IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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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

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

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 business day 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 business days in advance of the deadline. The first possible notice submission deadline noted above may not allow sufficient time for this. **Agencies should plan accordingly.**

Note change of filing deadline

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurement of goods and services of general use; purchasing standards for service contracts, amendments to chs 117, 118 IAB 11/13/24 **Regulatory Analysis**	Google Meet (US) +1 575.567.3149 PIN: 657 223 287#	December 3, 2024 11 a.m. to 12 p.m.

ALCOHOLIC BEVERAGES DIVISION[185]

Rules on agency procedure, rescind chs 1 to 3, 10, 18, 19 IAB 11/13/24 **ARC 8345C**	Via videoconference: meet.google.com/kwj-qvcn-gia	December 4, 2024 9 to 10 a.m.
	Via videoconference: meet.google.com/bay-qwzt-ksq	December 4, 2024 12:30 to 1:30 p.m.
Retail alcohol licenses—beer permits—wine permits; license and permit division; transportation and warehouse; personal importation of alcoholic liquor, wine, and beer; trade practices, rescind chs 4, 5, 8, 9, 16 IAB 11/13/24 **Regulatory Analysis**	Via videoconference: meet.google.com/equ-jfyu-fxp	December 3, 2024 8 to 9 a.m.
Private wine sales, rescind ch 14 IAB 11/13/24 **Regulatory Analysis**	Via videoconference: http://meet.google.com/cec-wnfw-kxv	December 3, 2024 9 to 10 a.m.

APPEAL BOARD, STATE[543]

General provisions, ch 1; tort claims, ch 2; general claims, ch 3; budget appeals, ch 4; adoption of uniform rules, ch 5; public records and fair information practices; agency procedure for rule making, rescind chs 6, 7 IAB 10/30/24 **Regulatory Analyses**	State Capitol, Room G14 1007 East Grand Avenue Des Moines, Iowa	November 19, 2024 10 to 11 a.m.

ARCHITECTURAL EXAMINING BOARD[193B]

Continuing education credits—applying excess credits, 3.3(2) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite A Des Moines, Iowa Via videoconference call: us02web.zoom.us/j/82857506526?pwd=8640a5ElsVePvOBDa8Vihtbw4Gmcl4.1	November 19, 2024 3 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Red tape review, rescind chs 4, 15; adopt chs 5, 9, 10 12 to 14, 16, 18 to 27 IAB 10/30/24 **ARCs 8282C** to **ARC 8307C**	Board Room, Suite A 701 East Court Avenue Des Moines, Iowa	November 20, 2024 11 a.m. to 12 noon December 2, 2024 9 to 10 a.m.

EDUCATION DEPARTMENT[281]

Open enrollment—transportation, deadlines, 17.2(1), 17.6, 17.8; community colleges, 21.1, 21.2, 21.62, 21.63; postsecondary program review, amendments to ch 46; practitioner preparation, 79.13 to 79.15, 79.24; state standards for progression in reading, 62.3(4), 62.4(4), 62.6(1) IAB 10/30/24 **Regulatory Analyses**	Room B100 Grimes State Office Building Des Moines, Iowa	November 19, 2024 8 to 9:30 a.m.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

School safety, ch 13 IAB 10/30/24 **Regulatory Analysis**	Suite 500 7900 Hickman Rd Windsor Heights, Iowa meet.google.com/ifk-mfnt-fbj	November 20, 2024 9 a.m.

HUMAN RIGHTS DEPARTMENT[421]

Family development and self sufficiency (FaDSS) program, rescind ch 24 IAB 10/30/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 222 143 545 89 Passcode: Ythqof	November 19, 2024 2 to 3 p.m.

HUMAN SERVICES DEPARTMENT[441]

Red tape review, adopt chs 48, 84 to 86, 88, 89, 91, 93 to 102, 164; psychiatric medical institution for children—plan of care team, 78.12(2), 78.29(2), 85.3(3), 85.6(3), 85.22(3), 85.24(3) IAB 10/30/24 **Regulatory Analyses**	Microsoft Teams Meeting ID: 222 143 545 89 Passcode: Ythqof	November 19, 2024 2 p.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Continuing education— podiatrists, orthotists, prosthetists, pedorthists, 702.2(1), 705.2(1) IAB 10/30/24 **Regulatory Analyses**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 22, 2024 1 to 1:30 p.m.
Continuing education for respiratory care practitioners and polysomnographic technologists, 721.2(4) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 4 to 4:20 p.m.
Speech pathologists and audiologists —hearing aid dispensing, continuing education, 741.2, 742.2 IAB 10/30/24 **Regulatory Analyses**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 10:40 to 11 a.m.

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

Continuing education for optometrists, 761.2(1) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 10:20 to 10:40 a.m.
Continuing education for physician assistants, 782.2(1) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 3:20 to 3:40 p.m.
Continuing education for physical therapists and physical therapist assistants, 803.2(3) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 12 noon to 12:30 p.m.
Continuing education for occupational therapists and occupational therapy assistants, 805.2(3) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 12:30 to 1 p.m.
Continuing education for massage therapists, 823.2(4) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 11:40 a.m. to 12 noon
Continuing education for chiropractic physicians, 844.2(4) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 3 to 3:20 p.m.
Continuing education for athletic trainers, 862.2(4) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 2:30 to 3 p.m.
Continuing education for funeral directors, 902.2(4) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 3:40 to 4 p.m.
Continuing education for dietitians, 922.2(4) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 3 to 3:30 p.m.
Continuing education for barbering and cosmetology arts and sciences, 944.2(5) IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 2 to 2:30 p.m.

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

Sign language interpreters and transliterators—continuing education, licensure, 962.2(6), ch 965 IAB 10/30/24 **Regulatory Analyses**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 11 to 11:20 a.m.
Nursing home administrators—provisional license or appointment, continuing education 980.5, 981.2(1) IAB 10/30/24 **Regulatory Analyses**	6200 Park Avenue, Suite 100 Des Moines, Iowa	November 20, 2024 11:20 to 11:40 a.m.
Licensure of hearing aid specialists, ch 2060; continuing education for hearing aid specialists, 2061.2(1); discipline for hearing aid specialists, ch 2063 IAB 10/30/24 **Regulatory Analyses**	6200 Park Avenue Des Moines, Iowa	November 20, 2024 10 to 10:20 a.m.

LABOR SERVICES DIVISION[875]

Child labor, ch 32 IAB 10/30/24 **ARC 8266C**	Ledges Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 8 to 8:30 a.m. November 20, 2024 8 to 8:30 a.m.
Wage civil penalties, ch 34; wage claims, ch 35; wage discrimination, ch 36 IAB 10/30/24 **ARCs 8263C** to **8265C**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 8:30 to 9 a.m. November 20, 2024 8:30 to 9 a.m.
Elevator safety board—administrative/regulatory authority, waivers, contested cases, chs 65, 66, 69; conveyance safety program, ch 71; conveyances installed on or after January 1, 1975, or prior to January 1, 1975, chs 72, 73 IAB 10/30/24 **ARCs 8319C** to **8324C**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 1 to 1:30 p.m. November 20, 2024 1 to 1:30 p.m.
Right to know—hazardous chemicals, public safety/emergency response, chs 130, 140 IAB 10/30/24 **ARCs 8272C**, **8273C**	Ledges Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 1:30 to 2 p.m. November 20, 2024 1:30 to 2 p.m.

LABOR SERVICES DIVISION[875](cont'd)

Employer requirements for non-English speaking employees, ch 160; employment in a bona fide executive, administrative, or professional capacity; in the capacity of outside salesperson; or in the capacity of outside salesperson, rescind ch 218 IAB 10/30/24 **ARCs 8274C**, **8275C**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 1:30 to 2 p.m. November 20, 2024 1:30 to 2 p.m.
Minimum wage scope and coverage, ch 215 IAB 10/30/24 **ARC 8267C**	Ledges Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 8:30 to 9 a.m. November 20, 2024 8:30 to 9 a.m.
Records kept by employers, ch 216; wages, ch 217; domestic service, ch 219; employees of state and local governments, ch 220 IAB 10/30/24 **ARCs 8268C** to **8271C**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	November 19, 2024 9 to 9:30 a.m. November 20, 2024 9 to 9:30 a.m.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Description of organization, ch 1; examinations and licensing, ch 2; continuing education, ch 3; rules of professional conduct and discipline procedures, ch 4 IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue Des Moines, Iowa	November 19, 2024 2:30 to 3 p.m.

LOTTERY AUTHORITY, IOWA[531]

Agency reorganization, rescind chs 1, 2, 11 to 14, 18 to 21 IAB 11/13/24 **ARC 8342C**	Room 430 Hoover State Office Building Virtual: meet.google.com/kwj-qvcn-gia	December 4, 2024 10 to 11 a.m.
	Room 430 Hoover State Office Building Virtual: meet.google.com/bay-qwzt-ksq	December 4, 2024 1:30 to 2:30 p.m.
Rules on agency procedure, rescind chs 3 to 6 IAB 11/13/24 **ARC 8343C**	Room 430 Hoover State Office Building Virtual: meet.google.com/nrd-konm-xjy	December 4, 2024 9 to 10 a.m.
	Room 430 Hoover State Office Building Virtual: meet.google.com/jpc-tisr-erp	December 4, 2024 12:30 to 1:30 p.m.

NURSING BOARD[655]

Red tape review, chs 1 to 7 IAB 10/30/24 **Regulatory Analyses**	6200 Park Avenue Des Moines, Iowa	November 19, 2024 9:30 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Licensure; infection control for barbershops and barber schools; barber schools; continuing education for barbers; discipline for barbers, barber instructors, barbershops and barber schools, rescind chs 21 to 25 IAB 10/30/24 **Regulatory Analysis**	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa	November 19, 2024 11 to 11:30 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Congenital and inherited disorders, ch 4; WIC, rescind ch 73; State mortality review committee, ch 90; Correction or substitution of medical certification of cause of death, 99.10 IAB 10/30/24 **Regulatory Analyses**	Microsoft Teams Meeting ID: 222 143 545 89 Passcode: Ythqof	November 19, 2024 2 to 3 p.m.
Swimming pools and spas, ch 15 IAB 10/30/24 **Regulatory Analysis**	6200 Park Avenue Des Moines, Iowa	November 19, 2024 10 to 10:30 a.m.
State plumbing code, ch 25; State mechanical code, ch 61; Renovation, remodeling, and repainting—lead hazard notification process, ch 69; Lead-based paint activities, ch 70; Migratory labor camps, ch 81 IAB 10/30/24 **Regulatory Analyses**	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa	November 19, 2024 9 to 9:30 a.m.
Stroke care reporting, ch 146 IAB 10/30/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 268 876 122 100 Passcode: QXqezE	November 19, 2024 10 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Liquefied petroleum gas, ch 226; liquefied natural gas, ch 228; explosive materials and commercial explosive contractors and blasters, adopt ch 231, rescind ch 235 IAB 10/30/24 **Regulatory Analyses**	Geode Conference Room 6200 Park Avenue Des Moines, Iowa	November 25, 2024 9 to 9:30 a.m.

REAL ESTATE COMMISSION[193E]

Definitions, 2.1; broker continuing education, 3.4; salesperson continuing education, 4.4; offices and management, 7.3(7), 7.4, 7.9(1)"c," 7.11(2)"b," 7.12 to 7.15; closing a real estate business, 8.1(3); advertising, 10.1; brokerage agreements, amend ch 11; disclosure of relationships, 12.3, 12.4, 12.6, 12.7(1); prelicense education and continuing education, 16.4(2), 16.5(1), 16.6; disciplinary sanctions—brokerage agreement, 18.14(5); unlawful practices, 21.2; real estate wholesaling, ch 22 IAB 11/13/24 **Regulatory Analyses**	6200 Park Avenue Des Moines, Iowa	December 5, 2024 10 to 10:30 a.m.

REVENUE DEPARTMENT[701]

Agency procedure; forms and communications; interest, penalty, and exceptions to penalty; nonlocal business entity bond forfeitures, adopt chs 1 to 8, 10, 11, 28; amend chs 201, 202 IAB 11/13/24 **ARCs 8330C**, **8331C**, **8340C**, **8341C**, **8355C**	Room 430 Hoover State Office Building Des Moines, Iowa	December 4, 2024 9 to 10 a.m. December 4, 2024 12:30 to 1:30 p.m.
Determination of aggregate actual values, 102.12 IAB 10/30/24 **ARC 8318C**	Via videoconference call meet.google.com/ssg-gvyg-xdp	November 19, 2024 10:30 to 11 a.m.
	Via videoconference call meet.google.com/aih-dinn-whe	November 19, 2024 1 to 1:30 p.m.
Administration of cigarette, tobacco, vapor products, and alternative nicotine products; cigarette tax and regulation of delivery sales of alternative nicotine products or vapor products; tobacco tax; unfair cigarette sales; tobacco master settlement agreement; administration of marijuana and controlled substance stamp tax; adopt chs 230 to 234, 240, rescind chs 254 to 258, 269 IAB 11/13/24 **Regulatory Analyses**	Via videoconference call meet.google.com/dfi-ijbx-deo	December 4, 2024 2:30 to 3:30 p.m.

REVENUE DEPARTMENT[701](cont'd)

Vehicles subject to registration; automobile rental excise tax; state-imposed water service excise tax; state-imposed and locally imposed hotel and motel taxes, chs 250 to 253 IAB 11/13/24 **Regulatory Analyses**	Via videoconference call meet.google.com/iei-hezt-fuc	December 3, 2024 3 to 4 p.m.
Fuel tax administration, motor fuel and undyed special fuel, liquefied petroleum gas—compressed natural gas—liquefied natural gas—hydrogen, electric fuel excise tax, chs 259 to 262 IAB 11/13/24 **Regulatory Analysis**	Via videoconference call meet.google.com/ima-dbfg-ttv	December 3, 2024 2 to 3 p.m.
General requirements; personal importation of alcoholic beverages, chs 1000, 1002 IAB 11/13/24 **Regulatory Analyses**	Via videoconference call meet.google.com/cec-wnfw-kxv	December 3, 2024 9 to 10 a.m.
Alcohol product management and warehousing, chs 1001, 1003 IAB 11/13/24 **Regulatory Analyses**	Via videoconference call meet.google.com/equ-jfyu-fxp	December 3, 2024 8 to 9 a.m.
Lottery—operational rules, prizes, licensing, responsibilities of retailers, scratch and instaplay tickets, pull-tab tickets, computerized games, drawings and contests, chs 1100 to 1107 IAB 11/13/24 **ARCs 8347C** to **8354C**	Room 430 Hoover State Office Building Des Moines, Iowa	December 4, 2024 10 to 11 a.m. December 4, 2024 1:30 to 2:30 p.m.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Organization; administrative elements, amend ch 1; adopt ch 18 IAB 10/30/24 **Regulatory Analysis**	ICN Director's Conference Room Grimes State Office Building Des Moines, Iowa	November 21, 2024 10 to 11 a.m.

TRANSPORTATION DEPARTMENT[761]

Public records and fair information practices, ch 4 IAB 10/30/24 **ARC 8261C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 221 495 970	November 19, 2024 10 to 10:30 a.m.
	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 307 430 041	November 20, 2024 9 to 9:30 a.m.

TRANSPORTATION DEPARTMENT[761](cont'd)

Farm-to-market review board, ch 101 IAB 11/13/24 **ARC 8332C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 779 171 631	December 9, 2024 10 to 10:30 a.m.
	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 512 323 376	December 9, 2024 3 to 3:30 p.m.
County and city bridge construction funds, ch 160 IAB 11/13/24 **ARC 8333C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 642 335 738	December 11, 2024 9 to 9:30 a.m.
	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 434 886 27	December 11, 2024 2 to 2:30 p.m.
Personalized and special registration plates, ch 401 IAB 11/13/24 **ARC 8334C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 326 633 131	December 4, 2024 9 to 9:30 a.m.
	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 187 373 482	December 4, 2024 3 to 3:30 p.m.
Special mobile equipment, ch 410 IAB 10/30/24 **ARC 8262C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 653 059 509	November 19, 2024 1 to 1:30 p.m.
	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 931 333 470	November 20, 2024 3 to 3:30 p.m.
Authorized emergency vehicle certificate of designation, ch 451 IAB 11/13/24 **ARC 8335C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 267 747 030	December 4, 2024 10 to 10:30 a.m.
	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 159 280 274	December 4, 2024 2 to 2:30 p.m.
Transportation network companies, ch 540 IAB 10/30/24 **ARC 8278C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 434 109 363	November 19, 2024 3 to 3:30 p.m.
	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 298 193 050	November 20, 2024 1 to 1:30 p.m.
Financial responsibility, ch 640 IAB 11/13/24 **ARC 8336C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 449 594 470	December 5, 2024 9 to 9:30 a.m.
	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 190 667 211	December 5, 2024 1 to 1:30 p.m.

TRANSPORTATION DEPARTMENT[761](cont'd)

Financial liability coverage cards, ch 641 IAB 11/13/24 **ARC 8337C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 948 096 839 Microsoft Teams link Or dial: 515.817.6093 Conference ID: 435 599 040	December 5, 2024 11 to 11:30 a.m. December 5, 2024 3 to 3:30 p.m.
Aeronautics administration; airport improvement program; air service development program; commercial service vertical infrastructure program; general aviation vertical infrastructure program, adopt ch 700; rescind chs 710, 715, 716, 717 IAB 11/13/24 **ARC 8338C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 830 920 715 Microsoft Teams link Or dial: 515.817.6093 Conference ID: 904 864 183	December 4, 2024 11 to 11:30 a.m. December 4, 2024 2 to 2:30 p.m.
Iowa airport registration, ch 720 IAB 11/13/24 **ARC 8339C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 457 007 91 Microsoft Teams link Or dial: 515.817.6093 Conference ID: 544 572 847	December 5, 2024 10 to 10:30 a.m. December 5, 2024 2 to 2:30 p.m.

UTILITIES COMMISSION[199]

Aircraft registration, ch 750 IAB 11/13/24 **ARC 8344C**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 666 207 895 Microsoft Teams link Or dial: 515.817.6093 Conference ID: 154 133 939	December 6, 2024 9 to 9:30 a.m. December 6, 2024 2 to 2:30 p.m.
Electric lines, ch 11 IAB 10/30/24 **ARC 8276C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	November 25, 2024 2 to 4 p.m. December 12, 2024 9 to 11 a.m.
Hazardous liquid pipelines and underground storage, ch 13 IAB 11/13/24 **ARC 8357C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	December 16, 2024 9 to 11 a.m. December 30, 2024 9 to 11 a.m.
Regulation of telecommunications service, ch 22 IAB 10/30/24 **ARC 8316C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	November 25, 2024 9 to 11 a.m. December 12, 2024 2 to 4 p.m.
Location and construction of electric power generating facilities, ch 24 IAB 11/13/24 **ARC 8346C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	January 15, 2025 2 to 4 p.m. January 23, 2025 9 to 11 a.m.

UTILITIES COMMISSION[199](cont'd)

Local exchange competition, ch 38 IAB 10/30/24 **ARC 8317C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	November 25, 2024 9 to 11 a.m. December 12, 2024 2 to 4 p.m.
Universal service, ch 39 IAB 10/30/24 **ARC 8277C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	November 25, 2024 9 to 11 a.m. December 12, 2024 2 to 4 p.m.
Certificates of franchise authority for cable and video service, ch 44 IAB 10/30/24 **ARC 8315C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	November 25, 2024 9 to 11 a.m. December 12, 2024 2 to 4 p.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Employer records and reports, ch 11 IAB 10/30/24 **ARC 8313C**	Microsoft Teams Meeting ID: 274 098 201 839 Passcode: oucczx Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 889 103 296#	November 19, 2024 9 to 9:30 a.m.
	Microsoft Teams Meeting ID: 217 183 679 651 Passcode: sASDkJ Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 883 444 305#	November 19, 2024 1 to 1:30 p.m.
Forms and informational materials, ch 12 IAB 10/30/24 **ARC 8308C**	Microsoft Teams Meeting ID: 270 222 497 822 Passcode: DLGmeA Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 748 269 282#	November 19, 2024 1:30 to 2 p.m.
	Microsoft Teams Meeting ID: 212 768 934 441 Passcode: DnyrYG Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 910 448 239#	November 19, 2024 8:30 to 9 a.m.
Claims and benefits, ch 24 IAB 11/13/24 **ARC 8327C**	Lobby Conference Room 1000 East Grand Avenue Microsoft Teams Meeting ID: 299 616 517 725 Passcode: B8mCxb Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 798 439 149#	December 3, 2024 9 to 10 a.m. December 3, 2024 1 to 2 p.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Contested case proceedings, ch 26 IAB 10/30/24 **ARC 8314C**	Microsoft Teams Meeting ID: 273 085 916 341 Passcode: GAvs67 Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 305 439 002#	November 19, 2024 1:30 to 2 p.m.
	Microsoft Teams Meeting ID: 291 911 031 622 Passcode: Kwawxn Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 266 293 026#	November 19, 2024 9:30 to 10 a.m.
Request for waiver of administrative rule, ch 41 IAB 10/30/24 **ARC 8309C**	Microsoft Teams Meeting ID: 235 928 888 97 Passcode: NVmWU9 Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 805 172 07#	November 19, 2024 2 to 2:30 p.m.
	Microsoft Teams Meeting ID: 272 007 596 349 Passcode: iNsfEi Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 719 428 505#	November 19, 2024 9 to 9:30 a.m.
Public records and fair information practices, ch 42 IAB 10/30/24 **ARC 8310C**	Microsoft Teams Meeting ID: 217 553 975 298 Passcode: YWa6jJ Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 268 458 297#	November 19, 2024 2:30 to 3 p.m.
	Microsoft Teams Meeting ID: 247 891 474 547 Passcode: 3WNCdi Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 996 861 366#	November 19, 2024 9:30 to 10 a.m.
Petitions for rulemaking, ch 43 IAB 10/30/24 **ARC 8311C**	Microsoft Teams Meeting ID: 223 553 795 10 Passcode: hEEipE Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 862 185 932#	November 19, 2024 3 to 3:30 p.m.
	Microsoft Teams Meeting ID: 286 173 882 660 Passcode: tjMoGc Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 119 611 361#	November 19, 2024 10 to 10:30 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Declaratory orders, ch 44 IAB 10/30/24 **ARC 8312C**	Microsoft Teams Meeting ID: 221 035 557 927 Passcode: cxtSCs Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 707 543 680#	November 19, 2024 10:30 to 11 a.m.
	Microsoft Teams Meeting ID: 254 828 102 062 Passcode: hE88Wh Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 278 294 073#	November 19, 2024 3:30 to 4 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]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
  Soil Conservation and Water Quality Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
OMBUDSMAN[141]
CIVIL RIGHTS COMMISSION[161]
INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]
  Alcoholic Beverages Division[185]
  Banking Division[187]
  Credit Union Division[189]
  Insurance Division[191]
  Professional Licensing and Regulation Bureau[193]
    Accountancy Examining Board[193A]
    Architectural Examining Board[193B]
    Engineering and Land Surveying Examining Board[193C]
    Landscape Architectural Examining Board[193D]
    Real Estate Commission[193E]
    Real Estate Appraiser Examining Board[193F]
    Interior Design Examining Board[193G]
UTILITIES COMMISSION[199]
CORRECTIONS DEPARTMENT[201]
  Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
  Historical Division[223]
ECONOMIC DEVELOPMENT AUTHORITY[261]
  City Development Board[263]
IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
  Educational Examiners Board[282]
  College Student Aid Commission[283]
  Higher Education Loan Authority[284]
  Libraries and Information Services Division[286]
  Public Broadcasting Division[288]
  School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
  Employment Appeal Board[486]
  Child Advocacy Board[489]
  Racing and Gaming Commission[491]
  State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Regulatory Analysis

Notice of Intended Action to be published: 11—Chapters 117 and 118
"Procurement of Goods and Services of General Use; Purchasing Standards for Service Contracts"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8A.104(5)
State or federal law(s) implemented by the rulemaking: 2024 Iowa Acts, House File 2708

Public Hearing

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

December 3, 2024 11 a.m.	Via Google Meet Phone Number: 1.575.567.3149 PIN: 657 223 287#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Department of Administrative Services (DAS) 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

2024 Iowa Acts, House File 2708, relates to the powers, duties, and responsibilities of state government entities associated with information technology, among other items. 2024 Iowa Acts, House File 2708, provides that the Department of Management shall be the sole authority in state government for the procurement of information technology goods and services for supported entities. The same goes for establishing information technology master agreements and for determining whether a procurement is an information technology procurement. These proposed amendments comport with 2024 Iowa Acts, House File 2708, by rescinding references to information technology within the scope of the DAS central procurement enterprise.

