings and read out dates.

Remote register readings are to be maintained identical to readings of the meter register.

c. Registration devices for meters. Where remote meter reading is used, the customer will have a readable meter register at the meter.

d. Water meter readings.

(1) Water meter reading interval. Reading of all meters used for determining charges to customers will be scheduled at least quarterly. An effort will be made to read meters on corresponding days of each meter reading period. The meter reading date may be advanced or postponed no more than ten days without adjustment of the billing for the period.

(2) Customer water meter reading. The utility may permit the customer to supply the meter reading information by telephone, or electronically, provided a utility representative reads the meter at least once every 12 months and when there is a change of customer.

(3) Estimated bill. An estimated bill may be rendered in the event that access to a meter cannot be gained and a meter reading form left with the customer is not returned in time for the billing operation. Only in unusual cases will more than three consecutive estimated bills be rendered.

(4) When a customer is connected or disconnected, or the regular meter reading date is substantially revised causing a given billing period to be longer or shorter than usual, the bill will be prorated on a daily basis.

21.3(4) *Filing published meter and service installation rules.* A copy of the utility's current rules, if any, published or furnished by the utility for the use of engineers, architects, plumbing contractors, etc., covering meter and service installation will be filed with the commission upon request.

21.3(5) *Extensions to customers.*

a. Definitions. The following definitions apply to the terms used in this subrule:

"Advances for construction costs" means cash payments or surety bonds or an equivalent surety made to the utility by an applicant for an extension, portions of which may be refunded depending on any subsequent connections made to the extension. Cash payments, surety bonds, or equivalent sureties include a grossed-up amount for the income tax effect of such revenue.

"Agreed-upon attachment period" means a period of not less than 30 days nor more than one year mutually agreed upon by the utility and the applicant within which the customer will attach. If no time period is mutually agreed upon, the agreed-upon attachment period is deemed to be 30 days.

"Contribution in aid of construction" means a nonrefundable cash payment covering the costs of an extension that are in excess of utility-funded allowances. Cash payments will be grossed-up for the

income tax effect of such revenue. The amount of tax is reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability.

"Customer advance for construction record" means a separate record established and maintained by the utility, which includes by depositor:

1. The amount of advance for construction provided by the customer;
2. Whether the advance is by cash or surety bond or equivalent surety;
3. If by surety bond, all relevant information concerning the bond or equivalent surety;
4. The amount of refund, if any, to which the depositor is entitled;
5. The amount of refund, if any, that has been made to the customer;
6. The amount unrefunded; and
7. The construction project on which, or work order pursuant to which, the extension was installed.

"Estimated annual revenues" means an estimated calculation of annual revenue based upon the following factors, including but not limited to:

1. The size of the facility to be used by the customer;
2. The average annual amount of service required by the equipment; and
3. The average number of hours per day and days per year the equipment will be in use.

"Estimated construction costs" means an estimated calculation of construction costs using average costs in accordance with good engineering practices and based upon the following factors:

1. Amount of service required or desired by the customer requesting the extension;
2. Size, location, and characteristics of the extension, including all appurtenances; and
3. Whether the ground is frozen or whether other adverse conditions exist.

The average cost per foot is calculated utilizing the prior calendar year costs, to the extent such cost basis does not exceed the current costs using current construction cost methodologies, resources and material, and working conditions, divided by the total feet of extensions by size of pipe for the prior calendar year. In no event will estimated construction costs include costs associated with facilities built for the convenience of the utility.

"Extensions" means a distribution main extension.

"Similarly situated customer" means a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are approximately the same as the annual consumption or service requirements of other customers.

b. Terms and conditions. The utility shall extend service to new customers under the following terms and conditions:

(1) The utility will provide all water plant additions at its cost and expense without requiring an advance for construction or contribution in aid of construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to advance funds that are subject to refund as additional customers are attached. A contract between the utility and the customer that requires an advance by the customer to make plant additions will be available for commission inspection.

(2) Where the customer will attach within 30 days after completion of the distribution main extension, the following applies:

1. If the estimated construction cost to provide a distribution main extension is less than or equal to five times the estimated annual revenue calculated on the basis of similarly situated customers, the utility shall finance and make the extension without requiring an advance for construction.

2. If the estimated construction cost to provide a distribution main extension is greater than five times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and deposit no more than 30 days prior to commencement of construction an advance for construction equal to the estimated construction cost less five times the estimated annual revenue to be produced by the customer.

(3) Where the customer will not attach within the agreed-upon attachment period after completion of the distribution main extension, the customer requesting the extension shall contract with the utility

and deposit no more than 30 days prior to the commencement of construction an advance for construction equal to the estimated construction cost.

(4) Advance payments for plant additions or extensions are subject to refund for a ten-year period and may be made by cash, surety bond, or equivalent surety. In the event a surety bond or an equivalent surety is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond will be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are sufficient earned refunds to offset the amount of the surety bond, less the surcharge, the depositors shall provide the utility the amount of the surcharge. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors shall provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge, or the depositors may pay the interest on the previous year's bond and rebond the balance due to the utility for a second or third one-year period. Upon receipt of such cash deposit, the utility releases the surety bond. The cash deposit, less the surcharge, will be subject to refund by the utility for the remainder of the ten-year period.

c. Refunds. The utility will refund to the depositor, for a period of ten years from the date of the original advance, a pro rata share for each service attachment to the distribution main extension. The pro rata refund will be computed in the following manner:

(1) If the combined total of five times the estimated annual revenue for the depositor and each customer who has attached to the distribution main extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor will be refunded to the depositor.

(2) If the combined total of five times the estimated annual revenue for the depositor and each customer who has attached to the distribution main extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor will equal five times the estimated annual revenue of the customer attaching to the extension.

(3) In no event will the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund will be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record will be closed and the remaining balance credited to the respective plant account.

d. Extensions not required. Utilities do not need to make extensions as described in this subrule unless the extension will be of a permanent nature.

e. More favorable methods permitted. A utility may make a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors.

f. Connections to utility-owned equipment. An individual, partnership, or company may construct its own extension; however, it will meet, at a minimum, the applicable portions of the standards in rule 199—21.5(476) and such other reasonable standards as the utility may employ in constructing extensions, so long as the standards do not mandate a particular supplier. All connections to the utility-owned equipment or facilities are to be made by the utility at the applicant's expense. At the time of attachment to the utility-owned equipment or facilities, the applicant will transfer ownership of the extension to the utility and the utility will book the original cost of construction of the extension as an advance for construction, and make refunds to the applicant in accordance with paragraph 21.3(5)*"c."* The utility will be responsible for the operation and maintenance of the extension after attachment.

g. Reimbursement of extension construction cost. If the utility requires the applicant to construct the extension to meet service requirements greater than those necessary to serve the applicant's service needs, the utility shall reimburse the applicant for the difference in cost between the extension specifications required by the utility and the extension specifications necessary to meet the applicant's service needs.

21.3(6) *Water service connections.* The utility will supervise the installation and maintenance of that portion of the water service pipe from its main to and including the customer's meter. A curb stop

will be installed at a convenient place between the property line and the curb, and all services will include a curb stop and curb box or meter vault. In installations where meters are installed in meter vaults incorporating a built-in valve and are installed between the property line and curb, no separate curb stop and curb box are required.

21.3(7) *Location of meters.* Meters may be installed outside or inside as mutually agreed upon by the customer and the utility.

a. Outside meters. Meters installed out-of-doors shall be readily accessible for maintenance and reading, and so far as practicable, the location should be mutually acceptable to the customer and the utility. The meter is to be installed so as to be unaffected by climatic conditions and reasonably secure from injury.

b. Inside meters. Meters installed inside the customer's building shall be located as near as possible to the point where the service pipe enters the building and at a point reasonably secure from injury and readily accessible for reading and testing. In cases of multiple buildings, such as two-family dwellings or apartment buildings, the meter(s) will be located within the premises served or in a common location accessible to the customers and the utility.

199—21.4(476) Customer relations for water service.

21.4(1) *Customer information.*

a. Each utility shall:

(1) Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rates and rules relating to the service of the utility are available for public inspection. This notice will also be provided on the utility's website and supplied to the customer with service applications.

(2) Maintain up-to-date maps, plans, or records of its entire water system.

(3) Upon request, assist the customer or prospective customers in selecting the most economic rate schedule available for the proposed type of service.

(4) Upon request, inform the customer as to the method of reading meters and the method of computing the customer's bill.

(5) Notify customers affected by a change in rates or rate classification as directed in the commission's rules.

b. Inquiries for information or complaints to a utility are to be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee will provide identification to the customer, which will enable the customer to reach that employee again if needed.

c. Each utility will notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The utility will also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Commission by calling 877.565.4450, by writing to 1375 E. Court Ave., Des Moines, IA 50319, or by email to customer@iuc.iowa.gov." This information will be provided no less than annually.

d. Any utility that does not use the standard statement described in this subrule will file its proposed statement in its tariff for approval. A utility that bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing, as long as the advertisement is of a type size that is easily legible and conspicuous and contains the information set forth above.

21.4(2) *Customer deposits.*

a. Deposit required. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

b. Amount of deposit. The total deposit will not be less than $5 nor more in amount than the maximum estimated charge for service for 90 days or as may reasonably be required by the utility in cases involving service for short periods or special occasions.

c. New or additional deposit. A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice is to be mailed advising the customer of any new or additional deposit requirement. The customer will have no less than 12 days from the date of mailing to comply. The utility does not need to provide written notice of a deposit required as a prerequisite for commencing initial service.

d. Customer's deposit receipt. The utility will issue a receipt of deposit to each customer from whom a deposit is received.

e. Interest on customer deposits. Interest will be paid by the utility to each customer required to make a deposit. Utilities will compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods will be computed at the rate specified by the rule in effect for the period in question. Interest will be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent is the most recent date the account is treated as uncollectible.

f. Deposit refund. The deposit shall be refunded after 12 consecutive months of prompt payment unless the utility has evidence to indicate that the deposit is necessary to ensure payment of bills for service. In any event, the deposit will be refunded upon termination of the customer's service.

g. Unclaimed deposits. The utility will make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility will maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4 at which time the record and deposit, together with accrued interest, less any lawful deductions, will be sent to the state treasurer pursuant to Iowa Code section 556.13.

21.4(3) *Customer bill forms.* The utility will bill each customer as promptly as possible following the reading of the customer's meter. Each bill, including the customer's receipt, shall show:

a. The date and the reading of the meter at the beginning and at the end of the period or the period for which the bill is rendered.

b. The number of units metered, when applicable.

c. Identification of the applicable rates.

d. The gross and net amount of the bill.

e. The late payment charge and the latest date on which the bill may be paid without incurring a penalty.

f. A distinct marking to identify an estimated bill, when applicable.

21.4(4) *Bill payment terms.* The bill is considered rendered to the customer when deposited in the U.S. mail with postage prepaid, or sent via electronic delivery with customer consent. If delivery is by other than U.S. mail, the bill is considered rendered when delivered to the last-known address, including electronic addresses, of the party responsible for payment. The customer will have a minimum of 20 days between the rendering of a bill and the date by which the account becomes delinquent.

a. Late payment charge. A utility's late payment charge will not exceed 1.5 percent per month of the past due amount.

b. Charge forgiveness. Each account will be granted at least one complete forgiveness of a late payment charge each calendar year. The utility's rules will be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. The rules shall state how the customer is notified that the eligibility has been used.

When a residential customer cannot pay in full a delinquent bill for utility service or has an outstanding debt to the utility for residential utility service and is not in default of a payment agreement with the utility, a utility shall offer the customer an opportunity to enter into a reasonable payment agreement.

21.4(5) *Customer records.* The utility shall retain customer billing records for the length of time necessary to permit the utility to comply with subrule 21.4(6), but not less than three years.

21.4(6) *Adjustment of bills.* Bills that are incorrect due to meter or billing errors are to be adjusted as follows:

a. Fast meters. Whenever a meter in service is tested and found to have overregistered more than 2 percent, the utility shall adjust the customer's bill for the excess amount paid. The estimated amount of overcharge is to be based on the period the error first developed or occurred. If that period cannot be definitely determined, it will be assumed that the overregistration existed for a period equal to one-half the time since the meter was last tested, or one-half the time since the meter was installed unless otherwise ordered by the commission. If the recalculated bill indicates that more than $5 is due an existing customer, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. If a refund is due to a person no longer a customer of the utility, a notice will be mailed to the last-known address.

b. Nonregistering meters. Whenever a meter in service is found not to register, the utility may render an estimated bill.

c. Slow meters. Whenever a meter is found to be more than 2 percent slow, the utility may bill the customer for the amount the test indicates the customer has been undercharged for the period of inaccuracy, or a period as estimated in paragraph 21.4(6)*"a"* unless otherwise ordered by the commission.

d. Overcharges. When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the amount of the overcharge shall be adjusted, refunded, or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill cannot exceed five years unless otherwise ordered by the commission.

e. Undercharges. When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the tariff may provide for billing the amount of the undercharge to the customer. The time period for which the utility may adjust for the undercharge need not exceed five years unless otherwise ordered by the commission. The maximum bill will not exceed the billing for like charges (e.g., usage-based, fixed, or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the commission.