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 rulemaking since the authority for information technology procurement is transferring to another department.

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

Any entity seeking to procure information technology goods and services from the State of Iowa will benefit from these rescissions through enhanced clarity of 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:**

There are no anticipated impacts.

- **Qualitative description of impact:**

There are no anticipated impacts.

3. **Costs to the State:**

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

This shifts costs from DAS Central Procurement to Department of Management Procurement.

- **Anticipated effect on state revenues:**

There is no impact on state revenues.

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

The benefit is that this aligns DAS procurement rules with updated procurement authority. The cost of inaction would be inconsistency between DAS procurement rules and the Iowa Code.

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

This is the most direct method for achieving the purpose of the proposed rulemaking.

6. **Alternative methods considered by the agency:**

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

There were no alternative methods considered.

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

DAS has an obligation to comport with 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?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind paragraph **117.1(1)"c".**

ITEM 2. Rescind the definitions of "Board," "Information technology device," "Information technology services," "Material modification," "Negotiated contract," "Operational standards," "Participating agency," "Software," "Systems software" and "Upgrade" in rule **11—117.2(8A)**.

ITEM 3. Rescind subparagraph **117.5(5)"a"(5)**.

ITEM 4. Renumber subparagraph **117.5(5)"a"(6)** as **117.5(5)"a"(5)**.

ITEM 5. Amend subparagraph **117.9(7)"a"(1)** as follows:

(1) ~~Information technology consulting~~ Consulting services,

ITEM 6. Rescind paragraph **117.9(7)"i".**

ITEM 7. Rescind and reserve rule **11—117.11(8A)**.

ITEM 8. Rescind paragraph **117.14(4)"a".**

ITEM 9. Reletter paragraphs **117.14(4)"b"** to **117.14(4)"e"** as **117.14(4)"a"** to **117.14(4)"d"**.

ITEM 10. Rescind and reserve subrule **118.2(1)**.

ITEM 11. Amend rule **11—118.3(8A)**, definition of "Service," as follows:

"Service" or *"services"* means work performed for a state agency or for its clients by a service provider and includes, but is not limited to:

1. Professional or technical expertise provided by a consultant, advisor or other technical or service provider to accomplish a specific study, review, project, task, or other work as described in the scope of work. By way of example and not by limitation, these services may include the following: accounting services; aerial surveys; aerial mapping and seeding; appraisal services; land surveying services; construction manager services; analysis and assessment of processes, programs, fiscal impact, compliance, systems and the like; auditing services; communications services; services of peer reviewers, attorneys, financial advisors, and expert witnesses for litigation; ~~information technology~~ consulting services; services of investment advisors and managers; marketing services; policy development and recommendations; program development; public involvement services and strategies; research services; scientific and related technical services; software development and system design; and services of underwriters, physicians, and pharmacists; or

2. No change.

ITEM 12. Amend paragraph **118.7(1)"g"** as follows:

g. ~~The procurement is an information service that is systems software or an upgrade, or compatibility~~ Compatibility is the overriding consideration, ~~or~~ the procurement would prevent voidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation.

Regulatory Analysis

Notice of Intended Action to be published: 185—Chapters 4, 5, 8, 9 and 16
"Retail Alcohol Licenses—Beer Permits—Wine Permits; License and Permit Division; Transportation and Warehouse; Personal Importation of Alcoholic Liquor, Wine, and Beer; Trade Practices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 123.10, 123.49 and 123.186

State or federal law(s) implemented by the rulemaking: Iowa Code sections 17A.18, 123.3, 123.4, 123.10, 123.22, 123.24, 123.30, 123.31, 123.31A, 123.31B, 123.33, 123.35, 123.38, 123.39, 123.45, 123.49, 123.49A, 123.50, 123.59, 123.92, 123.93, 123.94, 123.122, 123.127, 123.171, 123.175, 123.176, 123.183 and 123.186

Public Hearing

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

December 3, 2024	Via videoconference
8 to 9 a.m.	meet.google.com/equ-jfyu-fxp

Public Comment

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

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

Purpose and Summary

Chapters 4, 5, 8, 9, and 16 are all designed for alcohol license, permit, and certificate of compliance holders to better understand requirements they must follow pertaining to their license or permit type. As part of the government reorganization pursuant to 2023 Iowa Acts, Senate File 514, the Department proposes to rescind the existing chapters under agency [185] and adopt them as new chapters under 701—Chapters 1000 through 1003 in separate proposed rulemakings.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

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

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

All members of the public will benefit from the existing chapters being rescinded and updated under the Department's 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:**

No economic impact from the proposed rulemaking has been identified.

- **Qualitative description of impact:**

The Department proposes to rescind the existing Division chapters and replace them with a new set of rules from the Department under agency number [701]. This restructuring will organize all relevant information under one agency number and update the language in accordance with the government reorganization.

3. **Costs to the State:**

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

There are no costs to the agency resulting from rescinding these chapters.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

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

There is no benefit to retaining these chapters in their current locations. Doing so would cause confusion. By consolidating and reorganizing the existing Division chapters under the Department, the public can interact with the Department in an efficient, effective, and consistent manner.

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

No less costly or intrusive methods have been identified.

6. **Alternative methods considered by the agency:**

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

None were identified. The existing chapters under the Division can no longer exist under the Division's own agency number.

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

Not applicable.

Small Business Impact

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

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

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

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

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **185—Chapter 4**.

ITEM 2. Rescind and reserve **185—Chapter 5**.

ITEM 3. Rescind and reserve **185—Chapter 8**.

ITEM 4. Rescind and reserve **185—Chapter 9**.

ITEM 5. Rescind and reserve **185—Chapter 16**.

Regulatory Analysis

Notice of Intended Action to be published: 185—Chapter 14
"Private Wine Sales"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 123.10
State or federal law(s) implemented by the rulemaking: Iowa Code sections 123.10 and 123.180

Public Hearing

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

December 3, 2024	Via videoconference
9 to 10 a.m.	meet.google.com/cec-wnfw-kxv

Public Comment

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

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

Purpose and Summary

This chapter describes the requirements needed for Class "A" wine permittees to engage in private wine sales with other licensees within the state. The purpose of this proposed rulemaking is to rescind Chapter 14 because it is outdated and obsolete.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

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

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

The public will benefit from the elimination of a chapter that is no longer necessary, and the rulemaking will reduce confusion.

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

- **Quantitative description of impact:**

There is no economic impact resulting from the rescission of this chapter.

- **Qualitative description of impact:**

There is no qualitative impact resulting from the rescission of this chapter. Failing to have these rules rescinded would lead to confusion and create additional questions to the Department.

3. **Costs to the State:**

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

There are no costs to the agency resulting from rescinding 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:**

There are no benefits of retaining this chapter. The intended benefits of this chapter are to outline requirements needed for Class "A" wine permittees to engage in private wine sales with other licensees within the state. The Department determined the chapter was unnecessary and that rescinding it would reduce confusion.

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

Rescinding the chapter is not costly nor intrusive.

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 by the agency.

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

The Department has determined that the chapter should be rescinded because it contains outdated and obsolete language.

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?

Rescinding this chapter does not have an impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **185—Chapter 14**.

Regulatory Analysis

Notice of Intended Action to be published: 193E—2.1(543B)
"Definitions"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 543B

Public Hearing

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

December 5, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's (DIAL's) website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@iowa.gov

Purpose and Summary

These proposed amendments update definitions relating to the practice of real estate. This rule is proposed to be amended to support law changes implemented by 2022 Iowa Acts, House File 2324, and 2024 Iowa Acts, House Files 2326, 2394, and 2291.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

No costs are associated with this rulemaking.

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

The public and professionals benefit from the proposed definition updates. Establishing new definitions as a result of new legislation provides guidance for the public and for licensees. Without established definitions for those who wish to practice real estate, individuals 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:**

There is not a quantitative impact of the proposed definition changes.

- **Qualitative description of impact:**

There is not a qualitative impact of the proposed definition changes.

3. **Costs to the State:**

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

There are no costs associated with the proposed definition changes.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenues.

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

The Real Estate Commission believes the current requirements ensure 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:**

There are no less costly methods to consider.

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:**

No alternative methods were considered.

Small Business Impact

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

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

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

The proposed definition changes do not create any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule **193E—2.1(543B)**, definitions of "Customer" and "Ministerial acts," as follows:

"Customer" ~~means a consumer of real estate services in connection with a real estate transaction who is not being represented by the licensee, but for whom the licensee may perform ministerial acts. A customer may be a client of another broker, may have yet to decide whether or not to be represented by any broker, or may have chosen not to be represented by any broker.~~ means the same as defined in Iowa Code section 543.5(10).

"Ministerial acts" means those acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of specific assistance on behalf of a consumer. For purposes of these rules, ministerial acts include, but are not limited to, the following:

1. Responding to general telephone inquiries by consumers as to the availability and pricing of brokerage services;

2. Responding to general telephone inquiries from a consumer concerning the price, facts and features, or location of property;

3. Attending an open house and responding to general questions from a consumer about the facts and features of the property;

4. Setting an appointment to view property;

5. Responding to general questions of consumers walking into a licensee's office concerning brokerage services offered or the facts and features of particular properties;

6. Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;

7. Describing the facts and features of a property or the property's condition in response to a consumer's inquiry;

~~8. Completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client;~~

~~9. Showing a client through a property being sold by an owner; or~~

~~10. Referring a person to another broker or service provider.~~

8. Referring a person to another broker or service provider; or

9. Listing a broker providing physical or virtual access to a property to an unrepresented customer in which the listing broker has a brokerage agreement with a seller to the property.

ITEM 2. Adopt the following **new** definitions of "Agency disclosure," "Compensation," "Real estate team," "Representative," "Showing," "Wholesaler" and "Wholesaling" in rule **193E—2.1(543B)**:

"Agency disclosure" means the same as defined in Iowa Code section 543B.5(2).

"Compensation" means payment to a broker or licensee for real estate services performed.

"Real estate team" means two or more licensees assigned to the same broker, working together to provide real estate brokerage services and representing themselves to the public as a team.

"Representative" means a person or entity representing the interests of the client, on the client's behalf, but that is not the agent or broker of the client.

"Showing" means the act of a licensee providing a client physical or virtual access to a property that is being sold by a seller.

"Wholesaler" means a licensee, or a person represented by a licensee, who acquires an equitable interest, but not legal title, in a residential property for the purpose of selling the equitable interest to a buyer.

"Wholesaling" means the practice of a wholesaler entering into an assignable contract with an owner of residential property for the purpose of marketing and selling the equitable interest of the residential property to another person.

ITEM 3. Rescind the definition of "Subagent" in rule **193E—2.1(543B)**.

Regulatory Analysis

Notice of Intended Action to be published: 193E—subrules 3.4(1) and 3.4(3)
"Broker License"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 543B

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

This proposed rulemaking implements 2024 Iowa Acts, House File 2686. Chapter 3 sets forth continuing education requirements for real estate licensees. The intended benefit of this rulemaking is to ensure that licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans. The Real Estate Commission reviewed the continuing education requirements in the fall of 2023 pursuant to Executive Order 10. Subrules 3.4(1) and 3.4(3) are proposed to be amended to comply with the statutory changes from 2024 Iowa Acts, House File 2686, allowing a licensee to carry over up to 50 percent of excess completed continuing education hours from the previous renewal cycle. This rulemaking would grant real estate licensees the ability to carry over up to 18 hours of continuing education earned in excess of the 36 hours required every three years.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Licensees are financially responsible for their continuing education. These proposed amendments will not affect anyone financially since licensees will continue to pay for their own courses. Licensees may see a decrease in cost due to not losing excess hours.

Costs to the agency are for the staff time needed to manage licensing 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; continuing education audits; and approving

providers, instructors, and continuing education courses. The Commission utilizes 1.0 full-time equivalent (FTE) position to process continuing education applications, inquiries, and audits and 1.0 FTE position to assist with inquiries. Those staff work for other boards under the Department as well. Staff salaries to support the work of the Real Estate Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the fund to cover the costs of the Commission's regulations.

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

Licensees will benefit from this rulemaking since they will be able to carry over excess continuing education hours completed during one license term to the following licensing term, saving the licensees time and money.

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:**

Licensees take continuing education courses through many different avenues, including but not limited to private industries, college, conventions, real estate brokerages, and real estate associations. Licensing staff are not privy to the cost of all courses or activities provided for continuing education credits, so a quantitative description of the cost is not tangible.

- **Qualitative description of impact:**

Licensees will be able to retain excess continuing education credits earned that they may have lost previously. This will allow more flexibility for the licensee to complete courses and potentially save licensees money.

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 licensing 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; continuing education audits; and approving providers, instructors, and continuing education course applications. The Commission utilizes 1.0 FTE position to process continuing education applications, inquiries, and audits and 1.0 FTE position to assist with inquiries. Those staff work for other boards under the Department as well. Staff salaries to support the work of the Commission are covered by the fund. Licensing fees go into the fund to cover the costs of the Commission's regulations.

- **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 license are covered by the fund.

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

Allowing licensees to carry over up to 50 percent of their excess continuing education hours will allow licensees greater flexibility and potentially cost savings. The impact on the private industry organizations that offer these continuing education programs is unknown.

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

A less costly method would be to decrease the continuing education hour requirements.

6. **Alternative methods considered by the agency:**

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

There were not any alternative methods considered since the Commission agrees with the current continuing education requirement of 36 hours.

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

There were not any alternative methods considered since these rules are required by 2024 Iowa Acts, House File 2686.

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 amendments may impact smaller schools or providers since licensees may not need to take as many courses. There should not be any impact on the licensee's business since the licensee will have the flexibly to use excess hours that ultimately would save the licensee time and money.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 3.4(1) as follows:

3.4(1) To renew a license in active status, each broker or broker associate completes a minimum of 36 hours of approved programs, courses or activities. ~~The continuing education is completed during the three calendar years of the license term and cannot be carried over to another license term.~~ Licensees 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. Licensees may apply a maximum of 18 hours from the previous renewal period. Licensees cannot carry over any hours toward the mandatory eight-hour law update course or the four-hour ethics course.

ITEM 2. Amend subrule 3.4(3) as follows:

3.4(3) A license may be renewed in inactive status without the completion of continuing education. Prior to reactivating a license ~~which~~ that has been issued inactive due to the licensee's failure to submit evidence of continuing education, the licensee submits an application to reactivate to active status with evidence that all deficient continuing education hours have been completed. ~~The maximum continuing education hours will not exceed the prescribed number of hours of one license renewal period and are completed during the three calendar years preceding activation of the license.~~ Licensees 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. Licensees may apply a maximum of 18 hours from the previous renewal period. Licensees cannot carry over any hours toward the mandatory eight-hour law update course or the four-hour ethics course.

Regulatory Analysis

Notice of Intended Action to be published: 193E—subrules 4.4(1) and 4.4(3)
"Salesperson License"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 543B

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

This proposed rulemaking implements 2024 Iowa Acts, House File 2686. Chapter 4 sets forth continuing education requirements for real estate licensees. The intended benefit of this rulemaking is to ensure that licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans. The Real Estate Commission reviewed the continuing education requirements in the fall of 2023 pursuant to Executive Order 10. Subrules 4.4(1) and 4.4(3) are proposed to be amended to comply with the statutory changes from 2024 Iowa Acts, House File 2686, allowing a licensee to carry over up to 50 percent of excess completed continuing education hours from the previous renewal cycle. This rulemaking would grant real estate licensees the ability to carry over up to 18 hours of continuing education earned in excess of the 36 hours required every three years.

Costs to the agency are for the staff time needed to manage licensing 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, continuing education audits, approving providers, instructors, and continuing education courses. The Commission utilizes 1.0 full-time equivalent (FTE) position to process continuing education applications, inquiries, and audits, and 1.0 FTE position to assist with inquiries. Those staff work for other boards under the Department as well. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the fund to cover the costs of the Commission's regulations.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Licensees are financially responsible for their continuing education. These proposed amendments will not affect anyone financially since licensees will continue to pay for their own courses. Licensees may see a decrease in cost due to not losing excess hours.

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

Licensees will benefit from this rulemaking since they will be able to carry over excess continuing education hours completed during one licensing term to the following licensing term, saving the licensees time and money.

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:**

Licensees take continuing education courses through many different avenues, including but not limited to private industries, college, conventions, real estate brokerages, and real estate associations. Licensing staff are not privy to the cost of all courses or activities provided for continuing education credits, so a quantitative description of the cost is not tangible.

- **Qualitative description of impact:**

Licensees will be able to retain excess continuing education credits earned that they may have lost previously. This will allow more flexibility for the licensee to complete courses and potentially save licensees money.

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 licensing 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, continuing education audits, approving providers, instructors, and continuing education course applications. The Commission utilizes 1.0 FTE position to process continuing education applications, inquiries, and audits and 1.0 FTE position to assist with inquiries. Those staff work for other boards under the Department as well. Staff salaries to support the work of the Commission are covered by the fund. Licensing fees go into the fund to cover the costs of the Commission's regulations.

- **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 license are covered by the fund.

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

Allowing licensees to carry over up to 50 percent of their excess continuing education hours will allow licensees greater flexibility and potentially cost savings. The impact on the private industry organizations that offer these continuing education programs is unknown.

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

A less costly method would be to decrease the continuing education hour requirements.

6. **Alternative methods considered by the agency:**

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

There were not any alternative methods considered since the Commission agrees with the current continuing education requirement of 36 hours.

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

There were not any alternative methods considered since these rules are required by 2024 Iowa Acts, House File 2686.

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 amendments may impact smaller schools or providers since licensees may not need to take as many courses. There should not be any impact on the licensee's business since the licensee will have the flexibly to use excess hours that ultimately would save the licensee time and money.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 4.4(1) as follows:

4.4(1) As a requirement of license renewal in active status, each salesperson completes a minimum of 36 hours of approved programs, courses or activities ~~during the three calendar years of the license term, and continuing education hours cannot be carried over to another license term~~. Licensees 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. Licensees may apply a maximum of 18 hours from the previous renewal period. Licensees cannot carry over any hours toward the mandatory eight-hour law update course or the four-hour ethics course.

ITEM 2. Amend subrule 4.4(3) as follows:

4.4(3) A salesperson license may be renewed to inactive status without completion of continuing education. Prior to reactivating a license ~~which~~ that has been issued inactive due to failure to submit evidence of continuing education, the licensee must submit evidence that all deficient continuing education hours have been completed. ~~The maximum continuing education hours shall not exceed the prescribed number of hours of one license renewal period and must be completed during the three calendar years preceding activation of the license.~~ Licensees 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. Licensees may apply a maximum of 18 hours from the previous renewal period. Licensees cannot carry over any hours toward the mandatory eight-hour law update course or the four-hour ethics course.

Regulatory Analysis

Notice of Intended Action to be published: rules 193E—7.3(543B), 193E—7.4(543B), 193E—7.9(543B), and 193E—7.11(543B) through 193E—7.15(543B) "Offices and Management"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 544B

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

This proposed rulemaking implements 2024 Iowa Acts, Senate File 2291. Chapter 7 sets forth supporting guidance for agency brokerage agreements and negotiation compensation for real estate licensees. These amendments also update language to be consistent with Senate File 2291.

In addition, this proposed rulemaking implements 2024 Iowa Acts, House File 2394, and the regulation of wholesaling.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Licensees will be affected by Senate File 2291 and the supporting rules since agency agreements are now required for all clients, including buyers, prior to agency representation. Licensees will also be able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

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

The purpose of Senate File 2291 is to protect buyers from having to pay fixed compensation fees and from risks that may arise from not having a buyer agency agreement.

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:**

Licensees may lose revenue due to having to procure a buyer agency agreement prior to providing agency services.

Unlicensed individuals may lose revenue due to having to either procure a broker's license to perform wholesaling or procure an Iowa licensed broker to facilitate the wholesaling transaction.

- **Qualitative description of impact:**

Licensees will be able to protect themselves from losing buyers to another agent by having a buyer agency agreement.

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 licensee and public inquiries, rulemaking and investigations. The time needed to manage this provision is generally in the form of responding to questions related to new law and rule changes as well as the complaints being submitted regarding the changes. The Real Estate Commission utilizes 1.0 full-time equivalent (FTE) position to respond to inquiries, complete the rulemaking process, and handle complaints where discipline is imposed and 1.0 FTE position to investigate and process complaints relating to new laws and rules. Those staff work for other boards under the Department as well. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the fund to cover the costs of the Commission's regulations.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenues related to the proposed amendments. Staff salaries to support the work of the license are covered by the fund.

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

Licensees will be affected by Senate File 2291 and the supporting rules since buyer agency agreements are now required prior to agency representation. Licensees will also be able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

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

There are no less costly methods to consider.

6. **Alternative methods considered by the agency:**

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

There were not any alternative methods considered.

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

There were not any alternative methods considered, and rulemaking is required to bring the Commission into compliance with Senate File 2291.

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 real estate businesses may be affected by Senate File 2291 and the supporting rules since buyer agency agreements are now required prior to agency representation and by being able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 7.3(4) as follows:

7.3(4) All ~~listings~~ brokerage and property management agreements are canceled by the broker whose license is suspended or revoked upon receipt of the order of revocation or suspension and prior to the effective date of the order.

a. The seller or landlord, or buyer or tenant, are advised that the seller or landlord, or buyer or tenant, may enter into a ~~listing or~~ brokerage agreement with another broker of choice.

b. A broker whose license is suspended or revoked cannot sell or assign ~~listings~~ brokerage or management agreements to another broker without the written consent of the ~~owner of the property~~ client, and any sale or assignment of ~~listings~~ brokerage or management agreements are completed prior to the effective date of the order.