21.4(7) *Refusal or disconnection of service.* Service may be refused or discontinued only for the reasons listed in paragraphs 21.4(7)*"a"* through *"f"* below. Unless otherwise stated, the customer shall be permitted at least 12 days following mailing of notice of disconnect in which to take necessary action before service is discontinued. When a person is refused service, the utility shall notify the person promptly of the reason for the refusal to serve and of the person's right to file a complaint about the utility's decision with the commission.

a. Without notice in the event of an emergency.

b. Without notice in the event of tampering with the equipment furnished and owned by the utility or obtaining water by fraudulent means.

c. For violation of or noncompliance with the utility's rules on file with the commission.

d. For failure of the customer to permit the utility reasonable access to its equipment.

e. For nonpayment of bill, provided that the utility has: (1) made a reasonable attempt to effect collection; (2) given the customer written notice that the customer has at least 12 days, excluding Sundays and legal holidays, in which to make settlement of the account; and (3) given the customer the written statement of the customer's rights and responsibilities to avoid a shutoff, as required by subrule 21.4(8). In the event there is dispute concerning a bill, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending resolution and thereby avoid discontinuance of service for nonpayment of the disputed bill for up to 45 days after the rendering of the bill. The 45 days will be extended if requested of the utility by the commission in the event the customer files a written complaint with the commission.

f. For failure to pay a debt owed to a city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment. Disconnection of water service pursuant to this paragraph will only be allowed if the

governing body of a city utility, city enterprise, combined city utility, or combined city enterprise has entered into a written agreement with the utility that includes provisions:

(1) Requiring that a notice of disconnection of water service for failure to pay a debt owed to the city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment be made by the utility and allow the customer 12 days, excluding Sundays and legal holidays, after the mailing of the notice to take necessary action to satisfy the debt.

(2) Providing for prompt notice from the city utility, city enterprise, combined city utility, or combined city enterprise to the utility that the debt for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment has been satisfied and providing that, once notified of the payment of the debt, the utility shall reconnect water service to the customer as provided for in the utility's tariff.

(3) Requiring the city utility, city enterprise, combined city utility, or combined city enterprise, prior to contacting the utility for disconnection of water service to a customer, to have completed the disconnection notification procedures established in the tariffs or ordinances of the city utility, city enterprise, combined city utility, or combined city enterprise.

(4) Providing that the customer may be charged a fee for disconnection and reconnection of water service by the utility for failure of the customer to pay a debt owed to the city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment, that the fee be no greater than the rates or charges established for reconnection and disconnection of water service in the utility's tariffs approved by the commission, and that recovery of lost revenue by the utility as a result of disconnection of water service pursuant to this paragraph is not authorized under these rules.

21.4(8) *Statement of customer rights and responsibilities.* In addition to providing the written notice of disconnect required by subrule 21.4(7), a utility, prior to refusing water service due to nonpayment of a bill, will provide the customer a written statement of rights and responsibilities to avoid shutoff. Any utility that does not use the standard form set forth below will electronically submit its proposed form to the commission for approval. A utility that is preparing to disconnect water service due to nonpayment of a bill for sanitary sewage disposal service or storm water drainage service will replace the words "water service" in the form below with the words "sanitary sewage disposal service" or "storm water drainage service" as appropriate. The utility shall provide the customer with the written statement of customer rights and responsibilities at the same time it provides the customer the written notice of disconnect.

CUSTOMER RIGHTS AND RESPONSIBILITIES TO AVOID SHUTOFF OF WATER SERVICE FOR NONPAYMENT

1. What can I do if I receive a notice from the utility that says my water service will be shut off because I have a past due bill?

a. Pay the bill in full;

b. Enter into a reasonable payment plan with the utility (see #2 below); or

c. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #3 below).

2. How do I go about making a reasonable payment plan? (Residential customers only)

a. Contact the utility as soon as you know you cannot pay the amount you owe. If you cannot pay all the money you owe at one time, the utility may offer you a payment plan that spreads payments evenly over at least 6 months. The plan may be longer depending on your financial situation.

b. If you have not made the payments you promised in a previous payment plan with the utility and still owe money, you may qualify for a second payment agreement under certain conditions. If you do not make the payments you promise, the utility may shut off your utility service on one day's notice unless all the money you owe the utility is paid or you enter into another payment agreement.

3. What should I do if I believe my bill is not correct?

You may dispute your utility bill. You must tell the utility that you dispute the bill. You must pay the part of the bill you think is correct. If you do this, the utility will not shut off your service for 45 days

from the date the bill was mailed while you and the utility work out the dispute over the part of the bill you think is incorrect. You may ask the Iowa Utilities Commission for assistance in resolving the dispute. (See #6 below.)

4. When can the utility shut off my utility service because I have not paid my bill?

The utility will not shut off your service for up to 45 days from the rendering of the bill if you have notified the utility that you dispute a portion of your bill and you pay the part of the bill that you agree is correct. The 45 days will be extended if requested of the utility by the Utilities Commission in the event you file a written complaint with the Utilities Commission.

5. How will I be told the utility is going to shut off my service?

You must be given a written notice at least 12 days before the utility service can be shut off for nonpayment.

6. If service is shut off, when will it be turned back on?

a. The utility will turn your service back on promptly if you pay the whole amount you owe or, in the event that you dispute a portion of the bill, you pay the portion of the bill that is not under dispute (see #2 above).

b. The utility may charge you a fee to turn your service back on. Those fees may be higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.

7. Is there any other help available besides my utility?

If the utility has not been able to help you with your problem, you may contact the Iowa Utilities Commission toll-free at 877.565.4450. You may also write the Iowa Utilities Commission at 1375 E. Court Ave., Des Moines, IA 50319, or by email at customer@iuc.iowa.gov. Low-income customers may also be eligible for free legal assistance from Iowa Legal Aid, and may contact Legal Aid at 800.532.1275.

21.4(9) *Reconnection and charges.* In all cases of discontinuance of service where the cause of discontinuance has been corrected, the utility will promptly restore service to the customer. The utility may make a reasonable charge applied uniformly for reconnection of service.

21.4(10) *Insufficient reasons for denying service.* The following do not constitute sufficient cause for refusal of service to a present or prospective customer:

a. Delinquency in payment for service by a previous occupant of the premises to be served.

b. Failure to pay the bill of another customer as guarantor thereof.

c. Failure to pay for a different type or class of utility service, except sanitary sewage disposal service or storm water drainage service. Disconnection of water service pursuant to the provisions of paragraph 21.4(7)*"f"* is not considered a different type or class of public utility service for purposes of subrule 21.4(10).

d. Delinquency in payment for service arising more than ten years prior, as measured from the most recent of the last date of service, the physical disconnection of service, or the last payment or promise of payment made by the customer.

21.4(11) *Customer complaints.* A "complaint" means any objection to the charge, facilities, or quality of service of a utility.

a. Each utility will investigate promptly and thoroughly and keep a record of all complaints received from its customers that will enable it to review its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date resolved.

b. All complaints caused by a major service interruption shall be summarized in a single report.

c. A record of the original complaint shall be kept for a period of three years after final resolution of the complaint.

21.4(12) *Reasonable payment agreement.* A customer may enter into a reasonable payment agreement with the utility in the event of a past-due bill to avoid utility service shut off.

a. Availability of a first payment agreement. When a residential customer cannot pay in full a delinquent bill for utility service or has an outstanding debt to the utility for residential utility service and

is not in default of a payment agreement with the utility, a utility shall offer the customer an opportunity to enter into a reasonable payment agreement.

b. Reasonableness. Whether a payment agreement is reasonable will be determined by considering the current household income, ability to pay, payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household. The utility may require the person to confirm financial difficulty with an acknowledgment from the department of health and human services or another agency.

c. Terms of payment agreements.

(1) First payment agreement. The utility shall offer the following conditions to customers who have received a disconnection notice or who have been previously disconnected and are not in default of a payment agreement:

1. For customers who received a disconnection notice or who have been disconnected less than 120 days and are not in default of a payment agreement, the utility is to offer an agreement with at least six even monthly payments. For customers who have been disconnected more than 120 days and are not in default of a payment agreement, the utility is to offer an agreement with at least six even monthly payments. Utilities will inform customers they may pay off the delinquency early without incurring any prepayment penalties.

2. The agreement shall also include provision for payment of the current account.

3. The utility may also require the customer to enter into a budget billing plan to pay the current bill.

4. When the customer makes the agreement in person, a signed copy of the agreement shall be provided to the customer.

5. The utility may offer the customer the option of making the agreement over the telephone or through electronic transmission.

6. When the customer makes the agreement over the telephone or through electronic transmission, the utility shall provide to the customer a written document reflecting the terms and conditions of the agreement within three days of the date the parties entered into the oral agreement or electronic agreement.

7. The document will be considered provided to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid, or sent via electronic delivery with customer consent. If delivery is by other than U.S. mail, the document is considered provided to the customer when delivered to the last-known address, including electronic addresses, of the person responsible for payment for the service.

8. The document shall state that unless the customer notifies the utility otherwise within ten days from the date the document is provided, it will be deemed that the customer accepts the terms as reflected in the written document. The document stating the terms and agreements shall include the address and a toll-free or collect telephone number where a qualified representative can be reached.

9. Once the first payment required by the agreement is made by the customer or on behalf of the customer, the oral or electronic agreement is deemed accepted by the customer.

10. Each customer entering into a first payment agreement shall be granted at least one late payment that is four days or less beyond the due date for payment, and the first payment agreement shall remain in effect.

11. The initial payment is due on the due date for the next regular bill.

(2) Second payment agreement. The utility shall offer a second payment agreement to a customer who is in default of a first payment agreement if the customer has made at least two consecutive full payments under the first payment agreement.

1. The second payment agreement shall be for a term at least as long as the term of the first payment agreement.

2. The customer shall pay for current service in addition to the monthly payments under the second payment agreement and may be required to make the first payment up front as a condition of entering into the second payment agreement.

3. The utility may also require the customer to enter into a budget billing plan to pay the current bill.

(3) Additional payment agreements. The utility may offer additional payment agreements to the customer.

d. Refusal by utility. A customer may offer the utility a proposed payment agreement. If the utility and the customer do not reach an agreement, the utility may refuse the offer orally, but the utility must provide a written refusal of the customer's final offer, stating the reason for the refusal, within three days of the oral notification. The written refusal shall be considered provided to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the written refusal shall be considered provided to the customer when delivered to the last-known address of the person responsible for the payment for the service.

A customer may ask the commission for assistance in working out a reasonable payment agreement within ten days after the written refusal is provided. During the review of this request, the utility shall not disconnect the service.

199—21.5(476) Engineering practice for water service.

21.5(1) *Requirement of good engineering practice.* The design and construction of the utility's plant and distribution system will conform to good standard engineering practice.

21.5(2) *Inspection.* Each utility shall adopt and follow a program of inspection of its plant and distribution system in order to determine the necessity for replacement and repair. The frequency of the various inspections will be based on the utility's experience and accepted good practice.

199—21.6(476) Meter testing for water service.

21.6(1) *Periodic and routine tests.* Each utility shall adopt schedules approved by the commission for periodic and routine tests and repair of the utility's meters.

21.6(2) *Meter test facilities and equipment.* Each utility furnishing metered service will provide the necessary standard facilities, instruments, and other equipment for testing its meters, or contract for test of its meters by another utility or agency equipped to test meters subject to approval by the commission.

21.6(3) *Accuracy requirements.* All meters shall be in good mechanical condition and accurate to the following standards:

a. Test flow limits. For determination of minimum test flow and normal test flow limits, the utility will use as a guide the appropriate standard specifications of the American Water Works Association for the various types of meters.

b. Accuracy limits. A meter will not be placed in service if it registers less than 95 percent of the volume passed through it at the minimum test flow, or overregisters or underregisters more than 1.5 percent at the intermediate or maximum limit.

21.6(4) *Initial test and storage of meters.* Every meter will be tested prior to its installation either by the manufacturer, the utility, or an organization equipped for meter testing.

If a meter is not stored as recommended by the manufacturer, the meter will be tested immediately before installation.

21.6(5) *As found tests.* To determine the average meter error in accordance with these rules for periodic or complaint tests, meters will be tested in the condition as found in the customer's service. Tests will be made at intermediate and maximum rates of flow, and the meter error will be the algebraic average of the errors of the two tests.

21.6(6) *Request tests.* A utility will test any meter upon written request of a customer no more than once every 18 months. The customer will be given the opportunity to be present at the requested test.

21.6(7) *Commission-ordered tests.* The commission shall order tests of meters as follows:

a. Application. Upon written application to the commission by a customer or a utility, a test will be made of the customer's meter as soon as practicable.

b. Guarantee. The application will be sent by mail and accompanied by payment or money order made payable to the utility in the amount of $25.

c. Conduct of test. On receipt of a request from a customer, the commission will forward the deposit to the utility and notify the utility of the requirement for the test. The utility will not knowingly remove or adjust the meter until tested. The utility will furnish all instruments, load devices, and other facilities necessary for the test and will perform the test and furnish verification of the accuracy of test instruments used.

d. Test results. If the tested meter is found to overregister to an extent requiring a refund under the provisions of paragraph 21.4(6)*"a,"* the amount paid to the utility will be returned to the customer by the utility.

e. Notification. The utility will notify the customer in advance of the date and time of the commission-ordered test.

f. Utility report. The utility will make a written report of the results of the test and send the report to the customer and commission.

21.6(8) *Sealing of meters.* Upon completion of adjustment and test of any water meter, the utility will place a suitable register seal on the meter in a manner that adjustment or registration of the meter cannot be changed without breaking the seal.

21.6(9) *Record of meter tests.* Meter test records shall include:

a. The date and reason for the test.

b. The meter reading prior to any test.

c. The accuracy as found at each of the flow rates required by paragraph 21.6(3)*"a."*

d. The accuracy as left at each of the flow rates required by paragraph 21.6(3)*"a."*

e. Statement of any repairs.

f. If the meter test is made using a standard meter, the utility will retain all data taken at the time of the test sufficient to permit the convenient checking of the test method, calculations, and traceability to the National Bureau of Standards' volumetric standardization.

The test records of each meter will be retained for two consecutive periodic tests or at least for two years. A record of the test made at the time of the meter's retirement, if any, will be retained for a minimum of three years.

199—21.7(476) Standards of quality of water service.

21.7(1) *Water pressures.* Under normal conditions of water usage, the pressure at a customer's service line will be no less than 35 pounds per square inch gauge (PSIG) and no more than 125 PSIG.

At regular intervals, a utility shall make a survey of pressures in its water system. The survey will be of sufficient magnitude to indicate the quality of service being rendered at representative points on its system. The survey will be conducted during periods of high usage at or near the maximum usage during the year. The pressure charts for these surveys will show the date and time of beginning and end of the test and the test location. Records of these pressure surveys will be made available to the commission upon request.

21.7(2) *Interruption of water service.*

a. A utility shall make a reasonable effort to prevent interruptions of water service. When an emergency interruption occurs, the utility will reestablish service with the shortest possible delay consistent with the safety of its customers and the general public. If an emergency interruption affects fire protection service, the utility will immediately notify the fire chief or other responsible local official.

b. When a utility finds it necessary to schedule an interruption of water service, it shall make a reasonable effort to notify all customers to be affected by the interruption, including the time and anticipated duration of the interruption. Interruptions shall be scheduled at hours that create the least inconvenience to the customer.

c. A utility will retain records of interruptions for a period of at least five years.

21.7(3) *Water supply shortage.* The utility will attempt to furnish a continuous and adequate supply of water to its customers and to avoid any shortage or interruption of water delivery.

a. If a utility finds that it is necessary to restrict the use of water due to a shortage, it will equitably apportion its available water supply among its customers. The utility will notify its customers and the commission of the following:

(1) The reason for the restriction.
(2) The nature and extent of the restriction.
(3) The effective date of the restriction.
(4) The probable date of termination of the restriction.

b. The water use restriction will only take effect if approved by the commission, except in cases of emergency.

199—21.8(476) Applications for water costs for fire protection services.

21.8(1) *Definition.* For purposes of this rule, "water costs for fire protection service" means all or a part of the utility's costs of fire hydrants and other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection, as reflected in the utility's current tariff for public fire protection water service.

21.8(2) *Utility requirements.* A utility that provides public fire protection water service to a city preparing an application pursuant to subrule 21.8(3) will provide the city all necessary information and affidavits to enable the city to meet its application filing requirements.

21.8(3) *Application contents.* Any city filing an application with the commission requesting inclusion of all or a part of the water costs for fire protection service in a utility's rates or charges to customers covered by the city's fire protection service will submit, at the time the application is filed, the following information with supporting testimony:

a. A statement showing (1) the proposed method of allocating costs to affected customers, and (2) both the proposed per-customer rate increase and the average percentage increase by customer class, based on the utility's current tariff, if the costs for fire protection water service are included in rates charged to affected customers;

b. Copies of all bills rendered to the city by the utility for public fire protection water service during the preceding 24-month period;

c. The current number of utility customers served within the city's corporate limits, by customer class, with an affidavit from the utility verifying the information;

d. A map illustrating both (1) the city's corporate limits, and (2) the portion of the utility's customer service area within the city's corporate limits, with an affidavit from the utility verifying the customer service area; and

e. An affidavit from the utility showing that the notice required by Iowa Code section 476.6(14) *"c"* and subrule 21.8(4) has been provided and paid for by the applicant and mailed by the utility to all affected customers.

21.8(4) *Customer notification.*

a. Prior approval. The city will file with the commission for its approval, not less than 30 days before providing notification to affected customers, a copy of the proposed notice.

b. Content of notification. The notice will advise affected customers of the proposed increase in rates and charges, the proposed effective date of the increase, the percentage increase by customer class, and include a written explanation of the reason for the increase. The notice will advise customers that the city is requesting the increase and that customers have the right to file with the commission a written objection to the proposed increase and to request a public hearing.

c. Notice of deficiencies. Within 30 days of the filing of the proposed notice, the city will be notified either of the approval of the notice or of any deficiencies in the notice and the corrective measures required for approval.

d. Distribution. The city shall provide to the utility, for mailing, a sufficient number of copies of the approved notice and direct the utility either to (1) include the notice with the utility's next regularly scheduled mailing to the affected customers, or (2) make a separate mailing of the notice to affected customers within 30 days of receiving from the city the requisite number of copies of the notice. The city will pay all expenses incurred by the utility in providing notice to affected customers. The utility may require payment prior to the mailing.

e. Delivery. The written notice to affected customers will be mailed or delivered by the utility not more than 90 days before the application is filed and no later than the date the application is filed.

21.8(5) *Procedure.*

a. Docketing. Within 30 days of the applicant filing the application with the commission, the commission will either approve the application or docket the case as a formal proceeding and establish a procedural schedule.

b. Decision. The commission will render its decision within six months of the date of the application. If the application is approved, the commission will order the utility providing the water service to the city to file tariffs implementing the commission's decision. The utility will include annually a bill insert explaining to customers that the customers are being charged for water-related fire protection costs. The city will pay all costs incurred by the utility to file and implement the required tariff.

199—21.9(476) Incident reports regarding water service.

21.9(1) *Notification.* A water utility shall notify the commission about any incident involving:

a. The occurrence of a waterborne illness;

b. The issuance of a boil water advisory;

c. A contamination event;

d. A low-pressure event (less than 20 psi) that negatively affects the quality of water service;

e. A flood event affecting the utility's plant or distribution system; or

f. A cyberattack affecting the well-being of the utility, its customers, or the environment.

21.9(2) *Information required.* The utility shall notify the commission immediately, or as soon as practical, of any reportable incident by emailing the duty officer at dutyofficer@iuc.iowa.gov or, when email is not available, by calling the commission duty officer at 515.745.2332. The person sending the email will leave the telephone number of a person who can provide the following information:

a. The name of the utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the incident.

b. The location of the incident.

c. The time of the incident.

d. The number of deaths or personal injuries and the extent of those injuries, if any.

e. The number of services interrupted.

f. A summary of the significant information available to the utility regarding the likely cause of the incident and the estimated extent of damage.

21.9(3) *Normal service restored.* The utility will notify the commission when the incident has ended and normal water service has been restored.

199—21.10(476) Separate books for acquired water service assets. A utility acquiring the whole or any substantial part of a water system with a purchase price of $3 million or more from a non-rate-regulated entity described in Iowa Code section 476.1(3) will maintain separate books and records for the acquired system until the utility's next general rate case unless otherwise ordered by the commission.

DIVISION III
SANITARY SEWAGE UTILITIES

199—21.11(476) General sanitary sewage disposal service requirements.

21.11(1) *Sanitary sewage disposal service.*

a. Metered measurement of sanitary sewage. All sanitary sewage disposal service sold by a utility shall be on the basis of metered measurement, except that the utility may at its option, pursuant to commission-approved tariffs, provide flat-rate or estimated service for the following:

(1) Temporary service; or

(2) The disposal at the sewage treatment plant of delivered sewage where the amount of sewage can be readily estimated.

(3) When access to the meter cannot be gained.

b. Sanitary sewage meter requirements. Sanitary sewage disposal service provided by a utility may be based upon the amount of water used by the customer as measured pursuant to rule 199—21.3(476) or separately metered in substantial conformity with the requirements of rule 199—21.3(476). The method of measuring sanitary sewage disposal service will be filed in the utility's tariff and approved by the commission. A proposed tariff that includes provisions for separate sanitary sewage meters will describe the circumstances under which separate meters will be used.

c. Customer classes. In establishing customer classes, the utility may consider the characteristics of the sewage generated by that customer class and the existence of any industrial pretreatment agreements. Customer classes are established pursuant to commission-approved tariffs.

21.11(2) *Temporary service.* When the utility renders temporary service to a customer, it may require that the customer bear all of the costs of installing and removing the service in excess of any salvage realized pursuant to commission-approved tariffs.

21.11(3) *Sewage meter requirements.*

a. Sewage meter installation. Each sanitary sewage utility shall adopt a written standard method or a method preapproved by the commission for meter installation, copies of which shall be available upon request. All meters will be set in place by the utility.

b. Records of sewage meters and associated metering devices. Each sanitary sewage utility shall maintain for each meter and associated metering device the following applicable data:

(1) Meter identification.

1. Manufacturer.
2. Meter type, catalog number, and serial number.
3. Meter capacity.
4. Registration unit of measurement (gallons or cubic feet).
5. Number of moving digits or dials on register.
6. Number of fixed zeros on register.
7. Pressure rating of the meter.

(2) Meter location history.

1. Dates of installation and removal from service.
2. Location of installation.
3. All customer names with readings and read out dates.

Remote register readings shall be maintained identical to readings of the meter register.

c. Registration devices for meters. Where remote meter reading is used, the customer will have a readable meter register at the meter.

d. Sewage meter readings.

(1) Sewage meter reading interval. Reading of all meters used for determining charges to customers will be scheduled at least quarterly. An effort will be made to read meters on corresponding days of each meter reading period. The meter reading date may be advanced or postponed no more than ten days without adjustment of the billing for the period.

(2) Customer sewage meter reading. The utility may permit the customer to supply the meter reading information by telephone, or electronically, provided a utility representative reads the meter at least once every 12 months and when there is a change of customer.

(3) Readings and estimates in unusual situations. When a customer is connected or disconnected, or the regular meter reading date is substantially revised causing a given billing period to be longer or shorter than usual, such bills will be prorated on a daily basis.

(4) Estimated bill. An estimated bill may be rendered in the event that access to a meter cannot be gained and a meter reading form left with the customer is not returned in time for the billing operation. Only in unusual cases will more than three consecutive estimated bills be rendered.

21.11(4) *Filing published meter and service installation rules.* A copy of the utility's current rules, if any, published or furnished by the utility for the use of engineers, architects, plumbing contractors, etc., covering meter and service installation will be filed with the commission upon request.

21.11(5) *Extensions to customers.*

a. Definitions. The following definitions apply to the terms used in this subrule:

"Advances for construction costs" means cash payments or surety bonds or an equivalent surety made to the utility by an applicant for an extension, portions of which may be refunded depending on any subsequent connections made to the extension. Cash payments, surety bonds, or equivalent sureties shall include a grossed-up amount for the income tax effect of such revenue.