ITEM 2. Amend subrule 7.4(3) as follows:

7.4(3) An arrangement in which a real estate licensee, in connection with the sale of a lot to a consumer or homebuilder, obligates the consumer or homebuilder to pay ~~a commission~~ compensation on the value of the house to be constructed on the lot.

ITEM 3. Amend subrule 7.4(6) as follows:

7.4(6) Any arrangement in which a real estate licensee enters into an agreement with a mortgage broker, bank, savings and loan, or other financial institution pursuant to which the making of a loan is directly or indirectly conditioned upon payment of ~~a real estate commission~~ compensation to the real estate licensee.

ITEM 4. Amend paragraph **7.9(1)"c"** as follows:

c. An affiliated business arrangement does not include an arrangement in which a real estate licensee, or an associate of a real estate licensee, gives or pays ~~an~~ undisclosed ~~commission~~ compensation in a transaction to any other licensee for a referral to provide real estate brokerage services, including franchise affiliates, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service. Referral fees or ~~commissions~~ compensation paid by a licensee to another licensee under these conditions are exempted from the disclosure criteria.

ITEM 5. Amend paragraph **7.11(2)"b"** as follows:

b. While this rule does not obligate that a licensee list property owned by the licensee with the employing or affiliated broker, the broker may obligate as a condition of employment or affiliation that the licensee list the property with the employing or affiliated broker or pay ~~a~~ ~~commission~~ compensation.

ITEM 6. Amend rule 193E—7.12(543B) as follows:

193E—7.12(543B) ~~Commission~~ Compensation controversies. The commission will not and is not authorized by law to consider or conduct hearings involving disputes over fees or ~~commissions~~ compensation between cooperating brokers, salespersons, and other brokers.

7.12(1) A former employing or affiliated broker may pay ~~a commission~~ compensation directly to a broker associate or salesperson who is presently assigned to another broker or firm, or whose license is inactive, expired, suspended or revoked, only if the ~~commission~~ compensation was earned while the broker associate or salesperson was actively licensed and assigned to the former broker. Whether or not ~~a commission~~ compensation was earned while the broker associate or salesperson was licensed with the former broker depends upon the licensee's written agreement with the former broker. The commission will not determine whether ~~a commission~~ compensation is earned or whether ~~a commission~~ compensation is to be paid.

7.12(2) If the licensee is presently assigned to another broker or firm, the former broker does not pay the ~~commission~~ compensation to the new employing or affiliated broker or firm.

7.12(3) An Iowa real estate broker may pay ~~a commission~~ compensation or a fee to or receive ~~a commission~~ compensation or a fee from a nonresident broker who is actively licensed in the broker's resident state but not licensed in Iowa. The nonresident broker takes no part in the listing, showing, negotiating offers or any other functions of a broker in Iowa unless actively licensed in Iowa.

7.12(4) No change.

ITEM 7. Amend rule 193E—7.13(543B) as follows:

193E—7.13(543B) Support personnel for licensees; permitted and barred activities. Whenever a licensee affiliated with a broker engages support personnel to assist the affiliated licensee in the activities of the real estate brokerage business, both the firm or ~~sponsoring~~ designated broker and the affiliated licensee are responsible for supervising the acts or activities of the support personnel; however, the affiliated licensee has the primary responsibility for supervision subject to Iowa Code section 543B.7A. Unless the support person holds a real estate license, the support person cannot perform any activities, duties, or tasks of a real estate licensee as identified in Iowa Code sections 543B.3 and 543B.6 and may perform only ministerial duties that do not need discretion or the exercise of the licensee's own judgment. Personal assistants are considered support personnel.

7.13(1) and **7.13(2)** No change.

7.13(3) Broker supervision and improper use of license and office. While individual and designated brokers are responsible for supervising the real estate-related activities of all support personnel, an affiliated licensee employing a personal assistant has the primary responsibility for supervision of that personal assistant. A broker is not held responsible for inadequate supervision if:

a. The unlicensed person violated a provision of Iowa Code chapter 543B or of commission rules that is in conflict with the ~~supervising~~ designated broker's specific written policies or instructions;

b. to *e.* No change.

7.13(4) In order to provide reasonable assistance to licensees and their support personnel, but without defining every permitted activity, the commission has identified certain tasks that unlicensed support personnel under the direct supervision of a licensee affiliated with a firm or broker may not perform.

a. Permitted activities include~~,~~ but are not limited to~~,~~ the following:

(1)	Answer the telephone, provide information about a listing to licensees, and forward calls from the public to a licensee;
(2)	Submit data on listings to a multiple listing service;
(3)	Check on the status of loan commitments after a contract has been negotiated;
(4)	Assemble documents for closings;
(5)	Secure documents that are public information from the courthouse and other sources available to the public;
(6)	Have keys made for company listings;
(7)	Write advertisements and promotional materials for the approval of the licensee and ~~supervising~~ designated broker;

(8)	Place advertisements in magazines, newspapers, websites, social media, and other media as directed by the ~~supervising~~ designated broker;
(9)	Record and deposit earnest money, security deposits, and advance rents, and perform other bookkeeping duties;
(10)	Type contract forms as directed by the licensee or the ~~supervising~~ designated broker;
(11)	Monitor personnel files;
(12)	Compute ~~commission~~ compensation checks;
(13)	Place signs on property;
(14)	Order items of routine repair as directed by a licensee;
(15)	Act as courier for such purposes as delivering documents or picking up keys. The licensee remains responsible for ensuring delivery of all executed documents obligated by Iowa law and commission rules;
(16)	Schedule appointments with the seller or the seller's agent in order for a licensee to show a listed property;
(17)	Arrange dates and times for inspections;
(18)	Arrange dates and times for the mortgage application, the preclosing walk-through, and the closing;
(19)	Schedule an open house;
(20)	Perform physical maintenance on a property; ~~or~~
(21)	Accompany a licensee to an open house or a showing and perform the following functions as a host or hostess: 1. Open the door and greet prospects as they arrive; 2. Hand out or distribute prepared printed material; 3. Have prospects sign a register or guest book to record names, addresses and telephone numbers; 4. Accompany prospects through the home for security purposes and not answer any questions pertaining to the material aspects of the house or its price and terms~~.~~;
(22)	Independently host open houses for tours attended by licensed brokers and salespersons only~~.~~;
(23)	Advertise and list property for rent;
(24)	Show property for rent;
(25)	Collect rent and deposits for the rental of property; or
(26)	Complete and execute form agreements for the rental of property.

b. Barred activities include~~,~~ but are not limited to~~,~~ the following:

(1)	Making cold calls by telephone or in person or otherwise contacting the public for the purpose of securing prospects for listings, ~~leasing,~~ sale, or exchanges~~, or property management~~;
(2)	Independently hosting open houses, kiosks, home show booths, or fairs attended by the public;
(3)	Preparing promotion materials or advertisements without the review and approval of licensee and ~~supervising~~ designated broker;
(4)	Showing property for sale independently;
(5)	Answering any questions on title, financing, or closings (other than time and place);
(6)	Answering any questions regarding a listing except for information on price and amenities expressly provided in writing by the licensee;
(7)	Discussing or explaining a contract, listing, ~~lease,~~ agreement, or other real estate document with anyone outside the firm;
(8)	Negotiating or agreeing to any ~~commission, commission split~~ compensation, management fee, or referral fee on behalf of a licensee, seller, or buyer with another licensee, client, or customer;
(9)	Discussing with the owner of real property the terms and conditions of the real property offered for sale or lease;
(10)	Collecting or holding deposit moneys, ~~rent,~~ other moneys or anything of value received from the owner of real property or from a prospective buyer ~~or tenant~~;
(11)	Providing owners of real property or prospective buyers ~~or tenants~~ with any advice, recommendations or suggestions as to the sale, purchase, or exchange~~, rental, or leasing~~ of real property that is listed, to be listed, or currently available for sale ~~or lease~~; or
(12)	Holding one's self out in any manner, orally or in writing, as being licensed or affiliated with a particular firm or real estate broker as a licensee.

ITEM 8. Amend rule 193E—7.14(543B) as follows:

193E—7.14(543B) Information provided by nonlicensed support personnel limited. Nonlicensed support personnel may, on behalf of the employer licensee, provide information concerning the sale, exchange, purchase, ~~rental, lease,~~ or advertising of real estate only to another licensee. Support personnel provides information only to another licensee that has been provided to the personnel by the employer licensee either verbally or in writing.

ITEM 9. Amend subrule 7.15(3) as follows:

7.15(3) A ~~customer's~~ client's agent or representative cannot negotiate directly or indirectly with a seller or buyer, or landlord or tenant, if the agent knows, or acting in a reasonable manner should have known, that the seller or buyer, or landlord or tenant, has a written unexpired ~~listing or~~ brokerage agreement for services on an exclusive basis.

ITEM 10. Amend subrule 7.15(4) as follows:

7.15(4) A listing agent cannot refuse to permit a ~~customer's~~ client's agent or representative to be present at any step in a real estate transaction, including~~,~~ but not limited to~~,~~ viewing a property, seeking information about a property, or negotiating directly or indirectly with an agent about a property listed by such agent~~;~~, and ~~no~~ an agent ~~refuses~~ cannot refuse to show a property listed by that agent or otherwise deal with a represented ~~customer~~ client who requests that the ~~customer's~~ client's agent or representative be present at any step in the real estate transaction, except as provided in this subrule.

a. The ~~customer's~~ client's agent or representative does not have the right to be present at any discussion of confidential matters or evaluation of the offer by the seller and the listing agent.

b. Unless the seller provides written instructions to the listing agent to exclude a ~~customer's~~ client's agent or representative from being present when the offer is presented, it is not unlawful for the ~~customer's~~ client's agent or representative to be present.

c. Compliance with this rule does not need or obligate a listing broker to ~~share~~ split any ~~commission~~ compensation or to otherwise compensate a ~~customer's~~ client's agent.

Regulatory Analysis

Notice of Intended Action to be published: 193E—subrule 8.1(3)
"Closing a Real Estate Business"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 544B

Public Hearing

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

December 5, 2024	6200 Park Avenue
3:30 to 4 p.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

This proposed rulemaking implements 2024 Iowa Acts, Senate File 2291. The proposed amendment is intended to update verbiage to be consecutive with verbiage changes in other chapters.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

No class of persons is affected by the amendment.

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

No class of persons is affected by the amendment.

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

- **Quantitative description of impact:**

There is no quantitative impact.

- **Qualitative description of impact:**

There is no qualitative impact.

3. **Costs to the State:**

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

There are no costs to the State.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenue.

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

There are no costs or benefits as a result of the proposed amendment.

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

There are no less costly methods to consider.

6. **Alternative methods considered by the agency:**

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

There were not any alternative methods considered.

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

There were not any alternative methods considered. Rulemaking is required to bring the Real Estate Commission into compliance with Senate File 2291.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 8.1(3) as follows:

8.1(3) Notifies all ~~listing and management~~ clients as well as parties and co-brokers to existing contracts, in writing, advising of the date the firm will close. All ~~listing and management~~ clients are advised in writing that they may enter into a new ~~listing~~ brokerage or management agreement with the broker of their choice;

Regulatory Analysis

Notice of Intended Action to be published: 193E—10.1(543B)
"Advertising"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 544B

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

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

Ashley Thompson
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

This proposed rulemaking complies with 2024 Iowa Acts, House File 2326. The amendments set forth supporting guidance to licensees regarding their advertising and supporting guidance to real estate teams regarding advertising and licensing.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Licensees may incur additional costs to adhere to the proposed rules by updating websites, business cards, signs, and other marketing tools.

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

The purpose of the proposed amendments is to provide additional guidance regarding advertising. Licensees will benefit from these rules as they will have additional guidance to help them comply with advertising requirements and avoid receiving discipline from the Real Estate Commission. The public will benefit from the proposed amendments because they will be able to easily identify a licensee, the licensee's team and the licensee's brokerage.

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:**

Licensees may lose revenue due to having to update their advertising; however, this loss will be minimal and affect very few licensees.

- **Qualitative description of impact:**

This chapter makes advertising easier to understand for both licensees and the public.

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 licensee and public inquiries, rulemaking and investigations. The time needed to manage this provision is generally in the form of responding to questions related to new law and rule changes as well as complaints being submitted regarding the changes. The commission utilizes one full-time equivalent (FTE) position to respond to inquiries, complete the rulemaking process, and handle complaints where discipline is imposed. One additional FTE position investigates and processes complaints relating to new laws and rules. Those two FTE positions work for other boards under the Commission as well. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund. Licensing fees go into the fund to cover the costs of the Board regulations.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues for the proposed changes. Staff salaries to support the work of the Commission are covered by the fund.

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

Licensees will be affected by 2024 Iowa Acts, Senate File 2291 and the supporting rules because agency buyer agreements are now required prior to agency representation, as is being able to negotiate compensation on purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

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

There are no less costly methods to consider.

6. **Alternative methods considered by the agency:**

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

There were no alternative methods considered.

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

There were no alternative methods considered. This proposed rulemaking is required to bring the Commission into compliance with 2024 Iowa Acts, Senate File 2291.

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?

A small real estate business may be affected by Senate File 2291 and the supporting rules because agency buyer agreements are now required prior to agency representation, as is being able to negotiate compensation on purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

Text of Proposed Rulemaking

ITEM 1. Amend rule 193E—10.1(543B), introductory paragraph, as follows:

193E—10.1(543B) Advertising. A broker cannot advertise to sell, buy, exchange, rent, or lease property in a manner indicating that the offer is being made by a private party not engaged in the real estate business, and no real estate advertisement can show only a post office box number, telephone number or street address. Every licensee, when advertising real estate, will use the licensed business name or the name under which the broker is licensed, and affirmatively and unmistakably indicate that the party is a real estate licensee and not a private party. Each broker when operating under a franchise or trade name other than the broker's own name may license the franchise or trade name with the commission, or clearly reveal in all advertising that the broker is the licensed individual who owns the entity using the franchise or trade name. An individual licensee or real estate team that is not a principal broker or firm is not required to register a trade name. An individual licensee or real estate team shall conspicuously display the name of the brokerage immediately preceding or immediately following the individual licensee's name or real estate team name in any advertising or information made available to the public. For purposes of this rule, "conspicuously display" shall mean advertisement that, when presented, a reasonable person would be able to identify or observe.

ITEM 2. Amend paragraph **10.1(4)"a"** as follows:

a. ~~The~~ Conspicuously display, in a font size that is readable to a reasonably prudent person, the firm or tradename as registered with the commission (abbreviations are not permitted) immediately preceding or immediately following the individual licensee's name or real estate team name;

ITEM 3. Amend paragraph **10.1(5)"b"** as follows:

b. ~~The~~ Conspicuously display the name of the firm or trade name with which the licensee is affiliated as that firm name is registered with the commission (abbreviations are not permitted) immediately preceding or immediately following the individual licensee's name or real estate team name;

Regulatory Analysis

Notice of Intended Action to be published: 193E—Chapter 11
"Brokerage Agreements"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 544B

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

This proposed rulemaking complies with 2024 Iowa Acts, Senate File 2291. The amendments set forth supporting guidance regarding agency brokerage agreements and negotiation compensation for real estate licensees. These amended rules also update language to be in alignment with Senate File 2291.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Licensees will be affected by Senate File 2291 and the supporting rules because agency buyer agreements are now required prior to agency representation, as is being able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

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

The purpose of Senate File 2291 is to protect buyers from having to pay fixed compensation fees and from risks that may arise from not having a buyer agency agreement.

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:**

Licensees may lose revenue due to having to procure a buyers agency agreement prior to providing agency services.

Unlicensed individuals may lose revenue due to having to procure either a broker's license to perform wholesaling or an Iowa licensed broker to facilitate the wholesaling transaction.

- **Qualitative description of impact:**

Licensees will be able to protect themselves from losing buyers to another agent by having a buyer agency agreement.

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 licensee and public inquiries, rulemaking and investigations. The time needed to manage this provision is generally in the form of responding to questions related to new law and rule changes as well as complaints being submitted regarding the changes. The commission utilizes one full-time equivalent (FTE) position to respond to inquiries, complete the rulemaking process, and handle complaints where discipline is imposed; and one other FTE position to investigate and process complaints relating to new laws and rules. Those two FTE positions work for other boards under the Real Estate Commission as well. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund. Licensing fees go into the fund to cover the costs of the Commission regulations.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues for the proposed definition changes. Staff salaries to support the work of the Commission are covered by the fund.

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

Licensees will be affected by Senate File 2291 and the supporting rules as agency buyer agreements are now required prior to agency representation, as is being able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

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

No less costly methods were considered.

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:**

No alternative methods were considered. This rulemaking is required to bring the Commission into compliance with Senate File 2291.

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?

A small real estate business may be affected by Senate File 2291 and the supporting rules because agency buyer agreements are now required prior to agency representation, as is being able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

Text of Proposed Rulemaking

ITEM 1. Amend rule 193E—11.1(543B) as follows:

193E—11.1(543B) ~~Listing brokerage~~ Brokerage agreements. All ~~listing~~ brokerage agreements ~~are~~ will be in writing, ~~properly identifying the property and containing all of the terms and conditions under which the property is to be sold,~~ including the ~~price, the commission~~ amount of compensation to be paid with disclosure that states compensation is negotiable and not set by law, the signatures of all parties concerned and a definite expiration date not to exceed one calendar year in length from the effective date, for properties with at least one, but not more than four dwelling units. ~~The agreement contains no provision requiring a party signing the listing to notify the broker of the listing party's intention to cancel the listing after such definite expiration date.~~ An exclusive ~~agency~~ brokerage agreement or exclusive right to sell ~~listing~~ agreement clearly indicates that it is such an agreement. A legible copy of every written ~~listing~~ brokerage agreement or other written authorization is given to the ~~owner of the property~~ client by a licensee as soon as the signature of the ~~owner~~ client is obtained.

1. A listing agreement should properly identify the property and contain the terms and conditions under which the property is to be sold, including but not limited to the list price and any compensation to be earned from the sale of the property.

2. A buyer representation agreement is required for all properties. Open houses or auctions are exempt from usage of a buyer representation agreement.

11.1(1) A licensee cannot solicit or enter into a ~~listing or~~ brokerage agreement with ~~an owner~~ a buyer or seller if the licensee knows or has reason to know that the ~~owner~~ buyer or seller has a written unexpired exclusive ~~agency~~ brokerage agreement or exclusive right to sell listing agreement to the property with another broker, unless the ~~owner~~ buyer or seller initiates the discussion and the licensee has not directly or indirectly solicited the ~~listing or~~ brokerage agreement.

a. However, if the ~~owner~~ buyer or seller initiates the discussion, the licensee may negotiate and enter into a ~~listing or~~ brokerage agreement that will take effect after the expiration of the current ~~listing~~ brokerage agreement.

b. If the ~~owner~~ buyer or seller initiates the discussion, the licensee may inform the ~~owner~~ buyer or seller that the ~~owner~~ buyer or seller needs to allow the current ~~listing~~ brokerage agreement to expire or obtain a mutually acceptable cancellation from the ~~listing~~ broker before any further discussion can take place.

11.1(2) A real estate licensee cannot negotiate a sale, exchange, or lease of real property directly with ~~an owner~~ a seller if it is known that the ~~owner~~ seller has a written unexpired contract in connection with the property which grants an exclusive right to sell to another broker~~, or which grants an exclusive agency to another broker~~.

11.1(3) A real estate licensee cannot negotiate a sale, purchase, exchange, or lease of real property directly with a buyer or seller if it is known that the buyer or seller has a written unexpired exclusive brokerage agreement with another broker.

~~11.1(3)~~ 11.1(4) ~~A listing agreement cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.~~ All brokerage agreements are written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker,

the affiliated broker associate or salesperson cannot solicit, take, or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.

~~11.1(4)~~ 11.1(5) Net listing barred. No licensee makes or enters into a net listing agreement for the sale of real property or any interest in real property. A net listing agreement is an agreement that specifies a net sale price to be received by the owner with the excess over that price to be received by the broker as ~~commission~~ compensation. The taking of a net listing is unprofessional conduct and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

ITEM 2. Rescind rule **193E—11.2(543B)**.

ITEM 3. Renumber rules **193E—11.3(543B)** to **193E—11.5(543B)** as **193E—11.2(543B)** to **193E—11.4(543B)**.

ITEM 4. Amend renumbered rule 193E—11.2(543B) as follows:

193E—11.2(543B) ~~Brokerage agreements~~ Cooperation, compensation, and compliance. ~~All brokerage agreements are written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker, the affiliated broker associate or salesperson cannot take or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.~~

11.2(1) Every written brokerage agreement includes, at a minimum, the criteria set forth in Iowa Code section ~~543B.57~~ 543B.56A and the following provisions:

a. ~~All brokerage~~ Brokerage agreements will contain a statement disclosing the brokerage policy on cooperating with and compensating other brokerages or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to ~~share~~ split the compensation with other brokerages and any other method for negotiating compensation for another party's broker. Such disclosure serves to inform the client of any policy that would limit the participation of any other brokerage; and

b. All ~~listing contracts and all~~ brokerage ~~agency contracts~~ agreements comply with Iowa real estate law and commission rules, including, but not limited to, rules 193E—11.1(543B) and 193E—11.4(543B) and 193E—Chapter 15.

~~**11.2(2)** No licensee makes or enters into a brokerage agreement that specifies a net sale, lease, rental, or exchange price to be received by an owner and the excess to be received by the licensee as a commission.~~

~~**11.2(3)** The taking of a net brokerage agreement is unprofessional conduct and a practice that is harmful or detrimental to the public and constitutes a violation of Iowa Code sections 543B.29(3) and 543B.34(8).~~

~~11.2(4)~~ 11.2(2) Duration of relationship. The relationships commence at the time of the brokerage agreement and continue until closing of the transaction or performance or completion of the agreement by which the broker was engaged within the term of the agreement and not exceeding 12 months. If the transaction does not close, or the agreement for which the broker was engaged is not performed or completed for any reason, the relationship ends at the earlier of the following:

a. ~~Any~~ The date of expiration agreed upon by the parties; or

b. Any termination by written agreement of the parties.

~~11.2(5)~~ 11.2(3) Obligation terminated. In addition to any continuing duty or obligation provided in the written agreement or pursuant to Iowa law and commission rules, a broker or brokerage engaged as a seller's or landlord's agent, buyer's or tenant's agent, ~~subagent,~~ or dual agent and affiliated licensees have the duty after termination, expiration, completion, or performance of the brokerage agreement to:

a. and *b.* No change.

~~**11.2(6)**~~ **11.2(4)** Compensation. In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, ~~or the sharing~~ or splitting of ~~a commission or~~ compensation between brokers.

a. No change.

b. Written permission of the client is needed as follows:

(1) A seller's or landlord's agent may ~~share the commission or other~~ split compensation paid by such seller or landlord with another broker, with the written consent of the seller or landlord.

(2) A buyer's or tenant's agent may ~~share the commission or other~~ split compensation paid by such buyer or tenant with another broker, with the written consent of the buyer or tenant.

(3) Without the written approval of the client, a seller's or landlord's agent cannot propose to the buyer's or tenant's agent that such seller's or landlord's agent may be compensated by ~~sharing~~ splitting compensation paid by such buyer or tenant.

(4) Without the written approval of the client, a buyer's or tenant's agent cannot propose to the seller's or landlord's agent that such buyer's or tenant's agent may be compensated by ~~sharing~~ splitting compensation paid by such seller or landlord.

c. No change.

d. A licensee cannot accept, receive or charge an undisclosed ~~commission~~ compensation for a transaction.

e. A licensee cannot give or pay an undisclosed ~~commission~~ compensation to any other licensee for a transaction, except payment for referrals to other licensees, including franchise affiliates, to provide real estate brokerage services, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service.

f. No change.

g. A licensee cannot give any undisclosed credit against ~~commission~~ compensation due from a client or licensee to any party to a transaction.

h. A licensee cannot accept, receive or charge any undisclosed payments for any services provided by any third party to any party to a transaction including~~,~~ but not limited to~~,~~ payments for procuring insurance or for conducting a property inspection related to the transaction.

i. to *k.* No change.

~~**11.2(7)** Solicitation of brokerage agreements. A licensee cannot advise, counsel, or solicit a brokerage agreement from a seller or buyer, or landlord or tenant, if the licensee knows, or acting in a reasonable manner should have known, that the seller or buyer, or landlord or tenant, has contracted with another broker for the same brokerage services on an exclusive basis.~~

~~*a.* This rule does not preclude a broker from entering into a brokerage agreement with a seller or buyer, or landlord or tenant, when the initial contact is initiated by the seller or buyer, or landlord or tenant, and the licensee has not directly or indirectly solicited the discussion, provided the brokerage agreement does not become effective until the expiration or release of the current brokerage agreement.~~

~~*b.* A brokerage agreement cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.~~

~~**11.2(8)**~~ **11.2(5)** Any ~~commission~~ compensation or fee in any brokerage agreement is fully negotiable among the parties to that brokerage agreement. Once the parties to a brokerage agreement have agreed to a ~~commission~~ compensation or fee, no licensee other than a party to that brokerage agreement attempts to alter, modify, or change or induce another person to alter, modify, or change a ~~commission~~ compensation or fee that has previously been agreed upon without the prior written consent of the parties to that brokerage agreement.

~~**11.2(9)**~~ **11.2(6)** The seller or landlord may, in the brokerage agreement, authorize the seller's or landlord's broker to disburse part of the broker's compensation to other brokers, including a buyer's or tenant's broker solely representing the buyer or tenant.

~~**11.2(10)**~~ **11.2(7)** Nothing contained in this rule shall obligate any buyer or tenant or seller or landlord to pay compensation to a licensee representing the buyer or tenant or seller or landlord in a

real estate transaction unless the buyer or tenant or seller or landlord has entered into a written brokerage agreement with the broker specifying the compensation terms and conditions, in accordance with Iowa real estate license law and commission rules.

ITEM 5. Amend renumbered rule 193E—11.3(543B) as follows:

193E—11.3(543B) Terms or conditions. A licensee cannot write, prepare or otherwise use a contract containing terms or conditions that would violate real estate laws in Iowa Code chapter 543B or commission rules. The broker is responsible to ensure that all preprinted documents and forms used are in compliance with these rules.

~~The broker is responsible to ensure that all preprinted documents and forms used are in compliance with these rules.~~

ITEM 6. Adopt the following **new** rule 193E—11.5(543B):

193E—11.5(543B) Enforcing a protective clause. To enforce a protective clause beyond the expiration of an exclusive brokerage agreement, there must be a provision for the protective clause in the brokerage agreement that establishes a definite protection period. In writing and prior to the expiration of the brokerage agreement, the broker furnishes to the party the names and available contact information of persons to whom the property was presented or a list of each property that was shown during the active term of the brokerage agreement and for whom protection is sought. Delivery is by personal or electronic service with written acknowledgment of receipt, or by regular mail or certified mail postmarked prior to the expiration of the brokerage agreement, return receipt requested.

ITEM 7. Amend subrules 11.6(1) and 11.6(2) as follows:

11.6(1) A licensee cannot pay ~~a commission~~ compensation, any part of ~~a commission~~ compensation, or valuable consideration to an unlicensed third party for performing brokerage functions or engaging in any activity that needs a real estate license. Referral fees or finder's fees paid to unlicensed third parties for performing brokerage activities, or engaging in any activity that needs a real estate license, are barred.

11.6(2) In a brokerage agreement, the broker is principal party to the contract. The broker may, with proper disclosure, pay a portion of the ~~commission~~ compensation earned to an unlicensed seller, landlord, buyer, or tenant that is a principal party to the brokerage agreement. This will be deemed a reduction in the amount of the earned ~~commission~~ compensation.

Regulatory Analysis

Notice of Intended Action to be published: 193E—Chapter 12
"Disclosure of Relationships"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543.18

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 544B and 2024 Iowa Acts, Senate File 2291

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's (DIAL's) website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

This proposed rulemaking implements 2024 Iowa Acts, Senate File 2291. The proposed amendments set forth supporting guidance for agency brokerage agreements and negotiation compensation for real estate licensees. These amended rules also update language to conform with Senate File 2291.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Licensees will be affected by Senate File 2291 and the supporting rules because buyer agency agreements are now required prior to agency representation, as is being able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

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

The purpose of Senate File 2291 is to protect buyers from having to pay fixed compensation fees and risks that may arise from not having an buyer agency agreement.

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:**

Licensees may lose revenue due to having to procure a buyer agency agreement prior to providing agency services.

Unlicensed individuals may lose revenue due to having to procure either a broker's license to perform wholesaling or an Iowa licensed broker to facilitate the wholesaling transaction.

- **Qualitative description of impact:**

Licensees will be able to protect themselves from losing buyers to another agent by having a buyer agency agreement.

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 licensee and public inquiries, rulemaking and investigations. The time needed to manage this provision is generally in the form of responding to questions related to new law and rule changes as well as the complaints being submitted regarding the changes. The Real Estate Commission utilizes 1.0 full-time equivalent (FTE) position to respond to inquiries, complete the rulemaking process and handle complaints where discipline is imposed, and 1.0 other FTE position to investigate and process complaints relating to new laws and rules. Those two staff work for other boards under DIAL as well. Staff salaries to support the work of the Real Estate Commission are covered by the Licensing and Regulation Fund. Licensing fees go into the fund to cover the costs of Commission regulations.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenues as a result of the proposed amendments. Staff salaries to support the work of the Commission are covered by the fund.

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

Licensees will be affected by Senate File 2291 and the supporting rules since agency buyer agreements are now required prior to agency representation, as is being able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

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

There are no less costly methods to consider.

6. **Alternative methods considered by the agency:**

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

There were no alternative methods considered.

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

There were no alternative methods considered. This rulemaking is required to bring the Commission into compliance with Senate File 2291.

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?

A small real estate business may be affected by Senate File 2291 and the supporting rules because agency buyer agreements are now required prior to agency representation, as is being able to negotiate compensation on the purchase agreements. Licensees may lose potential revenue by having to require a buyer agency agreement prior to providing any representation.

Text of Proposed Rulemaking

ITEM 1. Amend paragraph **12.2(3)"b"** as follows:

b. The written disclosure is acknowledged by separate signatures ~~of all parties to the transaction~~. A change in the licensee's representation that makes the initial written disclosure incomplete, misleading, or inaccurate obligates that a new verbal disclosure be made ~~which~~ that is followed by a new written disclosure signed by all parties to the transaction as soon as practical.

ITEM 2. Amend subrule 12.2(6) as follows:

12.2(6) Nothing contained in this rule bars a party from entering into a written ~~listing or~~ brokerage agreement with a broker ~~which~~ that contains duties, obligations, and responsibilities that are in addition to those specified in Iowa real estate license law and commission rules.

ITEM 3. Amend subrule 12.2(10) as follows:

12.2(10) If the seller, landlord, buyer, or tenant ~~rejects representation, or~~ refuses to sign the agency disclosure document, or refuses to sign acknowledging receipt of the disclosure, the licensee notes that fact and includes the date, place, time, and the names of others in attendance on a copy of the agency disclosure document and obtains other documentation establishing delivery of the disclosure and maintains the written documentation, including but not limited to copies of facsimile, restricted delivery certified mail, and other communications, in the transaction file.

ITEM 4. Amend subrule 12.2(17) as follows:

12.2(17) The licensee offering brokerage services to a person as a buyer's or tenant's agent, or who is providing brokerage services to a person as a seller's or landlord's agent, discloses in writing to that person the type or types of brokerage relationships the broker and affiliated licensees are offering to that person before entering into a ~~listing or~~ brokerage agreement with that person.

ITEM 5. Amend subparagraph **12.3(1)"c"(7)** as follows:

(7) Providing brokerage services ~~to all parties to the transaction~~ honestly and in good faith;

ITEM 6. Amend subrule 12.3(2) as follows:

12.3(2) *Duty to a buyer or tenant.* A licensee acting as an exclusive seller's or exclusive landlord's agent discloses to any customer all material adverse facts actually known by the licensee pursuant to Iowa Code section 543B.56.

a. and *b.* No change.

~~*c. A seller or landlord may agree in writing with an exclusive seller's or exclusive landlord's agent that other designated brokers may be retained or compensated as subagents, and any broker acting as a subagent on the seller's or landlord's behalf is an agent with the same obligations and responsibilities to the seller or landlord as the primary broker of the seller or landlord.*~~

~~*d.*~~ *c.* A real estate brokerage engaged by a seller or landlord in a real estate transaction may provide assistance to an unrepresented buyer or tenant by ~~performing such acts as preparing offers and conveying those offers to the seller or landlord and~~ providing information and assistance concerning professional services not related to real estate brokerage services.

ITEM 7. Amend subrule 12.3(3) as follows:

12.3(3) *Alternative properties.* The licensee may show alternative properties not owned by the seller or landlord to ~~prospective~~ buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the seller or landlord.

ITEM 8. Amend subparagraph **12.4(1)"c"(7)** as follows:

(7) Providing brokerage services ~~to all parties to the transaction~~ honestly and in good faith;

ITEM 9. Amend subrules 12.4(2) and 12.4(3) as follows:

12.4(2) *Duty to a seller or landlord.* A licensee acting as an exclusive buyer's or an exclusive tenant's agent discloses to any customer all material adverse facts actually known by the licensee, pursuant to Iowa Code section 543B.56.

a. and *b.* No change.

~~*c.* A buyer or tenant may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained or compensated as subagents, and any broker acting as a subagent on the buyer's or tenant's behalf is a single agent with the same obligations and responsibilities to the buyer or tenant as the primary broker of the buyer or tenant.~~

~~*d.*~~ *c.* A real estate brokerage engaged by a buyer or tenant in a real estate transaction may provide assistance to an unrepresented seller or landlord by ~~performing such acts as preparing offers and conveying those offers to the buyer or tenant and~~ providing information and assistance concerning professional services not related to real estate brokerage services.

12.4(3) *Competing buyers or tenants.* The licensee may show properties in which the buyer or tenant is interested to other ~~prospective~~ buyers or tenants, may assist other competing buyers or tenants, and may enter into brokerage ~~service~~ agreements with other competing buyers or tenants without breaching any duty or obligation to the buyer or tenant.

ITEM 10. Amend paragraph **12.5(4)"b"** as follows:

b. The potential dual agency agreement should be provided to the buyer or tenant prior to entering into a buyer or tenant ~~agency~~ agreement ~~or a contract for buyer or tenant brokerage services~~.

ITEM 11. Amend rule 193E—12.6(543B) as follows:

193E—12.6(543B) Appointed agents within a brokerage. Iowa Code section 543B.59 authorizes a designated broker to elect to appoint in writing one or more different licensees affiliated with the broker to act as agent to represent exclusively different clients in the same transaction, to the exclusion of all other affiliated licensees within the real estate brokerage. A licensee cannot disclose, except to the licensee's designated broker, information made confidential by request or instructions of the client the licensee is representing or otherwise confidential by statute or rule, except information allowed by this chapter or mandated to be disclosed by law.

12.6(1) No change.

12.6(2) The designated broker may decide that since both seller and buyer, or landlord and tenant, brokerage relationships are being offered to consumers by the broker's company, only the affiliated licensee who, on behalf of the designated broker, entered into the listing agreement with the seller or leasing agreement with the landlord will represent the seller or landlord as that client's agent. In that scenario, ~~all~~ other licensees affiliated with the designated broker ~~will~~ may represent buyers or tenants as their agents in any transactions dealing with the subject property.

12.6(3) The designated broker may decide that since both seller and buyer, or landlord and tenant, brokerage relationships are being offered to consumers by the broker's company, only the affiliated licensee who, on behalf of the designated broker, entered into the buyer representation agreement with the buyer or leasing agreement with the tenant will represent the buyer or tenant as that client's agent. In that scenario, other licensees affiliated with the designated broker may represent sellers or landlords as their agents in any transactions dealing with the subject property.

~~**12.6(3)**~~ **12.6(4)** If any seller, landlord, buyer, or tenant who is a client of the broker refuses to sign and consent to the appointed agent within the brokerage appointed by that same broker for the

other party to the transaction, then the broker and licensees affiliated with the broker cannot act as an appointed agent for that other party.

ITEM 12. Amend subrule 12.7(1) as follows:

12.7(1) Prior to entering into a ~~listing or~~ brokerage agreement, a real estate brokerage notifies a client in writing of the real estate brokerage's appointed agent policy and those affiliated licensees in accordance with Iowa Code section 543B.59(1). The appointed agent disclosure includes, at a minimum, the following provisions:

a. to *e.* No change.

Regulatory Analysis

Notice of Intended Action to be published: 193E—Chapter 16
"Prelicense Education and Continuing Education"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 543B

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's (DIAL's) website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

This proposed rulemaking enforces 2024 Iowa Acts, House File 2686. The proposed amendments set forth continuing education requirements for real estate licensees. The intended benefit of these amendments is to ensure that licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans. The Real Estate Commission reviewed the continuing education requirements in the fall of 2023 pursuant to Executive Order 10. The chapter is being amended to comply with the statutory changes from 2024 Iowa Acts, House File 2686, allowing a licensee to carry over up to 50 percent of excess completed continuing education hours from the previous renewal cycle. This rulemaking would grant real estate licensees the ability to carry over up to 18 hours of continuing education earned in excess of the 36 hours required every three years.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Licensees are financially responsible for their continuing education. These proposed amendments will not affect anyone financially because each licensee will continue to pay for that licensee's own courses. Licensees may see a decrease in costs due to not losing excess hours of continuing education.

A cost to the agency is the staff time needed to manage licensing activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements; continuing education audits; and approving

providers, instructors, and continuing education courses. The Commission utilizes 1.0 full-time equivalent (FTE) position to process continuing education applications, inquiries, and audits, and one other FTE position to assist with inquiries. Those two staff work for other boards under DIAL as well. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund. Licensing fees go into the fund to cover the costs of the Commission regulations.

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

Licensees will benefit because they will be able to use excess continuing education hours taken during one license term and carry them over to the following licensing term, saving time and money.

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:**

Licensees take continuing education courses through many different avenues, including but not limited to private industries, college, conventions, real estate brokerages, and real estate associations. Licensing staff is not privy to the cost of all courses or activities provided for continuing education credits, so a quantitative description of the cost is not obtainable.

- **Qualitative description of impact:**

Licensees will be able to retain excess continuing education credits that they may have lost previously. This will allow more flexibility for licensees to complete courses and potentially save licensees money.

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 licensing activities, which includes continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements; continuing education audits; and approving providers, instructors, and continuing education course applications. The Commission utilizes 1.0 FTE position to process continuing education applications, inquiries, and audits, and 1.0 other FTE position to assist with inquiries. Those two staff work for other boards under DIAL as well. Staff salaries to support the work of the Commission are covered by the fund. Licensing fees go into the fund to cover the costs of the Commission regulations.

- **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 Commission are covered by the fund.

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

Allowing licensees to carry over up to 50 percent of their excess continuing education hours will allow licensees greater flexibility and potentially cost savings. The impact on the private industry organizations that offer these continuing education programs is unknown.

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

A less costly method would be to decrease the continuing education hour requirements.

6. **Alternative methods considered by the agency:**

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

No alternative methods were considered because the Commission agrees with the current continuing education requirement of 36 hours.

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

There were no alternative methods considered because these amendments are required by 2024 Iowa Acts, House File 2686.

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 amendments may impact smaller schools or providers because licensees may not need to take as many courses. There is not expected to be any impact on a licensee's business because the licensee will have the flexibly to use excess hours that ultimately would save time and money.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 16.4(2) as follows:

16.4(2) As a criteria of license renewal in an active status, each real estate licensee completes a minimum of 36 hours of approved programs, courses or activities. ~~The continuing education is completed during the three calendar years of the license term and cannot be carried over to another license renewal term.~~ Licensees 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. Licensees may apply a maximum of 18 hours from the previous renewal period. Licensees cannot carry over any hours toward the mandatory eight-hour law update course nor the four-hour ethics course. Approved courses in the following subjects are completed to renew a license to active status:

Law Update	8 hours
Ethics	4 hours
Electives	24 hours

ITEM 2. Amend subrule 16.5(1) as follows:

16.5(1) The commission will verify by random audit or on a test basis the education claimed by the licensee. It is the responsibility of the licensee to maintain records that support the continuing education claimed and the validity of the credits. Documentation is retained by the licensee for a period of ~~three~~ six years after the effective date of the license renewal.

ITEM 3. Amend rule 193E—16.6(543B) as follows:

193E—16.6(543B) Reactivating an inactive license. A license may be renewed without the necessary continuing education, but it is only renewed to an inactive status. Prior to reactivating a license that has been issued inactive due to failure to submit evidence of continuing education, the licensee submits evidence that all deficient continuing education hours have been completed. ~~The maximum continuing education hours cannot exceed the prescribed number of hours of one license renewal period and are completed during the three calendar years preceding activation of the license.~~ Licensees 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. Licensees may

apply a maximum of 18 hours from the previous renewal period. Licensees cannot carry over any hours toward the mandatory eight-hour law update course nor the four-hour ethics course.

Regulatory Analysis

Notice of Intended Action to be published: 193E—subrule 18.14(5)
"Investigations and Disciplinary Procedures"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 543B

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's (DIAL's) website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

The proposed amendment implements Iowa Code section 543B.56A, which imposes a civil penalty for failure to have a brokerage agreement.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

No costs are associated with this rulemaking.

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

This amendment benefits the public, specifically lower income home owners, by imposing a penalty for failing to have a brokerage agreement.

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

- **Quantitative description of impact:**

There is no quantitative impact of the proposed amendment.

- **Qualitative description of impact:**

There is not qualitative impact of the proposed amendment.

3. **Costs to the State:**

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

There are no costs associated with the proposed amendment.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenues as a result of the proposed amendment.

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

The Real Estate Commission believes the current requirements ensure 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:**

There are no less costly methods to consider.

6. **Alternative methods considered by the agency:**

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

There were no alternative methods considered.

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

There were no alternative methods considered.

Small Business Impact

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

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

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

The proposed amendment does not have any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 18.14(5) as follows:

18.14(5) *Violations for which civil penalties may be imposed.* The following is a nonexclusive list of violations upon which civil penalties may be imposed:

a. to *r.* No change.

s. Failing to have a brokerage agreement signed as outlined in Iowa Code section 543B.56A.

~~*s.*~~ *t.* Violating any of the remaining provisions in 193E—Chapters 1 through ~~20 inclusive~~ 22 that have not heretofore been specified in this rule.

Regulatory Analysis

Notice of Intended Action to be published: 193E—Chapter 21
"Enforcement Proceedings Against Unlicensed Persons"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 543B

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's (DIAL's) website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

The proposed amendment implements Iowa Code section 543B.56A, which imposes a civil penalty for failure to have a brokerage agreement.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

No costs are associated with this rulemaking.

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

This amendment benefits the public, specifically lower income home owners, by imposing a penalty for failing to have a brokerage agreement.

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

- **Quantitative description of impact:**

There is no quantitative impact of the proposed amendment.

- **Qualitative description of impact:**

There is no qualitative impact of the proposed amendment.

3. **Costs to the State:**

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

There are no costs associated with the proposed amendment.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenues.

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

The Real Estate Commission believes the current requirements ensure 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:**

There are no less costly methods to consider.

6. **Alternative methods considered by the agency:**

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

There were no alternative methods considered.

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

There were no alternative methods considered.

Small Business Impact

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

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

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

The proposed amendment does not create any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 193E—21.2(17A,543B) as follows:

193E—21.2(17A,543B) Unlawful practices. Practices by unlicensed persons which are subject to civil penalties include~~,~~ but are not limited to:

1. Acts or practices by unlicensed persons ~~which~~ that need licensure pursuant to Iowa Code sections 543B.1, 543B.3, ~~and~~ 543B.6, and 543B.56A, which do not fall into the exceptions listed in Iowa Code section 543B.7.

2. to 7. No change.

Regulatory Analysis

Notice of Intended Action to be published: 193E—Chapter 22
"Real Estate Wholesaling"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 543B.18
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 543B

Public Hearing

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

December 9, 2024	6200 Park Avenue
10 to 10:30 a.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's (DIAL's) website prior to the hearing.

Public Comment

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

Ashley Thompson
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9028
Email: ashley.thompson@dia.iowa.gov

Purpose and Summary

The proposed chapter enforces 2022 Iowa Acts, House File 2394, and provides supporting rules.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Individuals who are not licensed and now require either a broker license or broker representation will have to either compensate a broker to facilitate the transaction or incur the costs of obtaining a license to practice real estate.

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

A member of the public who is interested in selling the member's home though a wholesale transaction will benefit from the State regulating the practice of wholesaling by avoiding fraudulent 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:**

The quantitative impact of this rulemaking is unknown because it is implementing new legislation from 2024 Iowa Acts, House File 2394. DIAL continues to review the impact on the community.

- **Qualitative description of impact:**

This rulemaking implements new legislation from 2024 Iowa Acts, House File 2394. Since these are new rules, the qualitative impact is not known. The belief is that this rulemaking will improve the real estate experience and ensure all individuals are receiving notice and have knowledge of who they are dealing with in their real estate transactions.

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 duties associated with regulating this new law. The time needed to manage this provision is generally in the form of responding to questions related to the practice of wholesaling and investigating complaints submitted regarding this matter. The Real Estate Commission utilizes 1.0 full-time equivalent (FTE) position to process continuing education applications, inquiries, and audits, and one other FTE position to assist with inquiries. Those two staff work for other boards under DIAL as well. Staff salaries to support the work of the Commission are covered by the Licensing and Regulation Fund. Licensing fees go into the fund to cover the costs of the Commission regulations.