"Agreed-upon attachment period" means a period of not less than 30 days nor more than one year mutually agreed upon by the utility and the applicant within which the customer will attach. If no time period is mutually agreed upon, the agreed-upon attachment period is deemed to be 30 days.

"Contribution in aid of construction" means a nonrefundable cash payment covering the costs of an extension that are in excess of utility-funded allowances. Cash payments will be grossed-up for the income tax effect of such revenue. The amount of tax shall be reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability.

"Customer advance for construction record" means a separate record established and maintained by the utility, which includes by depositor:

1. The amount of advance for construction provided by the customer;
2. Whether the advance is by cash or surety bond or equivalent surety;
3. If by surety bond, all relevant information concerning the bond or equivalent surety;
4. The amount of refund, if any, to which the depositor is entitled;
5. The amount of refund, if any, which has been made to the customer;
6. The amount unrefunded; and
7. The construction project on which or work order pursuant to which the extension was installed.

"Estimated annual revenues" means an estimated calculation of annual revenue based upon the following factors, including but not limited to:

1. The size of the facility to be used by the customer;
2. The size and type of equipment to be used by the customer;
3. The average annual amount of service required by the equipment; and
4. The average number of hours per day and days per year the equipment will be in use.

"Estimated construction cost" means an estimated calculation of construction costs using average costs in accordance with good engineering practices and based upon the following factors:

1. Amount of service required or desired by the customer requesting the extension;
2. Size, location and characteristics of the extension, including all appurtenances; and
3. Whether the ground is frozen or whether other adverse conditions exist.

The average cost per foot is calculated utilizing the prior calendar year costs, to the extent such cost basis does not exceed the current costs using current construction cost methodologies, resources and material, and working conditions, divided by the total feet of extensions by size of pipe for the prior calendar year. In no event will estimated construction costs include costs associated with facilities built for the convenience of the utility.

"Extensions" means a sanitary sewer main extension.

"Similarly situated customer" means a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are approximately the same as the annual consumption or service requirements of other customers.

b. Terms and conditions. The utility shall extend service to new customers under the following terms and conditions:

(1) The utility will provide all sewage treatment plant additions at its cost and expense without requiring an advance for construction or contribution in aid of construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility may require, no more than 30 days prior to commencement of construction, the customer or developer to advance funds that are subject to refund as additional customers are attached. A contract between the utility and the customer that requires an advance by the customer to make plant additions will be available for commission inspection.

(2) Where the customer will attach within 30 days after completion of the sewer main extension, the following applies:

1. If the estimated construction cost to provide a sewer main extension is less than or equal to five times the estimated annual revenue calculated on the basis of similarly situated customers, the utility will finance and make the extension without requiring an advance for construction.

2. If the estimated construction cost to provide a sewer main extension is greater than five times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and deposit no more than 30 days prior to commencement of construction an advance for construction equal to the estimated construction cost less five times the estimated annual revenue to be produced by the customer.

(3) Where the customer will not attach within the agreed-upon attachment period after completion of the sewer main extension, the customer requesting the extension shall contract with the utility and deposit no more than 30 days prior to the commencement of construction an advance for construction equal to the estimated construction cost.

(4) Advance payments for plant additions or extensions are subject to refund for a ten-year period and may be made by cash, surety bond, or equivalent surety. In the event a surety bond or an equivalent surety is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond will be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are sufficient earned refunds to offset the amount of the surety bond, less the surcharge, the depositors shall provide the utility the amount of the surcharge. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors will provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge, or the depositors may pay the interest on the previous year's bond and rebond the balance due to the utility for a second or third one-year period. Upon receipt of such cash deposit, the utility releases the surety bond. The cash deposit, less the surcharge, will be subject to refund by the utility for the remainder of the ten-year period.

c. Refunds. The utility will refund to the depositor for a period of ten years from the date of the original advance, a pro rata share for each service attachment to the sewer main extension. The pro rata refund will be computed in the following manner:

(1) If the combined total of five times the estimated annual revenue for the depositor and each customer who has attached to the sewer main extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor will be refunded to the depositor.

(2) If the combined total of five times the estimated annual revenue for the depositor and each customer who has attached to the sewer main extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor will equal five times the estimated annual revenue of the customer attaching to the extension.

(3) In no event will the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund will be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record will be closed and the remaining balance be credited to the respective plant account.

d. Extensions not required. Utilities do not need to make extensions as described in subrule 21.11(5) unless the extension will be of a permanent nature.

e. More favorable methods permitted. A utility may make a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors.

f. Connections to utility-owned equipment. An individual, partnership, or company may construct its own extension; however, it will meet, at a minimum, the applicable portions of the standards in rule 199—21.13(476) and such other reasonable standards as the utility may employ in constructing extensions, so long as the standards do not mandate a particular supplier. All connections to the utility-owned equipment or facilities are to be made by the utility at the applicant's expense. At the time of attachment to the utility-owned equipment or facilities, the applicant will transfer ownership of the

extension to the utility and the utility will book the original cost of construction of the extension as an advance for construction, and make refunds to the applicant in accordance with paragraph 21.11(5)*"c."* The utility will be responsible for the operation and maintenance of the extension after attachment.

g. Reimbursement of extension construction cost. If the utility requires the applicant to construct the extension to meet service requirements greater than those necessary to serve the applicant's service needs, the utility shall reimburse the applicant for the difference in cost between the extension specifications required by the utility and the extension specifications necessary to meet the applicant's service needs.

21.11(6) *Sanitary sewer service connections.* The utility will supervise the installation and maintenance of that portion of the sanitary sewer service line from the main to and including the customer's meter or, if the customer does not have a separate meter for sanitary sewage disposal service, to the point where the sanitary sewage line exits the customer's residence or building.

21.11(7) *Location of meters.* Meters may be installed outside or inside as mutually agreed upon by the customer and utility.

a. Outside meters. Meters installed out-of-doors shall be readily accessible for maintenance and reading, and, so far as practicable, the location should be mutually acceptable to the customer and the utility. The meter is to be installed so as to be unaffected by climatic conditions and reasonably secure from injury.

b. Inside meters. Meters installed inside the customer's building shall be located as near as possible to the point where the service pipe enters the building and at a point reasonably secure from injury and readily accessible for reading and testing. In cases of multiple buildings, such as two-family dwellings or apartment buildings, the meter(s) will be located within the premises served or in a common location accessible to the customers and the utility.

199—21.12(476) Customer relations for sanitary sewage disposal service.

21.12(1) *Customer information.*

a. Each utility shall:

(1) Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rates and rules relating to the service of the utility are available for public inspection. This notice will also be provided on the utility's website and supplied to the customer with service applications.

(2) Maintain up-to-date maps, plans, or records of its entire system.

(3) Upon request, assist the customer or prospective customers in selecting the most economic rate schedule available for the proposed type of service.

(4) Upon request, inform the customer as to the method of reading meters and the method of computing the customer's bill.

(5) Notify customers affected by a change in rates or rate classification as directed in the commission's rules.

b. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee will provide identification to the customer, which will enable the customer to reach that employee again if needed.

c. Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The utility will also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Commission by calling 877.565.4450; by writing to 1375 E. Court Ave., Des Moines, IA 50319; or by email to customer@iuc.iowa.gov." This information will be provided no less than annually.

d. Any utility that does not use the standard form contained herein will file its proposed form in its tariff for approval. A utility that bills by postcard may place an advertisement in a local newspaper of

general circulation or a customer newsletter instead of a mailing, as long as the advertisement is of a type size that is easily legible and conspicuous and contains the information set forth above.

21.12(2) *Customer deposits.*

a. Deposit required. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

b. Amount of deposit. The total deposit will not be less than $5 nor more in amount than the maximum estimated charge for service for 90 days or as may reasonably be required by the utility in cases involving service for short periods or special occasions.

c. New or additional deposit. A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice is to be mailed advising the customer of any new or additional deposit requirement. The customer will have no less than 12 days from the date of mailing to comply. The utility does not need to provide written notice of a deposit required as a prerequisite for commencing initial service.

d. Customer's deposit receipt. The utility will issue a receipt of deposit to each customer from whom a deposit is received.

e. Interest on customer deposits. Interest will be paid by the utility to each customer required to make a deposit. Utilities will compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods will be computed at the rate specified by the rule in effect for the period in question. Interest will be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent is the most recent date the account is treated as uncollectible.

f. Deposit refund. The deposit shall be refunded after 12 consecutive months of prompt payment unless the utility has evidence to indicate that the deposit is necessary to ensure payment of bills for service. In any event, the deposit will be refunded upon termination of the customer's service.

g. Unclaimed deposits. The utility will make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility will maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at which time the record and deposit, together with accrued interest, less any lawful deductions, will be sent to the state treasurer pursuant to Iowa Code section 556.13.

21.12(3) *Customer bill forms.* The utility will bill each customer as promptly as possible following the reading of the customer's meter. Each bill, including the customer's receipt, shall show:

a. The date and the reading of the meter at the beginning and at the end of the period or the period for which the bill is rendered.

b. The number of units metered, when applicable.

c. Identification of the applicable rates.

d. The gross and net amounts of the bill.

e. The late payment charge and the latest date on which the bill may be paid without incurring a penalty.

f. A distinct marking to identify an estimated bill, when applicable.

21.12(4) *Bill payment terms.* The bill is considered rendered to the customer when deposited in the U.S. mail with postage prepaid, or sent via electronic delivery with customer consent. If delivery is by other than U.S. mail, the bill is considered rendered when delivered to the last-known address, including electronic addresses, of the party responsible for payment. The customer will have a minimum of 20 days between the rendering of a bill and the date by which the account becomes delinquent.

a. Late payment charge. A utility's late payment charge will not exceed 1.5 percent per month of the past due amount.

b. Charge forgiveness. Each account will be granted at least one complete forgiveness of a late payment charge each calendar year. The utility's rules will be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month

after expiration of the net payment period. The rules shall state how the customer is notified that the eligibility has been used.

When a residential customer cannot pay in full a delinquent bill for utility service or has an outstanding debt to the utility for residential utility service and is not in default of a payment agreement with the utility, a utility shall offer the customer an opportunity to enter into a reasonable payment agreement, as defined in subrule 21.4(12).

21.12(5) *Customer records.* The utility shall retain customer billing records for the length of time necessary to permit the utility to comply with subrule 21.12(6), but not less than three years.

21.12(6) *Adjustment of bills.* Bills that are incorrect due to meter or billing errors are to be adjusted as follows:

a. Fast meters. Whenever a meter in service is tested and found to have overregistered more than 2 percent, the utility shall adjust the customer's bill for the excess amount paid. The estimated amount of overcharge is to be based on the period the error first developed or occurred. If that period cannot be definitely determined, it will be assumed that the overregistration existed for a period equal to one-half the time since the meter was last tested, or one-half the time since the meter was installed unless otherwise ordered by the commission. If the recalculated bill indicates that more than $5 is due an existing customer, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. If a refund is due a person no longer a customer of the utility, a notice will be mailed to the last-known address.

b. Nonregistering meters. Whenever a meter in service is found not to register, the utility may render an estimated bill.

c. Slow meters. Whenever a meter is found to be more than 2 percent slow, the utility may bill the customer for the amount the test indicates the customer has been undercharged for the period of inaccuracy, or a period as estimated in paragraph 21.12(6)*"a"* unless otherwise ordered by the commission.

d. Overcharges. When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the amount of the overcharge shall be adjusted, refunded, or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill cannot exceed five years unless otherwise ordered by the commission.

e. Undercharges. When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the tariff may provide for billing the amount of the undercharge to the customer. The time period for which the utility may adjust for the undercharge need not exceed five years unless otherwise ordered by the commission. The maximum bill will not exceed the billing for like charges (e.g., usage-based, fixed, or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the commission.

21.12(7) *Refusal of service.* Service may be refused only for the reasons listed in paragraphs 21.12(7)*"a"* through *"e"* below. Unless otherwise stated, the customer shall be permitted at least 12 days, excluding Sundays and legal holidays, following mailing of notice of refusal in which to take necessary action before service is refused. When a person is refused service, the utility shall notify the person promptly of the reason for the refusal to serve and of the person's right to file a complaint about the utility's decision with the commission. Refusal of service shall be pursuant to tariffs approved by the commission.

a. Without notice in the event of an emergency.

b. Without notice in the event of tampering with the equipment furnished and owned by the utility or obtaining service by fraudulent means.

c. For violation of or noncompliance with the utility's rules on file with the commission.

d. For failure of the customer to permit the utility reasonable access to its equipment.

e. For nonpayment of bill.

21.12(8) *Method of refusing service.* A utility may refuse sanitary sewage disposal service to a residential customer by disconnecting water service or by arranging for the disconnection of water

service pursuant to an agreement with the entity providing water service. Except in the event of an emergency or with prior written authorization from the commission, a utility shall not refuse sanitary sewage disposal service to a residential customer by physically disconnecting the customer's sanitary sewage service connection.

21.12(9) *Reconnection and charges.* In all cases of discontinuance of sanitary sewage disposal service where the cause of discontinuance has been corrected, the utility will promptly restore service to the customer. The utility may make a reasonable charge applied uniformly for reconnection of service.

21.12(10) *Insufficient reasons for denying service.* The following does not constitute sufficient cause for refusal of service to a present or prospective customer:

a. Delinquency in payment for service by a previous occupant of the premises to be served.

b. Failure to pay the bill of another customer as guarantor thereof.

c. Failure to pay for a different type or class of utility service.

d. Delinquency in payment for service arising more than ten years prior, as measured from the most recent of the last date of service, the physical disconnection of service, or the last payment or promise of payment made by the customer.

21.12(11) *Customer complaints.* A "complaint" shall mean any objection to the charge, facilities, or quality of service of a utility.

a. Each utility will investigate promptly and thoroughly and keep a record of all complaints received from its customers that will enable the utility to review its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and the complaint's disposition and the date resolved.

b. All complaints caused by a major service interruption shall be summarized in a single report.

c. A record of the original complaint shall be kept for a period of three years after final resolution of the complaint.

21.12(12) *Reasonable payment agreement.* A customer may enter into a reasonable payment agreement as defined in subrule 21.4(12).

199—21.13(476) Engineering practice for sanitary sewage disposal service.

21.13(1) *Requirement of good engineering practice.* The design and construction of the utility's plant and collection system will conform to good standard engineering practice.

21.13(2) *Inspection.* Each utility shall adopt and follow a program of inspection of its plant and collection system in order to determine the necessity for replacement and repair. The frequency of the various inspections will be based on the utility's experience and accepted good practice.

199—21.14(476) Meter testing for sanitary sewage disposal service. If a utility uses separate meters to measure the volume of sewage disposal, the separate meters will be tested in substantial conformity with the requirements of rule 199—21.6(476).

199—21.15(476) Standards of quality of sanitary sewage disposal service.

21.15(1) *Operation and maintenance.* The utility shall maintain and operate any sewage treatment facility with adequate capacity and equipment to convey all sewage to the plant and to treat the sewage to the quality required by all applicable laws and regulations.

21.15(2) *Design and construction.* The design and construction of the utility's collection system, treatment facility, and all additions and modifications shall conform to the requirements prescribed by law.

21.15(3) *Reasonable efforts to prevent.* The utility will make reasonable efforts to eliminate or prevent the entry of surface water or groundwater into its sanitary sewage system or the unlawful release of untreated sanitary sewage. The utility may request assistance from any appropriate state, county, or municipal authorities, but such a request does not relieve the utility of its responsibility to make reasonable efforts to eliminate or prevent the entry of surface water or groundwater and to contain sewage. The utility will notify the commission when it requests assistance from other state or local agencies.

21.15(4) *Bypass and upset.* The utility will comply with the bypass and upset provisions of rule 567—63.6(455B).

21.15(5) *Interruption of sanitary sewage disposal service.*

a. A utility shall make a reasonable effort to prevent interruptions of sanitary sewage service. When an emergency interruption occurs, the utility will reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

b. When a utility finds it necessary to schedule an interruption of service, the utility shall make a reasonable effort to notify all customers to be affected by the interruption, including the time and anticipated duration of the interruption. Interruptions shall be scheduled at hours that create the least inconvenience to the customer. The utility shall notify the commission when sanitary sewage service is interrupted. Except for emergencies, a utility shall not interrupt sanitary sewage disposal service unless water service has been disconnected at least 24 hours prior.

c. A utility shall retain records of interruptions for a period of at least five years.

21.15(6) *Separate class.* Sanitary sewage service is considered a separate class of service for ratemaking purposes.

199—21.16(476) Incident reports regarding sanitary sewage disposal service.

21.16(1) *Notification.* A sanitary sewage utility shall notify the commission about any incident involving:

a. An unlawful or uncontained release of sewage into the environment;

b. A flood event affecting the utility's plant or collection system;

c. A cyberattack affecting the well-being of the utility, its customers, or the environment; or

d. Any event that causes serious adverse impact on the health of people or the environment or interrupts service to the customer.

21.16(2) *Information required.* The utility shall notify the commission immediately, or as soon as practical, of any reportable incident by emailing the duty officer at dutyofficer@iuc.iowa.gov or, when email is not available, by calling the commission duty officer at 515.745.2332. The person sending the email will leave the telephone number of a person who can provide the following information:

a. The name of the utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the incident.

b. The location of the incident.

c. The time of the incident.

d. The number of deaths or personal injuries and the extent of those injuries, if any.

e. The number of services interrupted.

f. A summary of the significant information available to the utility regarding the likely cause of the incident and the estimated extent of damage.

21.16(3) *Normal service restored.* The utility will notify the commission when the incident has ended and normal sanitary sewage service has been restored.

199—21.17(476) Separate books for acquired sanitary sewage disposal service assets. A utility acquiring the whole or any substantial part of a sanitary sewage system with a purchase price of $3 million or more from a non-rate-regulated entity described in Iowa Code section 476.1(3) will maintain separate books and records for the acquired system until the utility's next general rate case unless otherwise ordered by the commission.

DIVISION IV
STORM WATER DRAINAGE UTILITIES

199—21.18(476) Standards of quality of storm water drainage service.

21.18(1) *Design and maintenance.* Systems for storm water drainage by piped collection shall be designed and maintained in conformance with good engineering practices. Such systems will be

designed and maintained so as to minimize flooding and ponding outside of areas designed to retain storm water and to reasonably provide for the drainage of normally anticipated rainfall events.

21.18(2) *Inspection.* Storm water drainage systems shall be inspected on a routine basis to identify and correct the blockage or obstruction of intake structures. The frequency of such inspections will be based upon the utility's experience and be pursuant to tariffs approved by the commission.

21.18(3) *Connections.* Utilities providing piped storm water drainage shall control the installation and maintenance of the piped connection up to and including all storm water intakes. Connections shall be adequate to receive all storm water drainage from properties upgradient of the storm water drainage connection unless other upgradient connections are provided. Connections shall be pursuant to tariffs approved by the commission.

21.18(4) *Rates.* Rates for storm water drainage service provided by a utility may be based upon the acreage drained, or by some other method pursuant to tariffs approved by the commission.

21.18(5) *Separate class.* Storm water drainage service is considered a separate class of service for ratemaking purposes.

199—21.19(476) Customer relations for storm water drainage service.

21.19(1) *Customer information.*

a. Each utility shall:

(1) Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rates and rules relating to the service of the utility are available for public inspection. This notice will also be provided on the utility's website and supplied to the customer with service applications.

(2) Maintain up-to-date maps, plans, or records of its entire storm water drainage system.

(3) Upon request, assist the customer or prospective customers in selecting the most economic rate schedule available for the proposed type of service.

(4) Upon request, inform the customer as to the method of computing the customer's bill.

(5) Notify customers affected by a change in rates or rate classification as directed in the commission rules of practice and procedures.

b. Inquiries for information or complaints to a utility are to be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee will provide identification to the customer, which will enable the customer to reach that employee again if needed.

c. Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The utility will also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Commission by calling 877.565.4450; by writing to 1375 E. Court Ave., Des Moines, IA 50319; or by email to customer@iuc.iowa.gov." This information will be provided no less than annually.

d. Any utility that does not use the standard form contained herein will file its proposed form in its tariff for approval. A utility that bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing, as long as the advertisement is of a type size that is easily legible and conspicuous and contains the information set forth above.

21.19(2) *Customer deposits.*

a. Deposit required. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

b. Amount of deposit. The total deposit shall not be less than $5 nor more in amount than the maximum estimated charge for service for 90 days or as may reasonably be required by the utility in cases involving service for short periods or special occasions.

c. New or additional deposit. A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice is to be mailed advising the customer of any new or additional deposit requirement. The customer will have no less than 12 days

from the date of mailing to comply. The utility does not need to provide written notice of a deposit required as a prerequisite for commencing initial service.

d. Customer's deposit receipt. The utility will issue a receipt of deposit to each customer from whom a deposit is received.

e. Interest on customer deposits. Interest will be paid by the utility to each customer required to make a deposit. Utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods will be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent is the most recent date the account is treated as uncollectible.

f. Deposit refund. The deposit shall be refunded after 12 consecutive months of prompt payment unless the utility has evidence to indicate that the deposit is necessary to ensure payment of bills for service. In any event, the deposit will be refunded upon termination of the customer's service.

g. Unclaimed deposits. The utility will make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility will maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at which time the record and deposit, together with accrued interest, less any lawful deductions, will be sent to the state treasurer pursuant to Iowa Code section 556.13.

199—21.20(476) Incident reports regarding storm water drainage service.

21.20(1) *Notification.* A utility shall notify the commission about any incident involving:

a. A non-storm water discharge from the storm water drainage system;

b. A flood event affecting the storm water drainage system;

c. A cyberattack affecting the well-being of the utility, its customers, or the environment; or

d. Any event that causes a serious adverse impact on the health of people or the environment or interrupts service to the customer.

21.20(2) *Information required.* The utility shall notify the commission immediately, or as soon as practical, of any reportable incident by emailing the duty officer at dutyofficer@iuc.iowa.gov or, when email is not available, by calling the commission duty officer at 515.745.2332. The person sending the email will leave the telephone number of a person who can provide the following information:

a. The name of the utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the incident.

b. The location of the incident.

c. The time of the incident.

d. The number of deaths or personal injuries and the extent of those injuries, if any.

e. The number of services interrupted.

f. A summary of the significant information available to the utility regarding the likely cause of the incident and the estimated extent of damage.

21.20(3) *Normal service restored.* The utility will notify the commission when the incident has ended and normal storm water drainage service has been restored.

199—21.21(476) Separate books for acquired storm water drainage service assets. A utility acquiring the whole or any substantial part of a storm water drainage system with a purchase price of $3 million or more from a non-rate-regulated entity described in Iowa Code section 476.1(3) will maintain separate books and records for the acquired system until the utility's next general rate case unless otherwise ordered by the commission.

These rules are intended to implement Iowa Code sections 17A.3, 474.5, 476.1, 476.2, 476.6(18), and 476.8.

ARC 8230C

UTILITIES COMMISSION[199]

Notice of Intended Action

Proposing rulemaking related to energy efficiency and demand response planning and reporting and providing an opportunity for public comment

The Utilities Commission hereby proposes to rescind Chapter 35, "Energy Efficiency and Demand Response Planning and Reporting for Natural Gas and Electric Utilities Required to be Rate-Regulated," and to adopt a new Chapter 35, "Energy Efficiency and Demand Response Planning and Reporting for Rate-Regulated Natural Gas and Electric Utilities," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 476.2 and 476.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 476.6.

Purpose and Summary

The Commission commenced this proposed rulemaking under the provisions of Executive Order 10. The purpose of this proposed chapter is to explain the procedures governing energy efficiency and demand response proceedings before the Commission. The Commission is proposing to rescind the existing Chapter 35 and repromulgate a new version with the removal of redundant, duplicative, and unnecessary language, and the reduction of restrictive terms.

Prior to submission of this Notice of Intended Action, the Commission held a technical conference with stakeholders to discuss the proposed Regulatory Analysis and the proposed new version of Chapter 35. The technical conference was attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and Interstate Power and Light Company (IPL). The Commission also received written comments from OCA and MidAmerican Energy Company (MidAmerican). OCA expressed support for the proposed new version of Chapter 35. MidAmerican proposed a number of revisions, many of which the Commission made to the chapter. For those MidAmerican suggestions it did not include in the Notice, the Commission invited further stakeholder discussion during the formal rulemaking process. Finally, IPL requested the proposed chapter be expanded by including a new definition, which the Commission declined to make at this time, but invited further discussion during the formal rulemaking process.

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 17, 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 proposed 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 22, 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 23, 2024 9 to 11 a.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa
November 13, 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 35 and adopt the following **new** chapter in lieu thereof:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Total resource cost test" means an economic test used to compare the present value of the benefits to the present value of the costs over the useful life of an energy efficiency or demand response measure or program from a resource perspective. Present values are calculated using a 12-month average of the

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

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

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

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

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

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

a. Each electric and natural gas utility shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The assessment of potential study.

c. Cost-effectiveness test analysis.