- **Anticipated effect on state revenues:**

There is no anticipated impact on state revenues. Staff salaries to support the work of the license are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

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

The Commission believes the current requirements ensure 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:**

There are no less costly methods to consider.

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:**

No alternative methods were considered.

Small Business Impact

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

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

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

The proposed chapter may affect small businesses that provided wholesaling practices without a broker license. The business will either need to compensate a broker to facilitate the transaction or incur the costs of obtaining a license to practice real estate.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 193E—Chapter 22:

CHAPTER 22
WHOLESALING OF RESIDENTIAL PROPERTY

193E—22.1(543B) Real estate wholesaling. A licensed real estate broker may engage in residential real estate wholesaling or represent a nonlicensed wholesaler in a residential real estate transaction provided proper disclosure is made under the guidelines in Iowa Code section 543B.6A.

193E—22.2(543B) Disclosure of wholesaling. A real estate wholesaler shall provide disclosure to all parties to the residential real estate wholesaling transaction prior to executing a contract to purchase or conveying an equitable interest to another party, including but not limited to the following:

22.2(1) The legal identities of all parties to the transaction, including the current titleholder for the residential property, the wholesaler, the purchaser of the equitable interest, and any real estate licensee who represents a party in the transaction.

22.2(2) An explanation of the wholesaling process, including but not limited to the following:

a. A wholesaler holds an equitable interest in the property, not legal title.

b. A wholesaler is selling its equitable interest in the property to another party.

c. A wholesaler may earn a profit from the sale of its equitable interest in the property.

22.2(3) Wholesaling disclosure: "This transaction constitutes real estate wholesaling, meaning the wholesaler holds only an equitable interest in the property and may not be able to convey title."

193E—22.3(543B) Penalties. Residential real estate wholesalers who do not comply with the required disclosures or licensing requirements shall be subject to a civil fine of up to $10,000 or 10 percent of the sale price for each transaction in violation of Iowa Code section 543B.6A, and the seller or buyer may cancel the contract at any time prior to closing without penalty and retain any earnest money paid by the wholesaler. Civil penalties shall be enforced at the discretion of the real estate commission.

These rules are intended to implement Iowa Code section 543B.6A.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapters 230 and 254
"Administration of Cigarette, Tobacco, Vapor Products, and Alternative Nicotine Products"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 453A.8, 453A.13, 453A.25, 453A.40, 453A.47, 453A.47A, and 453A.49

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 453A

Public Hearing

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

December 4, 2024 2:30 to 3:30 p.m.	Via videoconference call: meet.google.com/dfi-ijbx-deo

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Matt Bishop
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.452.9205
Email: matt.bishop@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to adopt new Chapter 230 and rescind and reserve Chapter 254. Chapter 254 contains rules on the Department's interpretation of Iowa Code chapter 453A on the administration of cigarette and tobacco taxes and the regulation of alternative nicotine and vapor products. The Department determined that the rules aid the public understanding of these topics. However, the Legislature's recent passage of 2024 Iowa Acts, Senate File 345 and House File 2677, on the regulation of devices and vapor products, will require, and in the case of House File 2677 mandate, the adoption of new administrative rules. The Department has determined that the current placement of the administrative rules on cigarette and tobacco-related and adjacent topics does not allow for these new forthcoming chapters of rules to be placed near the others, hindering the public's accessibility to these rules.

Therefore, the Department proposes readopting the rules on the administration of the excise tax on cigarette and tobacco and the regulation of alternative nicotine and vapor products in new Chapter 230. This move will provide the public easier accessibility to this and other cigarette and tobacco-related administrative rules. The Department proposes revisions to the text of the rules for better organization and clarification and to remove unnecessary, obsolete, and duplicative statutory language as required by Executive Order 10.

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 of the proposed rulemaking beyond what is imposed by the underlying statutes.

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

The public will benefit from the proposed rulemaking because the proposed rulemaking provides guidance on the imposition and administration of the excise taxes on cigarette and tobacco as well as the regulation of alternative nicotine and vapor products.

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

- **Quantitative description of impact:**

There is no economic impact of the proposed rulemaking beyond what is contained in the underlying statutes.

- **Qualitative description of impact:**

The proposed rulemaking will help to reduce uncertainty about the imposition and administration of the excise taxes on cigarettes and tobacco as well as the regulation of alternative nicotine and vapor products. Failure to have these rules would lead to confusion, additional questions to the Department, and potential errors in the administration of the excise taxes and regulation of the products.

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 the proposed rulemaking beyond those that would otherwise be required to administer the underlying statutes.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues. However, the proposed rulemaking provides guidance on the imposition and administration of the excise taxes on cigarette and tobacco, making it more likely that the correct amount of tax will be collected and remitted.

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

The cost of inaction would be failing to update the rules on the administration of the excise taxes on cigarette and tobacco and the regulation of alternative nicotine and vapor products to remove unnecessary, obsolete, or duplicative statutory language. The benefit of the proposed rulemaking is reducing confusion about these topics and making it more likely the correct amount of excise tax on cigarettes and tobacco is collected and remitted.

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

The proposed rulemaking is not costly or intrusive. The purpose of the proposed rulemaking is to provide guidance on the administration of the excise tax on cigarettes and tobacco and the regulation of alternative nicotine and vapor products. The Department considered the option of not having administrative rules for some topics. However, the Department determined that the rules provide helpful guidance and the Department, in some instances, is statutorily required to adopt administrative rules.

6. **Alternative methods considered by the agency:**

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

The Department considered the possibility of not providing rules in this chapter. However, the Department determined the rules provide useful guidance beyond what is provided in the underlying statutes.

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

The Department determined that retention of rules with the proposed revisions will reduce confusion about the subject of those rules. Further, moving the rules to allow for future rulemaking on related subjects will allow for easier accessibility for the public. Proceeding without rules could negatively impact members of the public by limiting their knowledge about these topics.

Small Business Impact

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

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

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

The proposed rulemaking does not have a substantial impact on small business because the rules do not make a distinction based on the size of a business. Further, the rules do not impose any requirements on business other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 230:

CHAPTER 230
ADMINISTRATION OF CIGARETTE, TOBACCO, VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS

701—230.1(453A) Definitions. Terms have the same meaning as defined in Iowa Code chapters 421B, 453A, 453C, and 453D, and chapter 453E as enacted by 2024 Iowa Acts, Senate File 345. In addition, as used in this title, the following definitions apply:

"Permit" means any permit or license issued under Iowa Code chapter 453A.

"Permittee" means any person holding or required to obtain a permit or license of any kind under Iowa Code chapter 453A.

"Supplier" means any person or firm authorized to manufacture or supply cigarette stamps for the department.

"Tax" means the tax imposed under Iowa Code chapter 453A.

"Taxpayer" means any person required to collect or remit tax directly to the department or required to be licensed or to file any report or return or keep records under Iowa Code chapter 453A.

"Tobacco" means the same as "tobacco products" as defined in Iowa Code sections 453A.1 and 453A.42.

This rule is intended to implement Iowa Code chapters 421B, 453A, 453C, and 453D, and 453E as enacted by 2024 Iowa Acts, Senate File 345.

701—230.2(453A) Records.

230.2(1) *Generally.* Every taxpayer shall keep, preserve, and make available to the department records for a period of at least three years. The following is a nonexhaustive list of records that are subject to the provisions of this rule. 701—Chapter 11 provides more information for taxpayers using an electronic data interchange process or technology. Nothing in this rule shall be construed to affect the provisions of any applicable federal law. The records will be considered inadequate when the requirements of this rule are not met. The director may, by express order in certain cases, authorize

permit holders to keep their records in a manner and upon forms other than those so prescribed (agreements must be in writing).

230.2(2) *General requirements for records used in an appeal.* If a tax liability has been assessed and an appeal is pending to the department, district court or an appellate court, books, papers, records, memoranda or documents specified in this rule that relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

230.2(3) *Cigarette manufacturer.* Cigarette manufacturers are required to keep the following records.

a. Records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.

b. Records evidencing the transportation of cigarettes into Iowa.

c. Records, including invoices, showing all sales of cigarettes to permittees.

d. A record of all stamps purchased.

e. Copies of all reports filed with the department.

230.2(4) *Cigarette distributing agent.* Cigarette distributing agents are required to keep the following records.

a. Records of the receipt of all cigarettes showing the number of cigarettes received and from whom the cigarettes were received.

b. Records of all distribution of cigarettes showing the number of cigarettes shipped and to whom and at whose direction the cigarettes were distributed.

c. Records showing all exports of cigarettes.

d. Copies of all reports filed with the department.

e. Detailed inventory records.

f. Freight receiving and shipping records.

230.2(5) *Cigarette distributors.* Cigarette distributors are required to keep the following records.

a. Records, including invoices, showing the purchase of all cigarettes sold, used or stored in Iowa.

b. Records, including invoices, showing the sale of cigarettes in Iowa.

c. Detailed inventory records.

d. Freight receiving and shipping records.

e. A record of all stamps purchased.

f. Copies of all reports filed with the department.

230.2(6) *Cigarette wholesaler.* Cigarette wholesalers are required to keep the following records.

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records, including invoices, evidencing the sale of all cigarettes.

c. Detailed inventory records.

230.2(7) *Cigarette vendor.* Cigarette vendors are required to keep the following records.

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records evidencing the sale of cigarettes.

c. Inventory records.

d. Records of all cigarette vending machines owned, furnished, installed, serviced, operated or maintained by the vendor and the location of each.

230.2(8) *Cigarette retailer.* Cigarette retailers are required to keep the following records.

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Inventory records.

230.2(9) *Tobacco distributor.* Tobacco distributors are required to keep the same records as a cigarette distributor as described in subrule 230.2(5), but with respect to tobacco, no records of stamps purchased are required.

230.2(10) *Tobacco subjobber.* Tobacco subjobbers are required to keep the same records as a cigarette wholesaler as described in subrule 230.2(6) but with respect to tobacco.

230.2(11) *Tobacco retailer.* Tobacco retailers are required to keep the same records as a cigarette retailer as described in subrule 230.2(8) but with respect to tobacco.

230.2(12) *Common carrier engaged in transporting cigarettes or tobacco products into Iowa.* Common carriers engaged in transporting cigarettes or tobacco products into Iowa are required to keep the following records.

a. Copies of bills of lading or manifests as to each transportation of cigarettes or tobacco.

b. Log book or trip sheets.

230.2(13) *Microfilm and related records system.*

a. Microfilm, microfiche, COM (computer on machine) and other related reduction in storage systems will be referred to as "microfilm" in this rule.

b. Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those that have been approved by the Internal Revenue Service. However, microfilm reproductions of supporting records of detail, such as sales invoices, purchase invoices, credit memoranda, etc., may be allowed providing all the following conditions are met and accepted by the taxpayer.

(1) Appropriate facilities are provided to ensure the preservation and readability of the films.

(2) Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and systematically filed.

(3) The taxpayer agrees to provide transcripts of any information contained on microfilm that may be required for purposes of verification of tax liability.

(4) Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.

(5) Any audit of "detail" on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director's designated representative.

(6) A posting reference must be on each invoice.

(7) Credit memoranda must carry a reference to the document evidencing the original transaction.

(8) Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

230.2(14) *Automatic data processing records.* Automatic data processing records are defined and described in 701—Chapter 11.

230.2(15) *Other persons.* The director may require any person other than those previously listed in this rule to maintain books and records as deemed necessary by the director.

This rule is intended to implement Iowa Code sections 453A.15; 453A.18; 453A.19 as amended by 2024 Iowa Acts, House File 2677; 453A.24; 453A.45; and 453A.49.

701—230.3(453A) Form of invoice. Whenever an invoice is required to be prepared or kept by Iowa Code chapter 453A or these rules, at minimum, it must contain the following information:

1. Seller's name and address.
2. Purchaser's name, address, and permit number (if any).
3. Date of sale.
4. All prices and discounts stated separately.
5. An indication as to whether cigarettes or tobacco products are being sold with or without tax stamps attached or tax included.
6. Origination and destination points.

This rule is intended to implement Iowa Code sections 453A.15, 453A.25, 453A.45, and 453A.49.

701—230.4(453A) Bonds. When bonds are required by Iowa Code chapter 453A or these rules, said bonds will be in the form of cash or a bond issued by a surety company licensed to do business in the state of Iowa, payable to the State of Iowa, and in a form approved by the director. Bonds required by

tobacco distributors must be issued by a surety company licensed to do business in Iowa. However, with prior approval by the director, a cash bond will be accepted by the department as a substitute for the surety bond. Iowa Code section 453A.44(4) provides more information.

This rule is intended to implement Iowa Code sections 453A.14 and 453A.44.

701—230.5(453A) Permit applications and denials.

230.5(1) *Applications for permits in general.* The application forms for all permits issued under Iowa Code chapter 453A are available from the department. Each application must include the following information:

a. Nature of the applicant's business;

b. Type of permit requested;

c. Address of the principal office of the applicant;

d. Address of the place of business for which the permit is to apply;

e. Names and addresses of no more than three principal officers or members, if the business is not a sole proprietorship;

f. A list of persons who will be the applicant's suppliers or customers or both (whichever is applicable);

g. Whether the applicant possesses any other permit issued under Iowa Code chapter 453A; and

h. Signature of the person authorized to complete the application. For electronically transmitted applications, the application form will state that, in lieu of the person's handwritten signature, the person's email address or the person's fax signature will constitute a valid signature.

i. Any other information required on the forms issued by the department for the purpose of administering Iowa Code chapter 453A and these rules.

230.5(2) *Cigarette distributor applicants.* In addition to the requirements above, cigarette distributor applicants must also supply certificates from cigarette manufacturers indicating the intention to sell unstamped cigarettes to the applicant.

230.5(3) *Denial of application for permit.*

a. The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due that is administered by the department or the interest or penalty on the tax. Rule 701—201.10(423) describes what constitutes being substantially delinquent in paying a tax.

b. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership.

c. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. Unlike a partnership, the corporation must, initially, owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax.

d. The director will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from child support services in regard to the individual unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

230.5(4) *Applications for retail permits.* Applications for retail permits are supplied by the department to city councils and county boards of supervisors. The application must be filed with the individual council or board either in a paper format or online through GovConnectIowa.

This rule is intended to implement Iowa Code chapter 252J and sections 453A.13, 453A.16, 453A.17, 453A.22, 453A.23, and 453A.44.

701—230.6(453A) Permit revocation.

230.6(1) *Revocation by the department.* Any permit revocation by the department under Iowa Code chapter 453A and this rule is subject to the requirements of rules 701—7.19(17A) and 701—7.39(17A).

230.6(2) *Delinquency.*

a. The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax that is administered by the department or the interest or penalty on the tax. Rule 701—201.10(423) describes what constitutes being substantially delinquent in paying a tax.

b. If the permit holder is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax.

c. If the permit holder is a partnership, a permit cannot be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest that is not a liability of the partnership.

230.6(3) *Revocation by a local jurisdiction.* Iowa Code chapter 17A does not apply to boards of supervisors or city councils. As a result, any permit revocation by a board of supervisors or city council is subject to the procedure or policy adopted by such board of supervisors or city council.

230.6(4) *Revocations for child support violations.* The department will revoke a permit of a permit holder, who is an individual, if the department has received a certificate of noncompliance from child support services in regard to the permit holder unless the unit furnishes the department with a withdrawal of the certificate of noncompliance. The board of supervisors or the city council that issued a retail permit is required by Iowa Code chapter 252J to revoke the permit of any retailer who is an individual if the board or council has received a certificate of noncompliance from child support services in regard to the retailer unless the unit furnishes the board of supervisors or the city council with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code chapter 252J and sections 453A.13, 453A.22, 453A.44(11), and 453A.48(2).

701—230.7(453A) Inventory tax.

230.7(1) *Inventory.* All persons required to obtain a permit under Iowa Code section 453A.13 and 453A.44 as distributors shall take an inventory of all cigarettes and little cigars in their possession prior to delivery for resale upon which the tax stamp or metered imprint has been affixed and all unused cigarette tax stamps and unused metered imprints in their possession at the close of business on the day preceding the effective date of an increase in the tax rate.

230.7(2) *Remittance.* Persons required to take an inventory shall remit the tax due on all cigarette stamps or metered imprints and all cigarettes and little cigars with stamps or metered imprints affixed in their possession prior to delivery for resale within 30 days of the inventory date.

230.7(3) *Computation.* The tax is equal to the difference between the amount paid for cigarette stamps or metered imprints purchased prior to the tax increase and the amount that is to be paid for cigarette stamps or metered imprints purchased after the tax increase.

In computing the inventory tax, any discount allowed or allowable under Iowa Code section 453A.8 shall not be considered.

230.7(4) *Applicability.* The inventory tax is applicable only when there is an increase in the tax rate. Rule 701—231.9(453A) provides an explanation of whether a refund is allowable when there is a decrease in the tax rate.

This rule is intended to implement Iowa Code sections 453A.6, 453A.40, and 453A.43.

ITEM 2. Rescind and reserve **701—Chapter 254**.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapters 231 and 255
"Cigarette Tax and Regulation of Delivery Sales of Alternative Nicotine Products or Vapor Products"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 453A.8, 453A.15, 453A.24, 453A.25, and 453A.47C

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 453A

Public Hearing

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

December 4, 2024 2:30 to 3:30 p.m.	Via videoconference call: meet.google.com/dfi-ijbx-deo

Public Comment

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

Matt Bishop
Department of Revenue
Hoover State Office Building
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Purpose and Summary

The purpose of the proposed rulemaking is to adopt new Chapter 231 and rescind and reserve Chapter 255. Chapter 255 contains rules on the Department's interpretation of Iowa Code chapter 453A on the excise tax on cigarettes and the regulation of delivery sales of alternative nicotine and vapor products. The Department determined that the rules aid the public understanding of this topic. However, the Legislature's recent passage of 2024 Iowa Acts, Senate File 345 and House File 2677, on the regulation of devices and vapor products, will require, and in the case of House File 2677 mandate, the adoption of new administrative rules. The Department has determined that the current placement of the administrative rules on cigarette and tobacco-related and adjacent topics does not allow for these new forthcoming chapters of rules to be placed near the others, hindering the public's accessibility to these rules.

Therefore, the Department proposes readopting the rules on the excise tax on cigarettes and the regulation of alternative nicotine and vapor products in new Chapter 231 in order to provide the public easier accessibility to this and other cigarette and tobacco-related administrative rules. The Department proposes revisions to the text of the rules for better organization and clarification and to remove portions of the rules that the Department determined are unnecessary, obsolete, or duplicative of statutory language as required by Executive Order 10.

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 to the proposed rulemaking beyond those that are imposed by the underlying statutes.

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

The public will benefit from the proposed rulemaking as the revisions and reorganization of cigarette and tobacco-related topics will provide easier access to those rules. Further, the revisions to the chapter in the proposed rulemaking will reduce confusion.

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

- **Quantitative description of impact:**

There is no economic impact associated with the proposed rulemaking beyond what is contained in the underlying statutes.

- **Qualitative description of impact:**

These rules reduce uncertainty about the imposition of the excise tax on cigarettes and the regulation of delivery sales of alternative nicotine and vapor products. The failure to have these rules would lead to confusion, additional questions to the Department, and potential errors in calculating the excise tax on cigarettes or regulating delivery sales of alternative nicotine and vapor products. This could lead to sales of these products that are in violation of statutory requirements.

3. **Costs to the State:**

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

There are no costs to the agency to implement the rules beyond what is otherwise required to administer the underlying statutes.

- **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 cost of inaction would be failing to update this chapter to remove outdated and unnecessary language and language that is duplicative of statute. The benefit of the proposed rulemaking is to reduce confusion, making it more likely that sales of cigarettes, alternative nicotine products, or vapor products will be made in line with the statutory requirements.

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

The proposed rulemaking is not costly or intrusive. The Department considered the option of not having administrative rules on these topics but determined that the rules provide helpful guidance to the public.

6. **Alternative methods considered by the agency:**

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

The Department considered the possibility of not providing the rules in this chapter but concluded that the rules provide useful guidance beyond what is provided in the underlying statutes to the public.

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

The absence of rules could lead to confusion that results in sales of these products that do not comply with the statutory requirements.

Small Business Impact

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

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

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

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

The proposed rulemaking does not have a substantial impact on small business because it does not make any distinctions based upon the size of the business. The rules do not impose any requirements beyond what is imposed by the underlying statutes to ensure that all businesses are selling cigarettes, alternative nicotine products, and vapor products within statutory requirements.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 231:

CHAPTER 231
CIGARETTE TAX AND REGULATION OF DELIVERY SALES OF ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS

701—231.1(453A) Definitions. Terms have the same meaning as defined in Iowa Code chapters 421B, 453A, 453C, and 453D; and chapter 453E as enacted by 2024 Iowa Acts, Senate File 345; and rule 701—230.1(453A).

This rule is intended to implement Iowa Code chapters 421B, 453A, 453C, and 453D, and chapter 453E as enacted by 2024 Iowa Acts, Senate File 345.

701—231.2(453A) Permits required. Every person selling or distributing cigarettes or using or consuming untaxed cigarettes within the state of Iowa must first obtain the appropriate permit.

231.2(1) *Distributor's permit.* If a distributor performs any other function that requires a permit, a separate permit must be obtained. If a person is not performing the functions of a distributor, a permit will not be issued.

231.2(2) *Wholesaler's permit.* A "sale or distribution" of cigarettes connotes a transfer of cigarettes from one person or entity to another person or entity. Therefore, an intraentity transfer is not a transaction that qualifies as a function of a wholesaler. If a person is not performing the functions of a wholesaler, a permit will not be issued.

EXAMPLE: The XYZ Grocery Chain has a warehouse in Des Moines where stamped cigarettes are stored. The stamped cigarettes are purchased from a permitted distributor. XYZ transfers the cigarettes to its retail outlets across the state for the purpose of making retail sales and makes no other sales. The storage of stamped cigarettes and the retail sale of cigarettes are not functions of a wholesaler. Therefore, XYZ would not be eligible for a wholesaler's permit.

231.2(3) *Cigarette vendor's permit.* The duplicate permit applies to additional places of business from which the cigarette vendor conducts operations and not to those places of business where the cigarette vending machines are installed for retail sales.

EXAMPLE: A cigarette vendor owns three warehouses from which the vendor supplies cigarettes to 100 vending machines located at various retail establishments. The total permit cost for the vendor would be $110 ($100 for a regular permit plus $10 for two duplicate permits at $5 each).

231.2(4) *Retail permits.*

a. Location. Retail permits valid only for the location described in the permit and a retailer must obtain a separate permit for each place of business owned or operated by the retailer.

b. *Local jurisdiction.* The power to grant the retail permit is discretionary with the city council or board of supervisors, and uniform, nondiscriminatory limits may be placed on the issuance of the retail permit. The city or county must submit a copy of any retail permit issued within 30 days of issuance.

c. *Mobile retailers.* If a cigarette retailer sells cigarettes from a mobile concession vehicle, the vehicle itself is considered a place of business.