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

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

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

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

(1) The name of the program.

(2) The customers the program targets.

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

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

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

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

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

(1) Overhead consists of:

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

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

3. Advertising and promotional costs, which include internal and third-party labor and materials expenses associated with program-specific marketing and training and demonstration aimed at promoting energy efficiency awareness or the programs included in a utility's plan. Advertising that is part of an approved energy efficiency or demand response plan is deemed to be advertising required by the commission for purposes of Iowa Code section 476.18(3).

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

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

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

(2) Incentives consist of:

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

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

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

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

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

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

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

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

l. These additional requirements for electric utilities:

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

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

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

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

4. An explanation of all significant methods and data used, as well as assumptions made, in the current 20-year forecast, including all forecasts of variables used in its demand and energy forecasts and separate identification of all sources of variables used, such as implicit price deflator, electricity prices by customer class, gross domestic product, sales by customer class, number of customers by class, fuel price forecasts for each fuel type, and other inputs.

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

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

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

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

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

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

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

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

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

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

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

- The type of generating capacity.
- The anticipated in-service year of the capacity.
- The anticipated life of the generating capacity.
- Both summer and winter net generating capability ratings as reported to the NERC.

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

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

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

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

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

1. A numerical and graphical representation of the utility's 20-year planning horizon comparing forecasted demand in each year from subparagraph 35.5(4)*"l"*(1) to committed capacity in each year

from numbered paragraphs 35.5(4)*"l"*(3)"1" to "4." Forecasted peak demand shall include reserve requirements.

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

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

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

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

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

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

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

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

4. The capacity costs of the new supply options allocated to costing periods. The utility shall describe its method of allocating capacity costs to costing periods. The utility shall specify the hours, days, and weeks that constitute the utility's costing periods. For each supply option identified in numbered paragraph 35.5(4)*"l"*(6)"1," the plan shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

m. These additional requirements for natural gas utilities:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

199—35.6(476) Contested case proceeding.

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

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

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

199—35.7(476) Exemptions from participation.

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

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

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

c. A statement that customers requesting to be exempt from participation in the electric energy efficiency plan will not be eligible to participate in any utility-sponsored electric energy efficiency programs and will not be eligible to receive rebates from the utility for electric energy efficiency programs during the five-year plan cycle, beginning January 1 of the first year of the five-year plan cycle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Overcollection or undercollection is the actual amount recovered by customer class for the previous recovery period less the amount authorized to be recovered by customer class for the previous

recovery period. Overcollection or undercollection may also include adjustments ordered by the commission in prudence reviews.

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

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

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

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

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

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

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

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

35.9(6) *Customers' bills.*

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

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

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

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

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

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

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

35.10(2) All applications to modify shall be filed in the same docket in which the energy efficiency or demand response plan was approved. All parties to the docket in which the energy efficiency or demand response plan was approved shall be served copies of the application to modify and have 14 days to file an objection or agreement. Objections should be specifically related to the contents of the modification. Failure to file timely objection shall be deemed agreement.

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

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

b. An analysis supporting the requested modification.

c. An estimated implementation schedule for the modification.

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

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

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

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

199—35.11(476) Prudence review.

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

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

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

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

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

These rules are intended to implement Iowa Code section 476.6.

ARC 8240C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to technical corrections

The State Board of Education hereby amends Chapter 12, "General Accreditation Standards," Chapter 21, "Community Colleges," Chapter 41, "Special Education," Chapter 43, "Pupil Transportation," Chapter 44, "School Buses," and Chapter 98, "Financial Management of Categorical Funding," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Executive Order 10 and Iowa Code section 17A.6(5).

Purpose and Summary

This is a technical correction rulemaking. This rulemaking adds dates certain for standards incorporated by reference as required by Iowa Code section 17A.6, adds content to school bus construction standards that was inadvertently omitted in the Executive Order 10 review, and removes surplus language regarding special education mediation that was inadvertently retained during the Executive Order 10 review.

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 8140C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on September 12, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 November 6, 2024.

The following rulemaking action is adopted:

ITEM 1. Amend subrule 12.3(4) as follows:

12.3(4) *Student records.* Each board will establish and maintain a system of student records, which will include for each student a permanent office record and a cumulative record.

The permanent office record serves as a historical record of official information concerning the student's education. The permanent office record is to be recorded and maintained under the student's legal name. At a minimum, the permanent office record will contain evidence of attendance and educational progress, serve as an official transcript, contain other data for use in planning to meet student needs, and provide data for official school and school district reports. This record is to be permanently maintained and stored in a fire-resistant safe or vault or can be maintained and stored electronically with a secure backup file.

The cumulative record provides a continuous and current record of significant information on progress and growth. It should reflect information such as courses taken, scholastic progress, school attendance, physical and health record, experiences, interests, aptitudes, attitudes, abilities, honors, extracurricular activities, part-time employment, and future plans. It is the "working record" used by the instructional professional staff in understanding the student. At the request of a receiving school or school district, a copy of the cumulative record will be sent to officials of that school when a student transfers.

For the sole purpose of implementing an interagency agreement with state and local agencies in accordance with Iowa Code section 280.25, a student's permanent record may include information contained in the cumulative record as defined above.

The board is to adopt a policy concerning the accessibility and confidentiality of student records that complies with the provisions of the federal Family Educational Rights and Privacy Act of 1974, as effective on February 7, 2024, and Iowa Code chapter 22.

ITEM 2. Amend subrule 12.5(13) as follows:

12.5(13) *Unit.* A unit is a course that meets one of the following criteria: it is taught for at least 200 minutes per week for 36 weeks; it is taught for the equivalent of 120 hours of instruction; it requires the demonstration of proficiency of formal competencies associated with the course according to the State Guidelines for Competency-Based Education or its successor organization, as effective on February 7, 2024; or it is an equated requirement as a part of a flexible student and school support program filed as prescribed in rule 281—12.9(256). A fractional unit will be calculated in a manner consistent with this subrule. Unless the method of instruction is competency-based, multiple-section courses taught at the same time in a single classroom situation by one teacher do not meet this unit definition for the assignment of a unit of credit, unless otherwise provided by Iowa Code section 256.11.

ITEM 3. Amend subparagraph **12.8(1)"c"(2)** as follows:

(2) Content standards and benchmarks. The board will adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide the learning of students from the date of school entrance until high school graduation. Included in the local standards and benchmarks are the core content standards from Iowa's approved standards and assessment system under the applicable provisions of the federal Elementary and Secondary Education Act, as effective on February 7, 2024. Standards and benchmarks may be adopted for other curriculum areas defined in rule 281—12.5(256).

ITEM 4. Amend numbered paragraph **21.2(11)"b"(5)** as follows:

3. The individual is a covered person under Section 702 of the Veterans Access, Choice and Accountability Act of 2014 or subsequent legislation, as effective on February 7, 2024.

ITEM 5. Amend rule **281—21.41(260C)**, definitions of "Apprenticeship program" and "Certification," as follows:

"Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as required under 29 CFR Parts 29 and 30, as effective on February 7, 2024, including the requirement for a written apprenticeship agreement.

"Certification" or *"certificate"* means documentary evidence that at least one of the following has been met:

1. The Office of Apprenticeship has approved a set of National Guidelines for Apprenticeship Standards developed by a national committee or organization, joint or unilateral, or policy or guideline used by local affiliates, as conforming to the standards of apprenticeship set forth in 29 CFR Section 29.5, as effective on February 7, 2024;
2. A registration agency has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;
3. A registration agency has registered an apprenticeship program as evidenced by a certificate of registration or other written indicia;
4. A registration agency has determined that an apprenticeship has successfully met the requirements to receive an interim credential; or
5. A registration agency has determined that an individual has successfully completed an apprenticeship.

ITEM 6. Amend rule 281—21.42(260C) as follows:

281—21.42(260C) Apprenticeship programs. For an apprenticeship program to be offered by a community college or a local educational agency, the program must be approved by the U.S. Department of Labor, Office of Apprenticeship, and meet all requirements outlined in the National Apprenticeship Act, 29 U.S.C. §50, 29 CFR Parts 29 and 30, all as effective on February 7, 2024, or as specified in Iowa Code chapter 84D.

ITEM 7. Adopt the following **new** subrule 21.62(10):

21.62(10) *Effective dates of federal law.* All references to federal law in this rule are to those versions in effect on February 7, 2024.

ITEM 8. Amend subrule 41.1002(1) as follows:

41.1002(1) *Procedures.* The parent, the LEA or the AEA may request a special education mediation conference on any ~~decision relating to the identification, evaluation, educational placement, or the provision of FAPE without the need for filing a due process complaint~~ issue under this chapter. The mediation conference shall comply with rule 281—41.506(256B,34CFR300).

a. to *h.* No change.

ITEM 9. Amend rule 281—41.1100(256B,34CFR300) as follows:

281—41.1100(256B,34CFR300) References to federal law. ~~All~~ Unless otherwise specified, all references in this chapter to the United States Code or to the Code of Federal Regulations are to those provisions in effect on February 7, 2024.

ITEM 10. Amend subrule 43.12(1) as follows:

43.12(1) *General.* Except for insulin-dependent diabetics, an applicant for a school bus driver's authorization is to undergo a biennial physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners. The applicant will submit annually to the applicant's employer the signed medical examiner's certificate pursuant to Federal Motor Carrier Safety Administration regulations 49 CFR Sections 391.41 to 391.49, all as effective on February 7, 2024, indicating, among other requirements, sufficient physical capacity to operate the bus effectively and to render assistance to the passengers in case of illness or injury and freedom from any communicable disease. At the discretion of the chief administrator or designee of the employer or prospective employer,

the chief administrator or designee shall evaluate the applicant's ability in operating a school bus, including all safety equipment, in providing assistance to passengers in evacuation of the school bus, and in performing other duties required of a school bus driver.

ITEM 11. Amend rule 281—44.1(285), introductory paragraph, as follows:

281—44.1(285) Requirements for manufacturers. In order to protect both the boards of education and manufacturers of school transportation vehicles and equipment from misunderstanding and confusion, all manufacturers shall provide equipment meeting all Iowa vehicle construction requirements described in this chapter as well as all federal statutes, regulations, industry standards, and technical documents incorporated in this chapter by reference that are in effect on February 7, 2024, and all applicable federal motor vehicle safety standards (FMVSS) that are in effect on February 7, 2024, which include the following:

ITEM 12. Amend paragraph **44.5(1)"c"** as follows:

c. Alteration of a vehicle, following manufacture by the OEM, is prohibited. This includes the addition or removal of seats~~, wheelchair securement devices, and power lifts. Ramps are allowed on the passenger side of the vehicle only and will comply with all applicable FMVSS and ADA requirements~~ and the addition of wheelchair lifts. The following exceptions apply:

(1) OEM options or other manufacturer's accessories not in violation of these standards may be installed.

(2) Seats may be added or removed as long as the seating capacity does not exceed the capacity as certified by the OEM or on the label installed according to paragraph 44.5(1)*"b."*

(3) Wheelchair ramps are allowed to be added to the passenger side of the vehicle only and will comply with all applicable FMVSS and ADA requirements. When wheelchair ramps are added, the vehicle must also be equipped with the appropriate wheelchair securement system, which must also meet all applicable FMVSS and ADA requirements.

ITEM 13. Amend subrule 98.2(7) as follows:

98.2(7) *Commingling prohibited.* Categorical funding shall not be commingled with other funding. All categorical funding will be accounted for separately from other funding. School districts and area education agencies will use a project code and program code as defined by Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as effective on February 7, 2024, as appropriate or required.

ITEM 14. Amend paragraph **98.62(3)"e"** as follows:

e. Transfer to a trust fund for other postemployment benefit (OPEB) cost or estimated cost calculated pursuant to Governmental Accounting Standards Board (GASB) Statement 45, as effective on February 7, 2024.

ITEM 15. Amend rule 281—98.66(257,279,298A,565), introductory paragraph, as follows:

281—98.66(257,279,298A,565) District support trust fund. The district support trust fund is used to account for moneys received in trust where those moneys, both principal and interest, are to benefit the school district. The school district or area education agency will not transfer its own resources to a district support trust fund. If the school district or area education agency has more than one district support trust, it will use locally assigned project codes pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as effective on February 7, 2024, to identify the different trusts in the same fund. The district support trust fund is not an irrevocable trust. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in the district support trust fund. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility as the trustee.