(1) If a retailer is selling cigarettes from a mobile concession vehicle within the area of several permit-issuing authorities, the retailer must obtain a permit from each authority.

(2) The retailer is operating a single place of business within the jurisdiction of the several authorities and is, therefore, subject to regulation by each.

(3) The location described on the permit shall include identification of the vehicle and the address of the permanent place of business from which the vehicle is dispatched. If the vehicle is traded in for a new vehicle, the exchange provisions of subrule 231.2(5) shall apply.

231.2(5) *Exchange of permits.* If a permittee changes the location of an operation requiring a permit but remains within the jurisdiction of the same entity that granted the original permit, the permittee may exchange the invalid permit (valid only for the location described in the permit) for a valid permit free of charge, without the partial payment-partial refund process described in Iowa Code section 453A.13(4).

EXAMPLE 1: City Bar and Grill sells cigarettes at retail and has obtained a retail cigarette permit from the city of Des Moines. The establishment is moved across the street but remains within the city limits of Des Moines. The retail permit is valid only for the location described in the permit, and therefore, the original permit is no longer valid. However, since the establishment has remained within the jurisdiction of the entity that granted the original permit, Des Moines, the original, presently invalid permit may be exchanged for a valid permit with a new location description at no cost.

EXAMPLE 2: Same as Example 1, except the new location of City Bar and Grill is outside the corporate limits of Des Moines and within the unincorporated area of Polk County. City Bar and Grill would have to surrender the old permit to the city of Des Moines and obtain a new permit from Polk County with the schedules set forth in this rule applying.

This rule is intended to implement Iowa Code sections 453A.13, 453A.16, 453A.17, and 453A.23.

701—231.3(453A) Bond requirements.

231.3(1) The amount of the bond required for each permit shall be as follows:

a. Distributor permit: $2,500.

b. Wholesaler permit: $2,500.

c. Vendor permit: $1,000.

d. Railway car retail permit: $500.

e. Manufacturer permit: $5,000.

f. Distributing agent permit: $2,500.

g. Retail permit: $0.

231.3(2) If a person is required to obtain more than one type of permit, the bond requirements shall be cumulative and additional bonds or a single bond equal to the total aggregate requirements must be obtained. More information on the required form of the bond is contained in rule 701—230.4(453A).

This rule is intended to implement Iowa Code sections 453A.14, 453A.17, and 453A.23.

701—231.4(453A) Cigarette tax—attachment—exclusivity of tax—exemption.

231.4(1) *Attachment.* The fact that the tax is eventually paid will not relieve the person's standing prior in the chain of distribution of the sanctions for distributing untaxed cigarettes if the tax should have been paid sooner by said person.

231.4(2) *Exclusivity of tax.* No other occupation or excise tax may be imposed by any political subdivision of the state. However, this provision does not apply to occupation or excise taxes imposed by the state.

231.4(3) *Sales exempt from tax.*

a. Generally. Sales of cigarettes that the state is prohibited from taxing under the Constitution or the laws of the United States or under the Constitution of this state are exempt from the tax. If the sale is exempt from the tax, stamps must not be attached. No refund will be issued for stamps that are attached to cigarette packages that are later sold exempt.

b. Sales to the federal government. Military post exchanges or instrumentalities of the federal government are not required to comply with the provisions of Iowa Code chapter 453A nor pay the tax imposed thereunder. However, individuals who have purchased or obtained cigarettes from a federal instrumentality and come within the jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1), and 453A.37.

c. Sales by or to Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax. The Indian sellers are subject to the recordkeeping requirements of Iowa Code chapter 453A. The cigarettes must be purchased by the Indian seller with the tax included in the purchase price. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or to the tribe of which the Indian purchaser is a member by the tribe's filing a claim for refund of the tax paid by the tribe on cigarettes sold to the Indian purchaser.

This rule is intended to implement Iowa Code section 453A.6.

701—231.5(453A) Cigarette tax stamps.

231.5(1) *Purchase of stamps from the department.* The stamps shall be sent to the purchaser through the United States Postal Service by registered mail or similar delivery service at the department's expense. The purchaser may request alternate methods of transmission, but such methods shall be at the expense of the purchaser. Regardless of the method used to send the stamps, title transfers to the purchaser at the time the department delivers the stamps to the carrier.

231.5(2) *Purchase of stamps from authorized bank.* The permittee shall furnish the bank with a requisition form prescribed by the department. The director may require such payments to be by cashier's check or certified check as to any individual distributor or manufacturer. The authorized bank shall be notified in writing by the department of any such requirement. Distributors or manufacturers that elect to purchase stamps from authorized banks shall advise the department in writing of the authorized bank so elected. The distributor or manufacturer may not purchase from any other bank other than the one so selected but may still purchase stamps directly from the department. Rule 701—231.6(453A) provides more information on restrictions on the sale of cigarette tax stamps placed on authorized banks. Rule 701—231.9(453A) provides more information on refunds relating to cigarette tax stamps.

This rule is intended to implement Iowa Code sections 453A.6, 453A.7, 453A.8, 453A.10, and 453A.28, and section 453A.35 as amended by 2024 Iowa Acts, House File 2677.

701—231.6(453A) Banks authorized to sell stamps—requirements—restrictions.

231.6(1) *Authorization.* The director has the discretion to allow the sale or distribution of stamps through authorized banks as defined in Iowa Code section 524.103. The authorization of a bank to sell stamps is not a mandatory direction but may be utilized by the director to enhance the efficiency of the tax stamp distribution system. The director will consider the following nonexhaustive list of factors to determine whether or not to authorize a bank to sell stamps:

a. Geographical location in relation to distributors or manufacturers requesting alternative purchase locations,

b. The anticipated volume of stamps to be purchased by the requesting distributors or manufacturers,

c. Access to transportation systems, and

d. Prior experience with the bank.

231.6(2) *Sale of stamps.* An authorized bank may sell cigarette stamps only to distributors or manufacturers holding valid permits who have "elected" (as per subrule 231.5(2)) to purchase stamps from that bank. The department shall furnish each bank with a list of all such distributors or manufacturers who have so elected, and the bank shall not sell stamps to persons not on the list. The bank must receive payment in full, less the discount, before selling stamps. A bank is not authorized to accept credit memorandums from distributors or manufacturers.

231.6(3) *Stamp inventory.* Each bank shall keep an adequate inventory of stamps on hand to supply distributors or manufacturers assigned to said bank for at least six weeks. Stamps will be shipped freight prepaid to the bank from the department or from the supplier of the stamps. The supplier of the stamps shall advise the department at once by mail of a shipment to a bank and the bank shall advise the department at once by mail of the receipt of the stamps. Each bank shall store stamps in a secure vault.

231.6(4) *Reports and remittances.* Each bank authorized to sell stamps shall forward to the department the invoices, requisitions, and remittances for stamps sold on a daily basis. Each bank shall forward to the department, on the first working day of each month, an inventory report that shall minimally include as to the prior month: the quantity of stamps on hand at the beginning of the month, the quantity of stamps received during the month, the quantity of stamps sold as to each distributor or manufacturer, the quantity of stamps on hand at the end of the month and the signature of the person responsible for the stamps.

231.6(5) *Audit.* For the purpose of auditing for the end of the fiscal year, no bank shall sell cigarette stamps on the days from June 25 through June 30. With or without notice, the department or a representative designated by the department may take an inventory of stamps and audit stamp sales.

231.6(6) *Records.* Each bank must retain all records of inventory, stamp receipts, and stamp sales for a period of three years.

231.6(7) *Termination of authorization.* The director may terminate the authorization of a bank to sell stamps if the bank has failed to comply with the provisions of this rule or Iowa Code chapter 453A or if the director deems it desirable for the efficient distribution of stamps.

a. Notice of termination shall be sent to the bank by certified mail. The bank may appeal the termination determination by filing an appeal pursuant to 701—Chapter 7 within 30 days of notice of termination.

b. A bank may voluntarily terminate the sale of stamps by giving the department 90 days' written notice.

c. Upon termination, the bank must immediately return all stamps and present a final accounting, along with any remittances, to the department.

This rule is intended to implement Iowa Code sections 453A.8, 453A.12, and 453A.25.

701—231.7(453A) Reports. Whenever "cigarette" is used in this rule, it also includes taxable "little cigars."

231.7(1) *In-state distributors not exporting cigarettes.* Every distributor with a place of business in Iowa where cigarettes are stamped and that is not engaged in exporting cigarettes from this state shall submit any forms required by the department.

a. All required forms must be completed before the report will be considered "filed" and may require but not be limited to the following information:

(1) Distributor's name, permit number and address;

(2) Amount of Iowa revenue purchased during the month;

(3) Quantity of cigarettes on hand at the end of the month;

(4) Amount of revenue on hand at the end of the month;

(5) Purchases of cigarettes during the month and as to each purchase, the seller's name, the date of purchase, the invoice number, and the quantity purchased;

(6) An inventory report as to out-of-state revenue;
(7) Quantity of cigarettes returned to the factory along with supporting documents;
(8) Certification of the person responsible for making the report;
(9) Inventory accounting for cigarettes; and
(10) Inventory accounting for revenue.

b. The quantity of cigarettes distributed or stamped should be equal to the tax equivalent of the revenue used. Any discrepancy must be adequately explained.

231.7(2) *In-state distributors exporting cigarettes.* Every distributor with a place of business in Iowa where cigarettes are stamped that also engages in exporting cigarettes from this state shall file the forms required by the department. The forms must be complete before the forms will be considered filed.

231.7(3) *Out-of-state distributors.* Every distributor stamping cigarettes only without the state shall file the forms required by the department and shall include but not be limited to:

a. The distributor's name, address and permit number;
b. An itemized statement of Iowa revenue purchased;
c. An inventory accounting of Iowa revenue;
d. A detailed schedule of cigarette distribution in Iowa and as to each distribution, the date, the name of purchaser or receiver, the purchaser's address and the quantity of cigarettes distributed; and
e. The certification of the person responsible for making the report.

231.7(4) *Manufacturers and other persons.* The monthly reports for manufacturers and other persons shall contain such information as the director deems necessary.

This rule is intended to implement Iowa Code section 453A.15.

701—231.8(453A) Manufacturer's samples and replacement packages.

231.8(1) *Free samples.* Iowa Code section 453A.39 provides an exclusive method for manufacturers to distribute free sample packages of cigarettes or little cigars. In addition to the requirements under Iowa Code section 453A.39, the cigarettes or little cigars must also be clearly marked "sample" and contain an acknowledgment that the tax was paid on each carton containing free samples. The tax to be paid must be computed on a per cigarette basis rather than a per package basis.

231.8(2) *Distributor affidavit.* The department will stamp the distributor's affidavit containing the remittance and return a copy of the affidavit to the distributor as the acknowledgment that taxes have been paid on the samples.

a. After receiving the acknowledgment, and before the sample cigarettes are distributed, each distributor is requested to stamp the cartons of free samples with a stamp containing the distributor's name, permit number and the words "IOWA STATE TAX PAID."

b. In the event the distributor needs acknowledgment sooner, the distributor may request that the department acknowledge by telephone and follow up with the affidavit acknowledgment at a later date.

c. In the event sample cigarettes must be returned to the manufacturer for some reason, a refund of the taxes previously paid will be made to the distributor that actually remitted the tax to the department. The refund will be made in the same manner as for regular cigarettes by the distributor filing the appropriate forms with the department.

231.8(3) *Replacement packages.* A manufacturer wants to respond to a customer complaint by replacing a package of 20 cigarettes purchased by the customer with another package of 20 cigarettes.

a. The replacement package must be clearly marked with the words "COMPLIMENTARY. NOT FOR SALE. ALL APPLICABLE STATE TAXES PAID."

b. The manufacturer may pay the tax directly to the department by submitting an affidavit to the department containing the number of replacement packages sent into the state during the previous month, along with the remittance. The number of replacement packages and remittance may be submitted as part of the manufacturer's affidavit required under Iowa Code section 453A.39.

This rule is intended to implement Iowa Code sections 453A.1, 453A.13, 453A.16, 453A.22, 453A.31, and 453A.39.

701—231.9(453A) Refund of tax—unused and destroyed stamps.

231.9(1) *Refunds of unused stamps and destroyed stamps.*

a. Refunds shall be issued for unused stamps that are returned to the department for any reason by a person entitled to receive a refund. This includes:

(1) Unused stamps unaffixed at the close of the business day next preceding the effective date of a decrease in the tax rate that are in excess of the unstamped cigarette inventory on hand as of that date.

(2) Stamps that are recalled by the director for purposes of effectuating a change of design of the stamps.

(3) Stamps that have been lost through destruction, since destroyed stamps have not been used. For purposes of this rule, destruction means destruction by fire, flood, other act of God as defined in 701—subrule 10.7(1), or other destruction not reasonably anticipated or foreseen and outside the control of the person seeking the refund. The claim for refund must be supported by proof of the fact of the loss and proof of the quantity of the loss. The claim must be filed within 30 days of the loss.

b. Refunds will not be issued for stamps that are lost (misplaced) or stolen because it is the distributor's or manufacturer's responsibility to maintain proper control over cigarette tax stamps.

c. Banks that are authorized to sell stamps or meter settings are not authorized to issue a refund; the stamps must be returned to the department and a refund will be issued only by the department.

231.9(2) *Return of used stamps.*

a. Refunds shall be issued for stamps that have been affixed to cigarettes that have become unfit for use or consumption or unsaleable. This refund is available to any permitted distributor or manufacturer upon proof that the cigarettes were returned to the manufacturer of the cigarettes.

b. The proof required shall be an affidavit from the distributor setting forth to whom the cigarettes were returned and verifying that cigarette stamps had been affixed thereto. An affidavit from the manufacturer to which the cigarettes were returned verifying the information must also be included.

231.9(3) *Cigarettes which have been destroyed.*

a. The tax shall be returned on cigarettes that have been destroyed after the tax stamps have been affixed to the person stamping the cigarettes. No refund is allowed for lost or stolen cigarettes.

b. The person claiming the loss must be able to prove the fact of the loss and quantity of the loss. The claim, on the form required by the department and accompanied by proof of the loss and proof of the quantity of the loss, must be filed with the department no later than 30 days following the date the loss occurred.

c. The amount of the refund shall be the face value of the stamps less the applicable discount allowed purchasers of tax stamps.

231.9(4) *No credit in lieu of a refund.* There are no statutory provisions to allow a credit in lieu of a refund of taxes paid for returned or destroyed cigarette stamps.

This rule is intended to implement Iowa Code section 453A.8.

701—231.10(453A) Delivery sales of alternative nicotine products or vapor products.

231.10(1) *Delivery sale permit for out-of-state retailers.* An out-of-state retailer that has applied and otherwise qualifies for a delivery sale permit will be issued the permit for the retailer's principal place of business.

231.10(2) *Sales and use tax permit.* A retailer holding a delivery sale permit must also have an Iowa sales or use tax permit. A retailer holding a delivery sale permit must collect and remit all Iowa sales and use tax due, including any applicable local option sales tax, on all sales in Iowa.

231.10(3) *Bond required.* A bond of $1,000 is required to obtain a delivery sale permit.

231.10(4) *Prohibited delivery sales.* All delivery sales of cigarettes and tobacco products to consumers in Iowa are prohibited.

This rule is intended to implement Iowa Code sections 453A.47A, 453A.47B, and 453A.47C.

ITEM 2. Rescind and reserve **701—Chapter 255**.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapters 232 and 256
"Tobacco Tax"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 453A.24, 453A.25, 453A.40, 453A.46, 453A.47A, and 453A.49

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 453A

Public Hearing

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

December 4, 2024 2:30 to 3:30 p.m.	Via videoconference call: meet.google.com/dfi-ijbx-deo

Public Comment

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

Matt Bishop
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.452.9205
Email: matt.bishop@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to adopt new 701—Chapter 232 and rescind and reserve 701—Chapter 256. Chapter 256 contained rules on the Department's interpretation of Iowa Code chapter 453A on the application and imposition of the excise tax on tobacco. The Department determined that the rules aid the public understanding of this topic. However, the Legislature's recent passage of 2024 Iowa Acts, Senate File 345, and 2024 Iowa Acts, House File 2677, on the regulation of devices and vapor products, will require, and in the case of House File 2677 mandate, the adoption of new administrative rules. The Department has determined that the current placement of the administrative rules on cigarette and tobacco-related and adjacent topics does not allow for these new forthcoming chapters of rules to be placed near the others, hindering the public's accessibility to these rules. Therefore, the Department proposes readopting the rules on the administration of the excise tax on tobacco and moving it into 701—Chapter 232, which was previously reserved, in order to provide the public easier accessibility to this and other cigarette and tobacco-related administrative rules. The Department proposes revisions to the text of the rules for better organization and clarification and to remove portions of the rules that the Department determined are unnecessary, obsolete, or duplicative of statutory language as required by Executive Order 10.

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 of the proposed rulemaking beyond what is imposed by the underlying statutes.

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

The public will benefit from the proposed rulemaking because the rulemaking provides guidance on the imposition and administration of the excise tax on tobacco.

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

- **Quantitative description of impact:**

There is no economic impact of the proposed rulemaking beyond what is contained in the underlying statutes.

- **Qualitative description of impact:**

The proposed rulemaking will help to reduce uncertainty about the imposition and administration of the excise tax on tobacco. Failure to have these rules would lead to confusion, additional questions to the Department, and potential errors in the administration of the excise tax.

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 the proposed rulemaking beyond those that would otherwise be required to administer the underlying statutes.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues. However, the proposed rulemaking provides guidance on the imposition and administration of the excise tax on tobacco, making it more likely that the correct amount of tax will be collected and remitted.

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

The cost of inaction would be failing to update the rules on the administration of the excise tax on tobacco to remove unnecessary, obsolete, or duplicative statutory language. The benefit of the proposed rulemaking is reducing confusion about the administration of the excise tax on tobacco.

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

The proposed rulemaking is not costly or intrusive. The Department considered the option of not having rules explaining the imposition and administration of the excise tax on tobacco, but determined that the rules provide useful guidance to the public.

6. **Alternative methods considered by the agency:**

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

The Department considered the possibility of not providing the rules in this chapter but concluded that the rules provide useful guidance beyond what is provided in the underlying statutes to the public.

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

The absence of rules on the administration of the excise tax on tobacco could lead to confusion and lead to sales that do not comply with the statutory requirements.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

The proposed rulemaking does not have a substantial impact on small business because it does not make any distinctions based upon the size of the business. The rules do not impose any requirements beyond what is imposed by the underlying statutes to ensure that all businesses regardless of size are selling tobacco products within statutory requirements.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 232:

CHAPTER 232
TOBACCO TAX

701—232.1(453A) Definitions. Terms have the same meaning as defined in Iowa Code chapters 421B, 453A, 453C, and 453D; chapter 453E as enacted by 2024 Iowa Acts, Senate File 345; and rule 701—230.1(453A).

This rule is intended to implement Iowa Code chapters 421B, 453A, 453C, and 453D, and chapter 453E as enacted by 2024 Iowa Acts, Senate File 345.

701—232.2(453A) Permits.

232.2(1) *Generally.* If the person holds a valid cigarette permit of any kind, the permit will be issued without cost if all other requirements for the permit are met, but the permit must still be obtained. A tobacco retailer is required to obtain a retail cigarette/tobacco permit.

232.2(2) *Distributor permit.*

a. Every person operating as a tobacco distributor as defined in Iowa Code section 453A.42 must obtain a tobacco distributor's permit.

b. In any distribution scheme whereby tobacco products are imported into this state for sale, there must be at least one distributor.

EXAMPLE 1: Manufacturer, Inc. is in the business of processing tobacco products in the state of North Carolina. Retailer, Inc. is in the business of selling tobacco products at retail in the state of Iowa. If Manufacturer, Inc. ships tobacco products directly to Retailer, Inc., f.o.b. manufacturer's plant, both are performing the functions of a distributor; Manufacturer, Inc. is selling tobacco products without this state and shipping them directly to a retailer in this state, and Retailer, Inc. is causing tobacco products to be brought into this state from without the state for the purpose of sale. Therefore, at least one of the parties must obtain a distributor permit

EXAMPLE 2: Manufacturer, Inc. is in the business of processing tobacco products in the state of North Carolina. Retailer, Inc. is in the business of selling tobacco products at retail in the state of Iowa. If Manufacturer, Inc. ships tobacco products directly to Retailer, Inc., f.o.b. retailer's place of business, Manufacturer, Inc. is acting as a distributor and Retailer, Inc. is not. Manufacturer, Inc. is selling tobacco products without this state and shipping them directly to a retailer in this state. Retailer, Inc. is not causing tobacco products to be brought into this state from without the state. Therefore, in this example, Manufacturer, Inc. must obtain a distributor permit.

232.2(3) *Subjobber's permit.*

a. Every person, other than persons permitted as tobacco distributors, operating as a tobacco subjobber, as defined in Iowa Code section 453A.42, must obtain a tobacco subjobber's permit.

b. A single subjobber's permit is sufficient for the subjobber's entire activities within the state because it is not issued for each place of business.

This rule is intended to implement Iowa Code section 453A.44.

701—232.3(453A) Distributor bond.

232.3(1) *Generally.* A bond in the amount of $1,000 is required to be posted before a distributor's permit can be issued, regardless of whether or not the distributor is permitted and bonded as a cigarette permittee.

232.3(2) *Aggregation.* If the distributor has a cigarette permit of any kind and is required to post a bond thereunder, the amount of the cigarette bond(s) and the tobacco bond(s) may be aggregated to reach a single bond requirement, and the distributor may provide a single bond in the aggregate amount provided the bond may be used to discharge either a cigarette tax liability or a tobacco tax liability. Rule 701—230.4(453A) provides more information about bonds.

This rule is intended to implement Iowa Code section 453A.44.

701—232.4(453A) Tax on tobacco products.

232.4(1) *Generally.* The tax on tobacco products is to be paid once, either upon distribution by a distributor or upon use or storage by a consumer. The tax is in addition to any occupation or privilege tax or permit fees imposed by any city or county.

232.4(2) *Distributor responsibility.* The tax as specified in Iowa Code section 453A.43(1)*"a"* is imposed when a distributor does any of the activities as listed in Iowa Code section 453A.43(1)*"e."*

232.4(3) *Consumer responsibility.*

a. If the tax under Iowa Code section 453A.43(1) is not paid under the circumstances identified in Iowa Code section 453A.43(1)*"e,"* the consumer is responsible for the tax specified in Iowa Code section 453A.43(2) based upon the cost to the consumer of the tobacco products used or stored by the consumer.

b. The tax does not apply to the use or storage of tobacco products in the circumstances identified in Iowa Code section 453A.43(2)*"e."*

c. The exceptions do not apply to tobacco products subject to the tax imposed upon distributors.

232.4(4) *Discounted tobacco products.*

a. Generally. A tobacco product sold by manufacturers to distributors that is discounted is taxed at the highest wholesale sales price for that product.

b. Discounted tobacco products. A tobacco product is discounted when, compared to an identical product on the price list, the tobacco product has a lower wholesale sales price.