ITEM 16. Amend rule 281—98.70(279,280,298A), introductory paragraph, as follows:

281—98.70(279,280,298A) Student activity fund. The student activity fund must be established in any school district receiving moneys from student-related activities, such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys collected through school activities are public funds that are the property of the school district and are under the financial control of the school board. Upon dissolution of an activity, such as a graduating class or student club, the surplus must be used to support other student activities in the student activity fund. Prudent and proper accounting of all receipts and expenditures in these accounts is the responsibility of the board secretary pursuant to Iowa Code section 291.6. School districts may maintain subsidiary records for student activities if those records are reconciled to the official records on a monthly basis; however, all official accounting records of the student activity fund shall be maintained within the school district's chart of account pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as effective on February 7, 2024.

ITEM 17. Amend rule 281—98.92(257,279,298A,565), introductory paragraph, as follows:

281—98.92(257,279,298A,565) Private purpose trust funds. Private purpose trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are not irrevocable trusts and are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and therefore cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. Scholarship trust funds are an example of private purpose trust funds. If a school district has more than one scholarship trust, the school district will use project codes in accordance with Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as effective on February 7, 2024, to separately account for the trusts. The district or area education agency will not transfer its own resources to a private purpose trust fund.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/24.

ARC 8241C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to charter schools

The State Board of Education hereby rescinds Chapter 19, "Charter Schools," Iowa Administrative Code, and adopts a new chapter with the same title, and rescinds Chapter 68, "Iowa Public Charter and Innovation Zone Schools," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapters 256E and 256F.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 256E and 256F.

Purpose and Summary

As part of the Department's review of rules under Executive Order 10, the Department determined that several of the rules in both Chapters 19 and 68 recite statutory text, are obsolete, or are aspirational in nature. Because Chapter 68 only applies to two legacy charter schools and none in the future, the Department is consolidating these two chapters into one for monitoring purposes. This matter was originally published in the Iowa Administrative Bulletin as **ARC 7092C**, on October 4, 2023. The period of public comment closed on October 24, 2023.

Based on the nature of the public comment received, the Department decided to allow **ARC 7092C** to expire and to provide a new Notice of Intended Action to receive public comment on additional proposed changes. The Department made the following changes:

The Department deleted an unnecessary reference to school years from subrule 19.5(5).

The Department added a new subrule 19.5(6), allowing the Department and Board to provide sample or template applications or contracts for the convenience of applicants, which applicants would be encouraged to use.

The Department removed subrule 19.11(3), which addressed federal funding, as unnecessary, and renumbered current subrule 19.11(4) as new subrule 19.11(3).

The Department added a new subrule 19.11(4), to implement 2024 Iowa Acts, House File 2368, regarding activities participation for students in virtual charter schools in their districts of residence.

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 8139C**. 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 State Board on September 12, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 November 6, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 19 and adopt the following **new** chapter in lieu thereof:

CHAPTER 19
CHARTER SCHOOLS

281—19.1(256E) General. All charter schools in Iowa are a part of the state's program of public education. Charter schools established on or after July 1, 2021, are subject to Iowa Code chapter 256E and Division I of this chapter. Charter schools established prior to July 1, 2021, continue to operate under and are subject to the provisions of Iowa Code chapter 256F and Division II of this chapter. The department monitors the effectiveness of charter schools and implements the applicable provisions of this chapter.

DIVISION I

CHARTER SCHOOLS ESTABLISHED ON OR AFTER JULY 1, 2021

281—19.2(256E) Establishment of charter schools. A charter school may be established by either of the following methods: a school board-state board model, pursuant to Iowa Code section 256E.4, or a founding group-state board model, pursuant to Iowa Code section 256E.5. The state board of education is the only authorizer of charter schools under this division.

281—19.3(256E) Purpose of a charter school. A charter school established under this division must intend to accomplish one or more of the purposes set forth in Iowa Code section 256E.1(3).

281—19.4(256E) Definitions. The definitions set forth in Iowa Code section 256E.2 apply to this division. In addition, "parent" includes a child's biological or adoptive parent, as well as anyone authorized by state or federal law or court order, judgment, or decree to make educational decisions for the child.

281—19.5(256E) General application provisions. The following general application provisions apply to both the school board-state board and founding group-state board charter establishment models.

19.5(1) *Instructions.* The instructions for completing an application includes or otherwise informs applicants of the content listed in Iowa Code sections 256E.4(3) and 256E.5(3).

19.5(2) *Review.* In reviewing and evaluating charter school applications, the state board employs procedures, practices, and criteria consistent with nationally recognized principles and standards for reviewing charter school applications. Each application review includes:

a. A thorough evaluation of the written application.

b. An in-person interview with the founding group.

c. An opportunity in a public forum for local residents to learn about and provide input on each application.

19.5(3) *State board actions following review.* Following review of a charter school application and completion of the process under subrule 19.5(2), the state board does all of the following:

a. Approves a charter school application only if the founding group has demonstrated competence in each element of the approval criteria and if the founding group is likely to open and operate a successful charter school.

b. Makes application decisions on documented evidence collected through the application review process.

c. Adheres to the policies and criteria that are transparent, are based on merit, and avoid conflicts of interest or any appearance thereof.

19.5(4) *Application approval.* The state board approves a charter school application if the application satisfies this division.

a. The state board will approve or deny a charter school application no later than 75 calendar days after the application is received.

b. If the state board denies an application, the state board will provide notice of denial to the founding group in writing within 30 days after the state board's action, specifying the exact reasons for denial and providing documentation supporting those reasons.

c. An approval decision may include, if appropriate, reasonable conditions that the founding group meet before a charter school contract may be executed pursuant to Iowa Code section 256E.6.

d. An approved charter application does not serve as a charter school contract.

e. A decision of the state board relating to an application under this rule is not appealable.

f. An unsuccessful applicant under this rule may subsequently reapply to the state board.

19.5(5) *Application deadlines and timelines.* Applications submitted to the state board on or before November 1 of the preceding school year will be considered for approval for the establishment of the charter school for the next school year.

19.5(6) *Sample applications and contracts.* The department or the state board may prepare sample or template applications and contracts for the convenience of future applicants. Use of these samples or templates is encouraged.

281—19.6(256E) School board-state board model. Iowa Code section 256E.4 governs charter schools founded under this model.

19.6(1) *School board-state board model application.* An application submitted under this rule includes all of the items related to the proposed charter school that are set forth in Iowa Code section 256E.4(4).

19.6(2) *Conversion of existing attendance center.* If the founding group proposes to establish a charter school by converting an existing attendance center of the school district, Iowa Code section 256E.4(5) governs such proposal.

281—19.7(256E) Founding group-state board model. Iowa Code section 256E.5 governs charter schools founded under this model. An application submitted under this rule includes all of the items related to the proposed charter school that are set forth in Iowa Code section 256E.5(4).

281—19.8(256E) Charter school contract. Iowa Code section 256E.6 governs contracts with approved charter schools. A contract may be amended by the founding group and the state board after the founding group complies with subrule 19.5(2) with reference to the proposed amendment.

281—19.9(256E) Performance framework. The performance provisions within each charter school's contract are governed by Iowa Code section 256E.9. This framework includes the items in Iowa Code section 256E.9(1), including student academic growth and proficiency in English language arts on statewide outcome assessments, student academic growth and proficiency in mathematics on statewide outcome assessments, and conditions for learning data (as mandated by Iowa's state plan under the Every Student Succeeds Act).

281—19.10(256E) General operating powers and duties. In order to fulfill the charter school's public purpose, a charter school established under this division is organized as a nonprofit education organization. It has the powers, duties, and exemptions specified in Iowa Code section 256E.7. For purposes of "applicable federal, state, and local health and safety requirements," that term includes mandatory reporting of child abuse under Iowa Code section 232.69, investigation of abuse by school employees under 281—Chapter 102, and seclusion and restraint under 281—Chapter 103.

281—19.11(256E) Funding.

19.11(1) *General.* Charter school funding is governed by Iowa Code section 256E.8.

19.11(2) *Enrollment estimates.* If necessary, and pursuant to paragraph 19.11(2)*"a,"* funding amounts determined under this rule for the first school year of a new charter school are to be based on enrollment estimates for the charter school included in the charter school contract. The process set out in paragraph 19.11(2)*"b"* is to be used for determining estimated enrollments for charter school funding purposes in school years after the first year of a charter school. Amounts paid using estimated enrollments are to be reconciled during subsequent payments based on actual enrollment of the charter school during each school year pursuant to paragraph 19.11(2)*"c."*

a. Enrollment estimates for the first school year are to be based on the number of enrolled students reported to the department through the student information system by August 5 of the school year.

b. Enrollment estimates for school years following the first school year are to be based on the number of enrolled students reported to the department through the student information system by August 5 of the school year.

c. Estimated payments will be reconciled, at minimum, based on actual enrollment information reported by the charter school pursuant to Iowa Code sections 256.9(44) and 257.6.

19.11(3) *Notification to districts of residence.* For purposes of this rule, each charter school notifies the district of residence of each child in a time and manner that allow the district of residence to include the child in the district's certified enrollment and any other relevant enrollment data.

19.11(4) *Students receiving instruction over the Internet—participation in activities in district of residence.* Students receiving instruction over the Internet from a charter school authorized under this chapter are eligible to participate in activities in their resident districts under the terms of Iowa Code section 256E.13.

281—19.12(256E) Oversight—corrective action—contract renewal—revocation.

19.12(1) *General.* The state board's monitoring, oversight, remedial actions, and enforcement actions (up to and including revocation) are governed by Iowa Code section 256E.10.

19.12(2) *Renewal guidance.* The state board's renewal application guidance will, at a minimum, include the criteria that will be used when assessing charter school contract renewal decisions and provide an opportunity for the charter school to:

a. Present additional evidence beyond the data contained in the performance report.

b. Describe improvements undertaken or planned for the charter school.

c. Describe the charter school's plans, including any proposed modifications, for the next charter school contract term.

19.12(3) *Revocation or nonrenewal.*

a. A charter school contract may be revoked at any time or not renewed if the state board determines that the charter school did any of the following:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures under the charter school contract or this division.

(2) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter school contract.

(3) Failed to meet generally accepted standards of fiscal management.

(4) Violated a provision of law from which the charter school was not exempted.

b. A decision to revoke or to not renew a charter school contract may only be by resolution of the state board and is to clearly state the reasons for the revocation or nonrenewal.

19.12(4) *Contract revocation and nonrenewal standards and procedures.* The state board will develop charter school contract revocation and nonrenewal standards and procedures that do all of the following:

a. Provide the charter school with a timely notice of the possibility of revocation or nonrenewal and of the reasons therefor.

b. Allow the charter school a reasonable period of time in which to prepare a response to any notice received.

c. Provide the charter school an opportunity to submit documents and give testimony challenging the decision to revoke the charter school contract or the decision to not renew the contract.

d. Allow the charter school the opportunity to hire legal representation and to call witnesses.

e. Permit the audio or video recording of such proceedings described in paragraphs 19.12(4)*"c"* and *"d."*

f. Require a final decision to be conveyed in writing to the charter school.

281—19.13(256E) Procedures for charter school closure—student enrollment. Charter school closures are governed by Iowa Code section 256E.11. Prior to any charter school closure decision, the state board will develop a charter school closure protocol to ensure timely notice to parents and guardians, provide for the orderly transition of students and student records to new schools, and provide proper disposition of school funds, property, and assets in accordance with this division. The protocol specifies necessary actions and timelines and identifies responsible parties for each such action.

281—19.14(256E) Reports.

19.14(1) *Annual report.* Each charter school prepares and files an annual report with the department, on or before October 1 and including data from the prior school year, pursuant to Iowa Code section 256E.12(1) that includes:

a. The charter school's mission statement, including a vision statement and goals, as well as data measuring goal attainment.

b. Student demographics, disaggregated by grade level and protected characteristics.

c. Attendance statistics and dropout rate (average daily attendance, dropout rate, student mobility).

d. Graduation data, including four-year and five-year graduation rates, credit accrual, and number of students on track for graduation.

e. Student achievement, including annual academic growth and proficiency, including Iowa statewide assessment of student progress (ISASP) data, other assessment data, and aggregate assessment test scores.

f. Financial performance, including projections of financial stability.

g. The number and qualifications of teachers and administrators.

h. Sustainability data, including enrollment trends, staff satisfaction, and parent and student satisfaction.

19.14(2) *Annual financial report.* Each charter school submits a Certified Annual Report consistent with 281—Chapter 99. The annual financial report is due to the department by September 15.

19.14(3) *Report to general assembly.* The state board will prepare and file a report with the general assembly annually by December 1 as required by Iowa Code section 256E.12(2).

281—19.15(256E) Operation of existing charter schools. Charter schools established pursuant to Iowa Code chapter 256F continue to operate pursuant to that Iowa Code chapter and are not subject to the requirements of this division or Iowa Code chapter 256E.

These rules are intended to implement Iowa Code chapter 256E.

DIVISION II

CHARTER SCHOOLS ESTABLISHED BEFORE JULY 1, 2021

281—19.16(256F) Definitions. The definitions in Iowa Code section 256F.2 apply to this division. In addition, "advisory council" means a council appointed by the school board of a charter school. With respect to a charter school, no more than one member of the council may be a member of the school board; a district's school improvement advisory committee may also serve as its advisory council. All advisory councils are subject to the provisions of Iowa Code chapters 21 and 22.

"Family unit" means a household in which resides one or more students enrolled at the existing public school that is the subject of a charter school application.

281—19.17(256F) Operating requirements. Charter schools are governed by Iowa Code sections 256F.4(2) through (8), 256F.6, and 256F.7.

281—19.18(256F) Ongoing review by the department. The department periodically reviews each charter school to ensure continuing compliance with the charter school's contract. The department may schedule mandatory meetings with the administrators of all charter schools at the department's sole discretion. Iowa Code section 256F.10 governs necessary reports under this division.

281—19.19(256F) Renewal of charter. The school board that established the charter school, in the absence of revoking the charter pursuant to rule 281—19.20(256F), takes affirmative action to renew a charter school contract after the initial four-year contract for a charter school and at the end of each renewal period. The school board shall hold a public hearing on the issue of renewal and submit to the department a copy of the minutes of the public hearing showing that a majority of the school board members voted in favor of renewal of the charter. Any action to renew a charter specifies the number of years, which may only be four years or less, for which the charter was renewed by the school board.

A school board will submit a new application to the department if the board modifies any of the terms of the original charter.

281—19.20(256F) Revocation or nonrenewal of charter. Iowa Code sections 256F.8 and 256F.9 govern revocation or nonrenewal of a charter under this division.

281—19.21(256F) Transition—operation of existing charter schools. Charter schools established pursuant to this division and Iowa Code chapter 256F prior to July 1, 2021, may continue to operate pursuant to those terms and are not subject to Iowa Code chapter 256E or Division I of this chapter. No new charter or innovation zone school may be created under this division.

These rules are intended to implement Iowa Code chapter 256F.

ITEM 2. Rescind and reserve **281—Chapter 68**.

[Filed 9/13/24, effective 11/6/24]
[Published 10/2/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/24.

ARC 8235C

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Rulemaking related to the career and technical cluster endorsement

The Educational Examiners Board hereby amends Chapter 22, "Authorizations," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.146 and 2024 Iowa Acts, Senate File 2411.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.146.

Purpose and Summary

This amendment creates a new endorsement option for career and technical authorizations.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on June 12, 2024, as **ARC 8062C**. This rulemaking was also adopted and filed emergency and published in the Iowa Administrative Bulletin as **ARC 8061C** on the same date. A public hearing was held on the following date(s):

- July 3, 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 Board on August 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

This rulemaking provides a benefit to jobs by expanding eligibility for the career and technical authorization teacher pathway.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—Chapter 6.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on November 6, 2024, at which time the Adopted and Filed Emergency rulemaking is hereby rescinded.

The following rulemaking action is adopted:

ITEM 1. Amend paragraph **22.9(3)"c"** as follows:

c. Applicants ~~shall~~ will meet one of the following qualifications:

(1) 6,000 hours of recent and relevant experience;

(2) 4,000 hours of recent and relevant experience if the applicant holds a baccalaureate degree;

(3) 3,000 hours of recent and relevant experience if the applicant holds an associate's degree in the teaching endorsement area sought, if such a degree is considered terminal for that field of instruction;

(4) Hold a baccalaureate or graduate degree or closely related degree in the teaching endorsement area sought; or

(5) Hold a baccalaureate degree in any area of study if at least 18 of the credit hours were completed in the teaching endorsement area sought.

(6) For a career and technical cluster endorsement, meet one of the above qualifications and at least 2,000 hours of recent and relevant experience or 9 semester hours each in two additional areas within the cluster endorsement. Combinations of experience and education may be approved by the executive director.

Recent and relevant experience ~~shall~~ will have been accrued within the ten years prior to the date of application. Experience that does not meet these criteria may be considered at the discretion of the executive director. In subjects for which state registration, certification or licensure is required, the applicant ~~must~~ will hold the appropriate license, registration or certificate before the initial career and technical secondary authorization or the career and technical secondary authorization will be issued.

[Filed 9/6/24, effective 11/6/24]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/24.

ARC 8242C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rulemaking related to rescission of chapters

The Transportation Department hereby rescinds Chapter 1, "Organization of the Department of Transportation," and Chapter 2, "Provisions Applicable to All Rules," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 307.12(1)"j."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 307.

Purpose and Summary

Chapter 1 describes the organization of the Department as required by Iowa Code section 17A.3(1) "a." This rulemaking rescinds Chapter 1 because 2024 Iowa Acts, Senate File 2370, section 4, strikes Iowa Code section 17A.3(1)"a." The Department's website, www.iowadot.gov, provides the public with this information.

Chapter 2 defines "commission," "department," and "director" or "director of transportation." This rulemaking rescinds Chapter 2 because these definitions are included in the Department's chapters, as needed. A separate chapter is not necessary.

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 8133C**. A public hearing was held on the following date(s):

- August 15, 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 Department on September 10, 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 761—Chapter 11.

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 November 6, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **761—Chapter 1**.

ITEM 2. Rescind and reserve **761—Chapter 2**.

[Filed 9/13/24, effective 11/6/24]
[Published 10/2/24]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/24.

ARC 8243C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rulemaking related to rescission of chapters

The Transportation Department hereby rescinds Chapter 28, "Iowa Transportation Map," Chapter 102, "Secondary Road Fund Distribution Committee," Chapter 132, "Iowa Byways Program," Chapter 161, "Highway Bridge Program for Cities and Counties," Chapter 170, "Allocation of Farm-to-Market Road Funds," Chapter 172, "Availability of Instructional Memorandums to Local Public Agencies," Chapter 173, "Preparation of Secondary Road Construction Programs, Budgets, and County Annual Reports," and Chapter 174, "Reimbursable Services and Supplies," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 307.12(1)"j" and 312.3C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 306D and sections 307.12(1) "j," 307.14, 307.24, 307.44, 309.22, 309.93, 310.27, 312.2, 312.3, 312.3B, 312.3C, 312.5 and 313.4(1).

Purpose and Summary

This rulemaking rescinds Chapters 28, 102, 132, 161, 170, 172, 173 and 174 in accordance with Executive Order 10 and 2024 Iowa Acts, Senate File 2385, section 367, which repeals Iowa Code section 312.3C and affects Chapter 102.

Chapter 28 supports the development and use of the Iowa Transportation Map and restricts use of the map for personal or professional gain. The instances of using the map for personal or professional gain are extremely rare, and the Department determined that alternate methods to restrict this use of the map could be used and that the rules are unwarranted.

Chapter 102 establishes formulas used for the distribution of moneys in the Secondary Road Fund and the Farm-to-Market Road Fund and defines the process the Secondary Road Fund Distribution Committee administers its duties. 2024 Iowa Acts, Senate File 2385, section 368, repeals Iowa Code section 312.3C, which gave the Committee authority to adopt Chapter 102. Later this year, the Transportation Commission will be adopting a new chapter concerning the Secondary Road Fund and Farm-to-Market Road Fund distribution methodologies in accordance with Senate File 2385, sections 303 through 307.

Chapter 132 supports the designation of Iowa Byways; however, there have been only 14 Iowa Byways designated since 1988. In lieu of rules on the subject, the Department published a guidance document on the Department's website at www.iowadot.gov/iowasbyways/iowas-byways-home.

Chapter 161 implements the federal-aid county and city highway bridge funding programs. Chapter 170 establishes requirements for the counties' allocation of farm-to-market funds. Chapter 172 establishes requirements for instructional memorandums for cities and counties. The Department already publishes instructional memorandums concerning the subject matter of Chapters 161, 170 and 172, so rules are duplicative and unnecessary. The Department's instructional memorandums are available on the Department's website at www.iowadot.gov/local_systems. Cities and counties have multiple opportunities to provide input on the instructional memorandums.

Chapter 173 establishes requirements for preparation of secondary road construction programs, budgets, and county annual reports. These requirements are already published on the Local Systems Bureau's web page on the Department's website.

Chapter 174 establishes requirements for reimbursable services and supplies for cities and counties. The Department provides reimbursable services to cities and counties, which is more efficient and less costly for taxpayers. The Department's instructional memorandums and various other internal procedures list the services the Department provides to cities and counties.

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 8135C**. A public hearing was held on the following date(s):

- August 15, 2024
- August 16, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on September 10, 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 761—Chapter 11.

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 November 6, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **761—Chapter 28**.

ITEM 2. Rescind and reserve **761—Chapter 102**.

ITEM 3. Rescind and reserve **761—Chapter 132**.

ITEM 4. Rescind and reserve **761—Chapter 161**.

ITEM 5. Rescind and reserve **761—Chapter 170**.

ITEM 6. Rescind and reserve **761—Chapter 172**.

ITEM 7. Rescind and reserve **761—Chapter 173**.

ITEM 8. Rescind and reserve **761—Chapter 174**.

[Filed 9/13/24, effective 11/6/24]
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ARC 8244C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rulemaking related to rescission of chapters

The Transportation Department hereby rescinds Chapter 106, "Promotion of Iowa Agricultural Products at Rest Areas," Chapter 121, "Adopt-a-Highway Program," and Chapter 124, "Highway Helper Sponsorship Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 307.12(1)"j."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 23A.2, 307.12(1)"j" and 307.24 and 1995 Iowa Acts, chapter 18, section 2.

Purpose and Summary

Chapter 106 provides Iowa agricultural organizations an opportunity to promote their products at Iowa interstate rest areas. However, only one promotional rest area has been designated since 1996 under Chapter 106. The Department will continue to provide a similar opportunity for nonprofit

agricultural organizations to provide refreshments at rest areas during holiday periods under Chapter 105, "Holiday Rest Stops."

Chapter 121 provides guidance for the Adopt-a-Highway litter pickup program. This program allows individuals or groups to pick up litter along certain highways as a volunteer public service. The Department is rescinding Chapter 121; however, the program will continue. In lieu of rules on this subject, the public may find information on the Department's website at: www.iowadot.gov/maintenance/Adopt-a-Highway-information.

Chapter 124 establishes the requirements for a Highway Helper Sponsorship Program. No companies have stepped forward to apply to be a sponsor of this program. The Department reviewed the need for the sponsorship and determined a sponsorship is not appropriate or necessary.

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 8134C**. A public hearing was held on the following date(s):

- August 15, 2024
- August 16, 2024

The Department received supportive comments from the Iowa Department for the Blind for the rescission of Chapter 106. The Department also received comments from a sponsor of the Adopt-a-Highway Program for the rescission of Chapter 121; the sponsor was reassured that the Adopt-a-Highway Program will continue. The same person who presented oral comments on Chapter 121 submitted the same comments in writing.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on September 10, 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 761—Chapter 11.

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 November 6, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **761—Chapter 106**.

ITEM 2. Rescind and reserve **761—Chapter 121**.

ITEM 3. Rescind and reserve **761—Chapter 124**.

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ARC 8236C

UTILITIES COMMISSION[199]

Adopted and Filed

Rulemaking related to competitive bidding process

The Utilities Commission hereby rescinds Chapter 40, "Competitive Bidding Process," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 476.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 476.1 and 476.53.

Purpose and Summary

The purpose of Chapter 40 is to establish minimum requirements for any rate-regulated electric utility engaging in the bidding process used to purchase supply. No rate-regulated electric utilities have opted to utilize the processes afforded them by Chapter 40, so the Commission is rescinding Chapter 40.

The Commission issued an order on August 27, 2024, approving the rescission of Chapter 40. The order is available on the Commission's electronic filing system, efs.iowa.gov, under RMU-2023-0040.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on May 29, 2024, as **ARC 8029C**. A public hearing was held on the following date(s):

- July 16, 2024
- July 30, 2024

The Commission received oral comments from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and MidAmerican Energy Company, both of which agreed with the rescission of Chapter 40.

The Commission also received a written comment from OCA in which it expressed its support for the rescission of Chapter 40.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on August 27, 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 amendment because the chapter is proposed to be rescinded.

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 November 6, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **199—Chapter 40**.

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[Published 10/2/24]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/24.

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.