(1) Tobacco products are identical if they are sold as the same package size on the price list, irrespective of whether such tobacco is flavored, adulterated, or mixed with any other ingredients; the price printed on the box; the manufacturer's suggested retail price provided to the retailer; the stock keeping unit or universal product code or similar codes used by the manufacturer; the type of packaging used; the name of the product as marketed; the geographic distribution; the target customer; or the length of the time of the promotion.

(2) The manufacturer's characterization of the tobacco product on the price list is a consideration to determine if a tobacco product is discounted, but it is not controlling.

(3) Examples of discounted tobacco products include but are not limited to prepriced cigars and reduced-price multipacks of tobacco products where the manufacturer sells an identical product on the price list at a higher wholesale sales price.

EXAMPLE 1: Manufacturer, Inc. sells XYZ Product cigars in 25-count packages as both a prepriced product and a regular-priced product. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for the prepriced product is listed as $480 and the wholesale sales price for the regular-priced product is listed as $605. The prepriced XYZ Product is a discounted cigar product and shall be taxed at the higher wholesale sales price of $605.

EXAMPLE 2: Manufacturer, Inc. sells ABC Product cigars in 25-count packages. ABC Product is prepriced at $.99 and $1.19. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for ABC Product at $.99 is listed as $346 and the wholesale sales price for ABC Product at $1.19 is listed as $360. ABC Product cigars, at both prepriced price points, shall be taxed at the higher wholesale sales price of $360.

EXAMPLE 3: Manufacturer, Inc. sells H Product cigarillos in two 30-count packages as prepriced products and as "save on two" products. Prepriced H Product includes 2/$.99 and 2/$1.49. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for H Product at 2/$.99 is listed as $190, the wholesale sales price for H Product at 2/$1.49 is listed as $207, and the wholesale sales price for H Product as "save on two" is listed as $350. H Product cigarillos shall be taxed at the highest wholesale sales price of $350.

EXAMPLE 4: Manufacturer, Inc. sells multipacks of J Product cigarillos. The J Product multipacks are sold as five-packs, and some of the five-packs are labeled as "five for the price of three." The wholesale sales price of the five-packs of J Product that are not labeled as discounted have a higher wholesale sales price than the five-packs of J Product that are labeled as "five for the price of three." The five-packs labeled as "five for the price of three" shall be taxed at the higher wholesale sales price of J Product five-packs that are not labeled as discounted.

This rule is intended to implement Iowa Code sections 453A.42(18) and 453A.43.

701—232.5(453A) Tax on little cigars. All provisions applicable to cigarettes concerning rate, imposition, payment method, reporting, and affixing of stamps apply equally to little cigars, as defined in Iowa Code section 453A.42. The tax on little cigars is to be paid on the purchase of stamps by cigarette distributors or cigarette manufacturers who hold valid permits.

This rule is intended to implement Iowa Code sections 453A.42 and 453A.43.

701—232.6(453A) Distributor returns.

232.6(1) *Generally.* Every distributor permitted under Iowa Code section 453A.44 must file monthly returns.

a. Due date. Returns are due no later than the 20th day of the month following the month covered by the return. For example, a return covering the month of May 2025 would be due no later than June 20th, 2025.

b. Remittances. Remittances for the amount due minus the applicable discount are to be included with the monthly returns.

c. Discount. Permitted tobacco distributors filing returns under Iowa Code section 453A.46 are entitled to deduct a discount equal to 3.5 percent from the remittance for the tax due. For example, if the amount of tax due was $100, then the distributor would be entitled to deduct $3.50 from the tax due and would remit $96.50 to the department.

232.6(2) *In-state distributors.*

a. Permitted tobacco distributors with a place of business in Iowa must file the form(s) prescribed by the department as the monthly distributor return.

b. Return information. Information to be included in the return includes but is not limited to:

(1) Distributor's name, address, and permit number.

(2) An accounting of the acquisition of tobacco products subject to tax. For each acquisition, the return must provide:

- Date received.
- Date and number of invoice.
- Seller information.
- Manufacturer's gross list price.

(3) Claims for credit for any tobacco products destroyed, returned to manufacturer, or exported.

- Claims for credit are to be completed on the form prescribed by the department.
- Claims for credit may also be completed via GovConnectIowa.

(4) Certification of the person responsible for completing the return.

232.6(3) *Out-of-state distributors.*

a. Permitted tobacco distributors, with no place of business in Iowa, must file the prescribed form by the department as the monthly distributor return.

b. Return information. Information to be provided in the return includes but is not limited to:

(1) Distributor name, address, and permit number.
(2) Accounting of sales of tobacco products in Iowa that are subject to tax, including:
- Date of sale.
- Invoice number.
- Purchaser name and address.
- Manufacturer's gross list price.

(3) Certification of the person responsible for completing the return.

This rule is intended to implement Iowa Code sections 453A.46 and 453A.47.

701—232.7(453A) Credits and refunds of taxes. Credits for tobacco products destroyed, returned to manufacturers, or exported are provided for in subrule 232.6(1). If the credits exceed the average monthly tax liability of the distributor, based upon the prior 12 tax periods, a refund may be issued.

Credits and refunds to a consumer who paid the tax pursuant to Iowa Code section 453A.43(2) are allowed for the same reasons and upon the same basis as credits and refunds to distributors.

This rule is intended to implement Iowa Code section 453A.47.

701—232.8(453A) Consumer's return.

232.8(1) *Generally.* Consumers or any person who is not a permitted tobacco distributor who obtains or possesses tobacco products on which the tax under Iowa Code section 453A.43 has not been paid is responsible for reporting and remitting tax on those tobacco products. Consumers must file a distributor tax return for any month the person is responsible for paying the tax.

232.8(2) *Due date.* Returns are due no later than the 20th day of the month following the month covered by the return. For example, if the return is covering the month of April 2025, the return is due no later than May 20, 2025.

232.8(3) *Manner of return.* Returns are to be completely filled out, excepting that the consumer will not have a permit number and so should indicate on the form that the permit number is not applicable to them.

a. The full amount of tax due must accompany the return when filed.

b. The discount provided under Iowa Code section 453A.46(1) for permitted distributors does not apply to consumers.

c. Returns can be filed electronically via GovConnectIowa or mailed to the department.

232.8(4) *Penalties.* Penalties provided in Iowa Code section 453A.46 for permitted distributors apply equally to consumers required to file a return.

This rule is intended to implement Iowa Code sections 453A.43, 453A.46, and 453A.49.

701—232.9(453A) Transporter's report.

232.9(1) *Generally.* All transportation of tobacco products into this state are to be reported to the director within 30 days of the importation.

232.9(2) *Reports.* Reports are to include but not to be limited to the following information:

a. Description of the products imported,
b. Name and address of seller or consignor,
c. Date of import,
d. Name and address of purchaser or cosignee,
e. Point of origin,
f. Point of destination.

232.9(3) *Out-of-state distributors.* Permitted tobacco distributors that have a place of business outside of the state where tobacco products are shipped from do not need to file a separate transportation report permit. This information will be included within the distributor reports filed by the distributor.

232.9(4) *Common carriers.* Common carriers transporting tobacco products into this state need only report shipments to places other than public warehouses permitted under the provisions of Iowa

Code chapter 554. Transporter reports filed by common carriers are due no later than the tenth day following the month of importation. For example, if a common carrier transported tobacco products during August 2025, its transporter report is due no later than September 10, 2025.

232.9(5) *Other transportation.* All other transportation of tobacco products into this state by persons other than out-of-state distributors and common carriers is to be reported to the department except:

a. The importation of tobacco products by a consumer in sufficiently small quantities to be exempt from the tax as identified in Iowa Code section 453A.45(5), or

b. The importation by a consumer of tobacco products if the consumer is responsible to report and pay the tax under Iowa Code sections 453A.43(2) and 453A.46(6).

This rule is intended to implement Iowa Code section 453A.45.

701—232.10(453A) Free samples. Persons responsible for the distribution of samples of tobacco products in the state are responsible for paying the amount of tobacco tax due on those samples and filing a return. The tax due is based on the usual wholesale price of these products.

This rule is intended to implement Iowa Code sections 453A.43, 453A.46, and 453A.49.

701—232.11(453A) Sales exempt from tax.

232.11(1) *Sales to the federal government.*

a. Military post exchanges or instrumentalities of the federal government are not required to comply with the provisions of Iowa Code chapter 453A or pay the tax imposed thereunder.

b. Individuals who have purchased or obtained tobacco products from a federal instrumentality and come within the jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.43(2) and 453A.50.

232.11(2) *Sales by or to Indians.*

a. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax.

b. Indian sellers are subject to the recordkeeping requirements of Iowa Code chapter 453A.

c. Tobacco products are to be purchased by the Indian seller with the tax included in the purchase price.

d. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or to the tribe of which the Indian purchaser is a member by the tribe's filing a claim for refund of the tax paid by the tribe on tobacco products sold to the Indian purchaser.

This rule is intended to implement Iowa Code section 453A.43(4).

ITEM 2. Rescind and reserve **701—Chapter 256**.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapters 233 and 257
"Unfair Cigarette Sales"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421B.11
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 421B

Public Hearing

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

December 4, 2024 2:30 to 3:30 p.m.	Via videoconference call: meet.google.com/dfi-ijbx-deo

Public Comment

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

Matt Bishop
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.452.9205
Email: matt.bishop@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to adopt new Chapter 233 and rescind and reserve Chapter 257. Chapter 257 contained rules on the Department's interpretation of Iowa Code chapter 421B on unfair cigarette sales and the minimum pricing of cigarettes that works in conjunction with the excise tax on cigarettes found in Iowa Code chapter 453A. The Department determined that the rules aid the public understanding of this topic. However, the Legislature's recent passage of 2024 Iowa Acts, Senate File 345, and 2024 Iowa Acts, House File 2677, on the regulation of devices and vapor products, will require, and in the case of House File 2677 mandate, the adoption of new administrative rules. The Department has determined that the current placement of the administrative rules on cigarette and tobacco-related and adjacent topics does not allow for these new forthcoming chapters of rules to be placed near the others, hindering the public's accessibility to these rules. Therefore, the Department proposes readopting the rules on unfair cigarette sales and minimum pricing of cigarettes and moving the rules into Chapter 233, which was previously reserved, in order to provide the public easier accessibility to this and other cigarette and tobacco-related administrative rules. The Department proposes revisions to the text of the rules for better organization and clarification and to remove portions of the rules that the Department determined are unnecessary, obsolete, or duplicative of statutory language as required by Executive Order 10.

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 to the proposed rulemaking beyond those that are imposed by the underlying statute.

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

The public will benefit from the proposed rulemaking because the revision and reorganizing of cigarette and tobacco-related topics will provide easier accessibility to those rules. Further, the revisions to the text of the chapter on unfair cigarette sales and minimum pricing of cigarettes will reduce confusion.

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

- **Quantitative description of impact:**

There is no economic impact associated with the proposed rulemaking beyond what is contained in the underlying statutes.

- **Qualitative description of impact:**

These rules reduce uncertainty about the calculations for determining the minimum pricing of cigarettes. The failure to have these rules would lead to confusion, additional questions to the Department, and potential errors in calculating minimum prices. This could lead to sales of cigarettes at prices in violation of statutory requirements.

3. **Costs to the State:**

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

There are no costs to the agency to implement the rules beyond what is otherwise required to administer the underlying statute.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

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

The cost of inaction would be failing to update this chapter to remove outdated and unnecessary language and language that is duplicative of statute. The benefit of the proposed rulemaking is to reduce confusion about the calculation of the minimum price of cigarettes, making it more likely that sales of cigarettes will be made in line with the statutory requirements.

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

The proposed rulemaking is not costly or intrusive. The Department considered the option of not having administrative rules explaining the calculations of the minimum price of cigarettes but determined that the rules provide helpful guidance to the public on the subject.

6. **Alternative methods considered by the agency:**

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

The Department considered the possibility of not providing the rules in this chapter but concluded that the rules provide useful guidance beyond what is provided in the underlying statutes to the public.

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

The absence of rules on minimum pricing and unfair cigarette sales would lead to confusion about the calculations that could lead to sales that do not comply with the statutory requirements.

Small Business Impact

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

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

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

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

The proposed rulemaking does not have a substantial impact on small business because it does not make any distinctions based upon the size of the business. The rules do not impose any requirements beyond what is imposed by the underlying statutes to ensure that all businesses regardless of size are fairly selling cigarettes.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 233:

CHAPTER 233
UNFAIR CIGARETTE SALES

701—233.1(421B) Definitions. For purposes of this chapter, terms and phrases have the same meaning as defined in Iowa Code section 421B.2.

This rule is intended to implement Iowa Code section 421B.2.

701—233.2(421B) Minimum price.

233.2(1) *Cost to retailers or cost to wholesalers.* The "cost to the retailer" and "cost to wholesaler" are defined in Iowa Code section 421B.2. The formulas for determining the cost to a wholesaler or retailer are not conclusive. The retailer, wholesaler, or the department may prove that the cost is either higher or lower.

233.2(2) *Proving higher or lower than statutory presumption.*

a. The statutory presumptive cost must be used in determining minimum price until approval of the request to utilize another figure is granted by the department. If the requester continues to sell cigarettes at less than the presumptive cost, the department may revoke the requester's permit or seek an injunction pursuant to Iowa Code section 421B.10 to prevent such action.

b. Any wholesaler or retailer who desires to prove that the wholesaler's or retailer's cost is less than the statutory presumptive cost computed according to Iowa Code chapter 421B may submit a petition for approval of a lower cost along with actual cost data to the department.

c. Any requester making sales of cigarettes in or into Iowa for more than 12 months shall submit cost data for the 12-month period ending no more than 30 days prior to the submission of the petition. Any requester making sales of cigarettes in or into Iowa for less than 12 months shall submit cost data for the period beginning with the start of business and ending no more than 30 days prior to the submission of the petition.

d. The department will notify the wholesaler or retailer of the acceptance or rejection of the petition. If the requester disagrees with the department's determination, the requester may file an appeal within 60 days of the department's decision in accordance with provisions of the "appeals" rule contained in 701—Chapter 7.

233.2(3) *Costs of doing business.*

a. Costs of doing business include but are not limited to freight charges, labor, and equipment costs to affix stamps, ink, glue, permit fees, management fees, labor costs (including salaries of officers), rents, depreciation, selling costs, maintenance expenses, interest expenses, delivery costs,

taxes, insurance, advertising expenses, and any other operational and administrative costs. The requester shall set forth the basis for allocated costs.

b. When the computed cost amounts to any fractional part of a cent, the cost must be rounded up to at least the next higher whole cent.

c. Sales made between wholesalers as provided for in Iowa Code section 421B.5, sales described in Iowa Code section 421B.6, and sales outside of the ordinary channels of trade as provided in Iowa Code section 421B.9 shall not be required to adhere to the minimum pricing requirements set forth in Iowa Code section 421B.3 and this rule.

233.2(4) *Discounts.* For purposes of determining the basic cost of cigarettes for wholesalers or retailers, trade or cash discounts may be deducted, if available, even though not taken. The discount taken or available must be clearly specified on the invoice or it will not be allowed as a reduction in the basic cost of cigarettes. Any financial incentive given to a wholesaler or retailer by a manufacturer at a later date will not reduce the basic cost of cigarettes.

233.2(5) *Example.* The following example will demonstrate the application of Iowa Code chapter 421B and this rule.

Per thousand cigarettes:

Manufacturer cost	$149.9500
Minus 2% discount	– 2.9990
Plus ½ of the tax	+ 34.0000
	=
Basic cost of cigarettes	$180.9510
Plus 4% of basic cost	+ 7.2380
	=
Retailer's basic cost	$188.1890
Plus ½ of the tax	+ 34.0000
Per 1000 cigarettes: Wholesaler Minimum price to retailer	= $222.1890
Per carton (10 packs of 20 cigarettes): Wholesaler Minimum Price to Retailer	$44.44
Minus ½ state tax	– 6.80
Retailer's basic cost	$37.6400
Plus 8% of basic cost	+ 3.0112
Plus ½ of state tax	+ 6.8000
	=
Minimum cost per carton to retailer	$47.4600
Per pack	$4.75/ pack

This rule is intended to implement Iowa Code sections 421B.2, 421B.3, 421B.5, 421B.6 and 421B.9.

701—233.3(421B) Combination sales.

233.3(1) *Additional items sold with cigarettes.* Whenever cigarettes and another item are offered for sale at a total combined price, the sales price shall not be lower than the "cost to wholesaler" or "cost to the retailer" of all articles sold. The "cost to wholesaler" or "cost to the retailer" of all of the articles sold on a combined basis is determined under Iowa Code sections 421B.2(1), 421B.2(3), and 421B.2(4).

233.3(2) *Promotional gifts.* If a promotional gift is given to the wholesaler or retailer by a cigarette manufacturer at no cost, which gift is to be given to consumers at no cost upon the sale of cigarettes, the minimum sales price will not be affected. The invoice cost of the promotional gift is zero, and therefore, the "cost to wholesaler" or "cost to the retailer" of the promotional gift is zero. If, however, the wholesaler or retailer were to purchase items to be given away with the purchase of cigarettes by consumers, the minimum sales price would increase. The "cost to wholesaler" or the "cost to the retailer" of the promotional item would be based upon the lower of invoice cost or replacement cost.

This rule is intended to implement Iowa Code section 421B.4.

701—233.4(421B) Retail redemption of coupons. The redemption of coupons by retailers, which coupons were supplied to consumers by manufacturers and will be redeemed from the retailers by the manufacturers, does not affect the minimum sales price of cigarettes. The retailer is still receiving the statutory minimum price even though that price is paid by two different persons, the consumer and the manufacturer. Manufacturer incentives to the consumer in lieu of a coupon that reduce the cost of the cigarettes to the consumer do not affect the minimum sales price of cigarettes when the manufacturer absorbs the loss for the incentive.

This rule is intended to implement Iowa Code section 421B.3.

701—233.5(421B) Promotions using cigarettes, noncigarettes, or coupons.

233.5(1) *Promotions using cigarettes, noncigarettes or coupons generally.* Promotional situations are specifically covered by Iowa Code section 421B.4. A promotional situation as described in Iowa Code section 421B.4 is valid provided it is a promotion scheme complying with the procedural requirements that it be a sale.

233.5(2) *Promotion using cigarettes.* If a manufacturer wants to run a promotion where two packs of cigarettes are sold for the price of one, the manufacturer could give the complimentary cigarettes to a distributor to be stamped that would then give the complimentary cigarettes to a retailer who gives the complimentary cigarettes away with the purchase of another pack. Provided the distributor is reimbursed for the cost of the tax stamps, there is no violation of Iowa Code chapter 421B by anyone. The following example illustrates what a manufacturer can do.

EXAMPLE: A manufacturer ships packs of 20, free of charge, to a permitted distributor with instructions to stamp them and send them to retail outlets or deliver them to one of the manufacturer's employees. The manufacturer reimburses the distributor for the cost of stamping the cigarettes. The manufacturer sends or furnishes instructions and display materials to retailers for the retail distribution of the cigarettes. This method of distribution would be proper.

The cost provisions of Iowa Code section 421B.4 would not prevent the distribution of cigarettes in this example since Iowa Code section 421B.4 is silent with respect to below cost combination sales by manufacturers. The cost of cigarettes that are sold is controlled by Iowa Code section 421B.2. The cigarettes sold under the "buy one" portion of the promotion will have a cost of the lower of the true invoice or the lowest replacement cost. The cigarettes sold under the "get one free" portion of the promotion and that were obtained free of charge will have no invoice cost to the retailer.

233.5(3) *Promotions using noncigarette items.* A manufacturer wants to give away promotional items with the purchase of cigarettes at the regular price. Since Iowa Code section 421B.4 is silent with respect to below cost combination sales by manufacturers, the practice of the manufacturer providing a gift item, such as cigarette lighters, through wholesale channels to retailers that will be delivered to the customer at the time of the sale of the cigarettes does not violate Iowa Code chapter 421B.

233.5(4) *Coupons.* A manufacturer distributes coupons to the general public to allow the purchase of cigarettes at a reduced price. Provided it is the manufacturer who absorbs the entire cost of the reduction in price, there would be no violation of Iowa Code chapter 421B. Coupons that are sent to the final consumer to be redeemed by a retailer that is reimbursed by a manufacturer do not

violate Iowa Code chapter 421B. This would be true even though the coupon represented the full price of the cigarettes.

This rule is intended to implement Iowa Code chapter 421B.

701—233.6(421B) Notification of manufacturer's price increase. For purposes of determining the "cost to the retailer" and the "cost to wholesaler," all manufacturers dealing with Iowa permittees shall notify the department in writing within five working days of the effective date of any change in the manufacturer's list price for cigarettes.

This rule is intended to implement Iowa Code sections 421B.8 and 421B.11.

701—233.7(421B) Sanctions for violations.

233.7(1) *Civil penalties.* Violations of Iowa Code chapter 421B and this chapter will result in penalties as identified in Iowa Code section 421B.3.

233.7(2) *Permit revocation or suspension generally.* The department may revoke or suspend any permit issued under subchapter I of Iowa Code chapter 453A for any violation of Iowa Code chapter 421B. The authority to revoke or suspend a retail cigarette permit for a violation of Iowa Code chapter 421B rests in the department even though the permit was issued by a city or county. The revocation or suspension shall be effectuated under the provisions of the "contested case proceedings" and "licenses" rules contained in 701—Chapter 7.

233.7(3) *Waiting period.* Once the permit is revoked or suspended, the permittee cannot obtain another cigarette permit, nor may a permit be issued for the location covered by the revoked or suspended permit, regardless of the identity of the applicant, for a period of at least six months.

This rule is intended to implement Iowa Code section 421B.11.

ITEM 2. Rescind and reserve **701—Chapter 257**.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapters 234 and 258
"Tobacco Master Settlement Agreement"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 453C.1(10), 453D.5(5), and 453D.7(3)
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 453C and 453D

Public Hearing

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

December 4, 2024 2:30 to 3:30 p.m.	Via virtual/videoconference: meet.google.com/dfi-ijbx-deo

Public Comment

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

Matt Bishop
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.452.9205
Email: matt.bishop@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to adopt new rule 701—Chapter 234 and rescind and reserve 701—Chapter 258. Chapter 258 contains rules required or necessary to ascertain the amount of excise tax paid on cigarettes sold by participating and nonparticipating tobacco manufacturers in Iowa each year and ensure tobacco product manufacturers comply with the Master Settlement Agreement (MSA). The rules also establish provisions for escrow accounts and provide for periodic compliance reports. Iowa's model directory and escrow statutes, and corresponding rules, are required to conform to the MSA. All settling states have enacted qualifying statutes. Violations of the model statutes threaten the integrity of the MSA, the fiscal soundness of the State, and the public health. The Department determined the rules are necessary and aid the public's understanding about what is required of tobacco product manufacturers under the MSA.

However, the Legislature's recent passage of 2024 Iowa Acts, Senate File 345 and House File 2677, on the regulation of devices and vapor products, will require, and in the case of House File 2677 mandate, the adoption of new administrative rules. The Department has determined that the current placement of the administrative rules on cigarette and tobacco-related and adjacent topics does not allow for these new forthcoming chapters of rules to be placed near the others, hindering the public's accessibility to these rules. Therefore, the Department proposes readopting the rules on the excise tax paid on cigarettes sold by participating and nonparticipating tobacco manufacturers in Iowa and tobacco product manufacturer compliance with the MSA in new Chapter 234. Moving the rules from Chapter 258 to Chapter 234 will provide the public easier accessibility to this and other cigarette and tobacco-related administrative rules. The Department proposes revisions to the text of the rules for

better organization and clarification and to remove unnecessary, obsolete, and duplicative statutory language as required by Executive Order 10.

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 to the proposed rulemaking beyond what is imposed by the underlying statutes and the MSA.

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

The public, especially those entities subject to the MSA, will benefit from the proposed rulemaking on ascertaining the amount of excise tax paid on cigarettes sold by participating and nonparticipating tobacco manufacturers in Iowa each year and ensuring tobacco product manufacturers comply with the MSA.

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

- **Quantitative description of impact:**

There is no economic impact of the proposed rulemaking beyond what is contained in the underlying statutes and the MSA itself.

- **Qualitative description of impact:**

The proposed rulemaking reduces uncertainty about the amount of excise tax paid on cigarettes sold by participating and nonparticipating tobacco manufacturers in Iowa each year. Further, the proposed rulemaking can help ensure tobacco product manufacturers comply with the MSA.

3. **Costs to the State:**

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

There are no costs to the Department or the Office of the Attorney General to implement the proposed rulemaking beyond what would otherwise be required to administer the underlying statutes or the MSA.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues, although the revision of the repromulgated rules will provide clarity to the public. For those subject to the underlying statutes and the MSA, the proposed rulemaking will make it more likely those subject to the underlying statutes and the MSA are in compliance with the underlying statutes and the MSA.

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

The cost of inaction would be the failure to comply with the underlying statute's requirement that the Department and the Attorney General adopt rules to effectuate the purposes of Iowa Code chapters 453C and 453D. Further, the cost of failing to amend and update the rules in the proposed rulemaking and failing to place the proposed rulemaking in a chapter more accessible to other chapters on cigarettes and tobacco will lead to frustration and confusion. The benefits to the proposed rulemaking are elimination of unnecessary and obsolete language and easier access to this topic by placing this chapter near other chapters with similar topics.

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

The proposed rulemaking is not costly or intrusive. The purpose of the proposed rulemaking is to provide guidance on the Attorney General's and the Department's administration of ascertaining the amount of excise tax paid on cigarettes sold by participating and nonparticipating tobacco manufacturers in Iowa each year and ensure tobacco product manufacturers comply with the MSA. The option of not having this proposed rulemaking was not considered since the rules are mandated by

statute and the state's model directory, escrow statutes, and corresponding rules are required to conform with the MSA.

6. **Alternative methods considered by the agency:**

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

The Department and the Attorney General did not consider the possibility of not providing the proposed rulemaking.

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

Proceeding without the proposed rulemaking would be defying the underlying statutes' mandates to adopt rules and would lead to confusion about the process for ascertaining the excise tax paid on cigarettes sold by participating and nonparticipating tobacco manufacturers in Iowa each year and ensuring tobacco product manufacturers comply with the MSA.

Small Business Impact

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

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

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

The proposed rulemaking does not have a substantial impact on small business because there are no differences to the application of the proposed rulemaking based on the size of an eligible business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 234:

CHAPTER 234
TOBACCO MASTER SETTLEMENT AGREEMENT

DIVISION I
TOBACCO MASTER SETTLEMENT AGREEMENT

701—234.1(453C) National uniform tobacco settlement and definitions.

234.1(1) *Purpose.* In 1998, the state of Iowa joined a multistate agreement with cigarette manufacturers called the Master Settlement Agreement (MSA). Subsequent to entering into that agreement, in 1999 the Iowa general assembly enacted Iowa Code chapter 453C that requires the department to promulgate regulations to ascertain the amount of excise tax paid on cigarettes sold by nonparticipating tobacco product manufacturers in Iowa each year.

234.1(2) *Definitions.* For the purposes of this chapter, the definitions set forth in Iowa Code section 453C.1 apply.

701—234.2(453C) Annual report.

234.2(1) *Filing.* A report must be filed by tobacco products distributors, cigarette distributors, and persons who sell tobacco products at retail that were purchased from a person who is not required to file a distributor report.

234.2(2) *Annual reporting.* The report must be filed annually on or before the last day of the month following the close of the calendar year in which the sales were made and must be in a form and manner prescribed by the department. The reports must be submitted electronically via GovConnectIowa.

234.2(3) *Report information.* The report must include the following information with respect to units sold that were not purchased from a participating tobacco product manufacturer or units sold that were purchased from a participating tobacco product manufacturer but are not units sold as covered by the MSA:

a. Number of units sold.

b. Brand of the units sold.

c. Name and address of the person from whom each unit was purchased.

d. Name and address of the manufacturer of the unit, if known.

e. Name and address of the importer of the unit, if known, and whether that importer is the exclusive importer of the unit, if known.

234.2(4) *Other reporting.* A retailer may need to file a report when purchasing roll-your-own tobacco or cigarettes over the Internet, through a catalog from a vendor located outside of Iowa, from an Indian tribe or from an enrolled member of an Indian tribe located on a reservation in or outside Iowa, by mail order, or from a vendor located in another state.

234.2(5) *Reporting purchases from participating tobacco product manufacturer.* A retailer must also, upon request by the department, report information with respect to units sold that were purchased from any participating tobacco product manufacturer.

701—234.3(453C) Recordkeeping. Every person who sells at retail tobacco products purchased from a person who is not required to file a report required by this chapter, and every tobacco products distributor and cigarette distributor subject to this reporting rule, must maintain complete and accurate records and underlying documentation for five years to support the data required to be supplied to the department under rule 701—234.2(453C). Upon request, all requested records and documents must be provided to the department.

701—234.4(453C) Disclosure to attorney general permitted. The department may disclose any and all information filed pursuant to rule 701—234.2(453C) to the attorney general for use in enforcing compliance with Iowa Code chapter 453C.

These rules are intended to implement Iowa Code chapter 453C.

DIVISION II
TOBACCO PRODUCT MANUFACTURERS' OBLIGATIONS AND PROCEDURES

701—234.5(453D) Purpose and definitions.

234.5(1) *Purpose.* Violations of Iowa Code chapter 453C threaten the integrity of the tobacco MSA, the fiscal soundness of the state, and the public health. In 2003, the general assembly enacted Iowa Code chapter 453D to establish procedural enforcement enhancements to aid in the enforcement of Iowa Code chapter 453C.

234.5(2) *Definitions.* For purposes of this division, the definitions set forth in Iowa Code section 453D.2 apply.

701—234.6(453D) Directory of tobacco product manufacturers.

234.6(1) *Directory of cigarettes approved for stamping and sale in Iowa.*

a. A tobacco product manufacturer and a brand family shall not be included in the directory authorized by Iowa Code section 453D.3 after April 30 each year until and unless the tobacco product manufacturer has provided current and accurate certification conforming to the requirements of Iowa Code section 453D.3.

b. Nonparticipating manufacturers and their brand families shall not be included in the directory after April 30 each year until and unless the attorney general has determined that the nonparticipating tobacco product manufacturer is in full compliance with Iowa Code section 453D.3 and that neither Iowa Code section 453D.3(2)*"b"*(1) nor 453D.3(2)*"b"*(2) applies to the nonparticipating tobacco product manufacturer or a brand family it seeks to have included in the directory.

c. A tobacco product manufacturer or brand family shall be deleted from the directory if a determination is made by the attorney general that the tobacco product manufacturer no longer meets the requirements of Iowa Code section 453D.3, or that either Iowa Code section 453D.3(2)*"b"*(1) or 453D.3(2)*"b"*(2) applies.

234.6(2) *Notice of inclusion in directory.* The attorney general shall notify a tobacco product manufacturer by mail that the tobacco product manufacturer has met the requirements of Iowa Code section 453D.3 and will be included in the directory. This notice shall include each brand family that the attorney general determines will be included in the directory.

234.6(3) *Notice of noninclusion in or deletion from the directory.* Tobacco product manufacturers that have applied for inclusion in the directory shall be notified in writing of a decision made by the attorney general not to include in or to delete from the directory the tobacco product manufacturer or a brand family. Such notice shall be served on the tobacco product manufacturer's agent for service of process by certified mail.

234.6(4) *Procedure for contesting notice of noninclusion or deletion.*

a. Appeals. A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing an appeal of that decision with the department. Appeals shall conform generally to the requirements of the "Appeals" rule contained in 701—Chapter 7 to the extent applicable. The appeal will, thereafter, be processed and a contested case hearing will be held in general conformity with the requirements of the "Filings with the department" and "Service by the department" subrules contained in 701—Chapter 7; the requirements of the "Docket," "Answer," "Commencement of contested case proceedings," "Discovery," and "Prehearing conference" rules contained in 701—Chapter 7; the requirements of the "Orders" subrule contained in 701—Chapter 7; and the requirements of the "Record and transcript," "Application for rehearing," and "Ex parte communication and disqualification" rules contained in 701—Chapter 7 to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that the tobacco product manufacturer or a particular brand family is entitled to be listed in the directory.

b. Orders. The form, status, finality and appealability of orders shall be controlled by the general provisions of the "Orders" subrule contained in 701—Chapter 7, except that no appeal to, or motion of, any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

c. Stays and bonds. Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under the requirements of the "Stays" subrule contained in 701—Chapter 7. However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals will be satisfied if the tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

d. *Forfeit of bond.* If a claim is made that a particular entity is the tobacco product manufacturer, the entity obtains an order allowing the entity and any of the brands the entity claims to be responsible for to be listed in the directory pending final resolution of the entity's status, and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond is forfeited to the state.

These rules are intended to implement Iowa Code chapter 453D.

ITEM 2. Rescind and reserve **701—Chapter 258**.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapters 240 and 269
"Administration of Marijuana and Controlled Substance Stamp Tax"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 453B.2
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 453B

Public Hearing

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

December 4, 2024 2:30 to 3:30 p.m.	Via videoconference call: meet.google.com/dfi-ijbx-deo

Public Comment

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

Matt Bishop
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.452.9205
Email: matt.bishop@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to adopt a new Chapter 240 and rescind and reserve Chapter 269. Chapter 269 contains rules on the Department's interpretation of Iowa Code chapter 453B on the application and imposition of the excise tax on unlawful dealing in certain substances. The Department determined these rules aid the public's understanding on this topic. However, the Legislature's recent passage of 2024 Iowa Acts, Senate File 345, and 2024 Iowa Acts, House File 2677, on the regulation of devices and vapor products, will require, and in the case of House File 2677 mandate, the adoption of new administrative rules. The Department has determined that the current placement of the administrative rules on cigarette and tobacco-related and adjacent topics does not allow for these new forthcoming chapters of rules to be placed near the others, hindering the public's accessibility to these rules. Further, the Department determined that for ease of use and accessibility for the public, the rules on this excise tax should be placed close to the rules on the cigarette and tobacco-related excise taxes.

Therefore, the Department proposes readopting and moving the rules on the administration of the excise tax on marijuana and controlled substance stamp tax into Chapter 240, which was previously reserved. The Department proposes revisions to the text of the rules for better organization and clarification and to remove portions of the rules that the Department determined are unnecessary, obsolete, or duplicative of statutory language as required by Executive Order 10.

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 of the proposed rulemaking beyond what is imposed by the underlying statute.

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

The public will benefit from the proposed rulemaking because the rulemaking provides guidance on the imposition and administration of the excise tax on unlawful dealing in certain substances.

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

- **Quantitative description of impact:**

There is no economic impact of the proposed rulemaking beyond what is contained in the underlying statutes.

- **Qualitative description of impact:**

The proposed rulemaking will help to reduce uncertainty about the imposition and administration of this excise tax. Failure to have the proposed rulemaking would lead to confusion and potential errors in the administration of this excise tax.

3. **Costs to the State:**

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

There are no costs to the agency to implement the proposed rulemaking beyond what would otherwise be required to administer the underlying statutes.

- **Anticipated effect on state revenues:**

There is no anticipated effect from the proposed rulemaking on state revenues. This chapter provides guidance on the administration of the excise tax.

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

The cost of inaction would be failing to update the chapter on the administration of marijuana and controlled substances stamp tax to remove obsolete, unnecessary, and duplicative statutory language. The benefit of the proposed rulemaking is reducing confusion about the administration and imposition of this excise tax.

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

The proposed rulemaking is not costly or intrusive. The Department considered the option of not having administrative rules explaining the imposition and administration of this excise tax. However, the Department determined that the rules provide useful guidance to the public.

6. **Alternative methods considered by the agency:**

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

The Department considered the possibility of not providing administrative rules for this tax type, but determined that the rules provide useful guidance to the public beyond what is provided in the underlying statutes.

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

The absence of the proposed rulemaking would lead to confusion on the administration of this tax type because the rules provide useful information for 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 rulemaking does not have a substantial impact on small business because the rulemaking does not make any distinctions relating to the size of a business nor does the rulemaking impose any requirements on businesses.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 240:

CHAPTER 240
ADMINISTRATION OF MARIJUANA AND
CONTROLLED SUBSTANCES STAMP TAX

701—240.1(453B) Marijuana and controlled substances stamp tax.

240.1(1) *Definitions.* For purposes of this chapter, words and terms have the same meanings as defined in Iowa Code section 453B.1.

240.1(2) *Purchases of stamps.*

a. Location. Stamps that are capable of being affixed to taxable substances are offered for sale to members of the public by the department during normal business hours at the rates set in Iowa Code section 453B.7. The stamps are sold at the Hoover State Office Building, First Floor, Des Moines, Iowa, and at other locations as may be designated by the director or may be purchased by mail.

b. Payment. Payment for stamps is accepted in the form of cash, cashier's check, or money order. Personal checks are not accepted.

c. Minimum purchase. The stamps are issued in the denominations requested by the purchaser so long as the minimum purchase price set in Iowa Code section 453B.8 is met. Also, the denomination of individual stamps cannot be less than the price for ten dosage units, multiples of ten dosage units, one whole gram, or multiples of one gram even if the stamp will be affixed to a package containing less than ten dosage units or multiples thereof, or only a portion of one gram or multiples thereof.

240.1(3) *Types of stamps.* Four different stamps are offered for sale:

a. Stamp for a substance consisting of or containing processed marijuana,

b. Stamp for taxable substances other than marijuana that are sold by weight,

c. Stamp for taxable substances other than marijuana that are not sold by weight, and

d. Stamp for each unprocessed marijuana plant.

240.1(4) *Validity.* The stamps are valid for a period of six months from the date of issuance. Stamps contain a statement that the stamps expire after six months from the date of issue. A stamp is "unused" and expires if it has not been affixed to taxable substances within six months of the date of issue.

240.1(5) *Identification not required.* Persons purchasing stamps are not required to provide identification, such as their name or address, when purchasing stamps.

701—240.2(453B) Refunds pertaining to unused stamps.

240.2(1) *Refund date.* At any time up to 30 days after the expiration date as indicated on the stamp, any unused stamp may be returned to the department and a refund requested in accordance with Iowa Code section 453B.14 and these rules.

240.2(2) *Refund information.*

a. Persons seeking a refund for an unused stamp must provide a name in which a refund can be made. However, refund information is confidential under Iowa Code section 453B.10.

b. If granted, the refund in the form of a warrant may, at the request of the refund claimant, either be picked up in person from the department at the Hoover State Office Building, Des Moines, Iowa, during normal business hours, or sent by mail to an address designated by the refund claimant.

These rules are intended to implement Iowa Code chapter 453B.

ITEM 2. Rescind and reserve **701—Chapter 269**.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapter 250
"Vehicles Subject to Registration"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.105A(4)
State or federal law(s) implemented by the rulemaking: Iowa Code section 321.105A

Public Hearing

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

December 3, 2024 3 to 4 p.m.	Via videoconference call: meet.google.com/iei-hezt-fuc

Public Comment

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

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 250 and adopt new Chapter 250 on vehicles subject to registration. These rules describe the Department's interpretation of the underlying statute to help the public understand the one-time fee for new registration for vehicles in Iowa. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language as required by Executive Order 10. Further, the Department proposes revisions to the chapter to add clarity to aid the public's understanding of the vehicle fee for new registration.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

The proposed rulemaking does not impose costs beyond what is imposed by the underlying statutes.

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

The public will benefit from information about the applicability of the vehicle fee for new registration.

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

- **Quantitative description of impact:**

There is no economic impact of the proposed rules beyond what is provided in the underlying statutes.

- **Qualitative description of impact:**

The qualitative benefit of the proposed rulemaking beyond what is already provided by the underlying statutes is the value of having rules that describe the applicability and administration of the vehicle fee for new registration.

3. **Costs to the State:**

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

There are no costs to the State beyond what is required to administer the relevant statutes.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

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

There are no costs associated with the proposed rulemaking. The costs of inaction would be failing to update this chapter to remove unnecessary and duplicative statutory language. The benefit is to eliminate outdated and unnecessary language to provide taxpayers with clarity on the processes involved with the vehicle fee for new registration.

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

The proposed rulemaking is not costly or intrusive. The purpose of the proposed rulemaking is to provide guidance on the applicability and administration of the vehicle fee for new registration.

6. **Alternative methods considered by the agency:**

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

The Department did not consider the option of not providing the proposed rulemaking, but the Department did remove outdated or unnecessary language where possible.

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

The Department determined that the retention of the rules in the proposed rulemaking will provide useful clarification and guidance on the vehicle fee for new registration to taxpayers.

Small Business Impact

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

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

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

The rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 250 and adopt the following **new** chapter in lieu thereof:

CHAPTER 250
VEHICLES SUBJECT TO REGISTRATION

701—250.1(321) Definitions.

"Dealer" means the same as defined in Iowa Code section 321.1(17).

"Directly and primarily used" means the same as described in rule 701—215.15(423).

"Optional service agreement" means an arrangement to prepay or pay for a predetermined price for future vehicle services, including but not limited to oil changes and tire rotation.

"Recycling" means the same as defined in 701—paragraph 215.19(2)*"a."*

"Regular course of business" means the activities that a person normally engages in as part of managing the person's trade or business. If referring to a dealer licensed under Iowa Code section 322.7, "regular course of business" further includes only the make or makes of new vehicles listed on the dealer's license.

"Single-member LLC" means a limited liability company (LLC) of which income is reported on Schedule C of the owner's personal income tax return. A single-member LLC shall be treated as a sole proprietorship.

"Vehicle protection package" means services including but not limited to exterior paint protection; interior fabric, leather, and vinyl protection; rust proofing; and undercoating that are purchased at the time the vehicle is purchased.

"Vehicle subject to registration" means any vehicle subject to registration pursuant to Iowa Code section 321.18.

This rule is intended to implement Iowa Code section 321.105A.

701—250.2(321) Purchase price.

250.2(1) *Exclusions.* "Purchase price" means the same as defined in Iowa Code section 321.105A(2)*"a"* and does not include:

a. Cash discounts.

b. Allowances for the trade-in of a vehicle subject to registration, as further outlined in rule 701—250.3(321).

c. Gasoline, if separately itemized.

d. Fees imposed by the dealer for document processing, including but not limited to those commonly known as "doc fees."

e. Any manufacturer's cash rebate to a purchaser that is applied to the purchase price of a vehicle.

f. Optional service agreements, if separately itemized.

g. Vehicle protection packages, if separately itemized.

h. Amounts listed under Iowa Code section 423.1(51)*"b."*

250.2(2) *Inclusions.* "Purchase price" includes but is not limited to the following, if valued in money even if not paid in money:

a. Accessories.

b. Additional equipment.

c. Services.

d. Freight and manufacturer's tax, valued in money.

e. In-kind compensation.

f. Amounts listed under Iowa Code section 423.1(51)*"a."*

EXAMPLE: Person A is a shareholder and employee in Corporation. In the months of April through November, Person A worked a substantial amount of overtime. In December, Corporation allowed Person A to choose whether to be paid for the overtime by receiving additional wages or by taking title to a corporate vehicle. Person A chose to take the vehicle, and Corporation transferred the title of

the vehicle to Person A. The transfer of the vehicle to Person A was "in-kind" compensation paid by Corporation to Person A for the overtime hours worked. This compensation constitutes consideration. The fee for new registration is due on the amount of overtime pay that would be due had Person A opted to be paid.

250.2(3) *Documentation.* A bill of sale, or equivalent documentation, is required to establish purchase price. The bill of sale, or equivalent documentation, must be signed by the seller. The county treasurer, department of transportation, or department may require additional or alternative documentation as necessary to sufficiently establish purchase price.

250.2(4) *Fee collection.* If there is doubt about a purchase price, the county treasurer or the department of transportation will collect the fee. A claim for refund may be filed by the taxpayer if the taxpayer believes the fee has been erroneously collected.

This rule is intended to implement Iowa Code section 321.105A.

701—250.3(321) Trades.

250.3(1) *Trades, generally.*

a. A trade-in allowance is excluded from the purchase price if the requirements of Iowa Code section 321.105A(2)*"a"*(2) are met.

EXAMPLE A: Person D has an automobile with a value of $5,000. Person E also has an automobile valued at $5,000. They decide to trade automobiles. Person D and Person E make an even trade, automobile for automobile, with no money changing hands. The fee for new registration is not due on either automobile because the exchange is even in value.

EXAMPLE B: Person B has an automobile with a value of $2,000. Person C has an automobile valued at $3,500. Person B and Person C decide to trade automobiles. Person B pays Person C $1,500 in cash for the difference in value. Person B will pay the fee for new registration on $1,500. Person C will not pay the fee for new registration because the trade-in allowance reduces the purchase price to $0.

EXAMPLE C: Person F has an automobile with a value of $5,000. Person G has an automobile valued at $3,000 and a forklift valued at $2,000. They decide to trade these three items. An even trade is made, Person F's automobile in exchange for Person G's automobile and forklift, with no money changing hands. The forklift is not a vehicle subject to registration. Thus, Person G cannot receive a trade-in allowance for the forklift against the $5,000 purchase price of Person F's automobile. Person G will, however, receive a trade-in allowance on the value of the automobile, a vehicle subject to registration. Therefore, Person G will pay a fee for new registration on $2,000. Person F will not pay the fee for new registration because the trade-in allowance reduces the purchase price to $0.

b. Unless otherwise excluded, a trade-in allowance is excluded from the purchase price only if the person(s) listed on the title of the traded vehicle are the same as the person(s) listed on the newly acquired vehicle.

Example: Person H and Person I are unrelated and, together, own a vehicle subject to registration. The owner on the title of the vehicle is listed as "Person H or Person I." Person I trades in the vehicle toward the purchase of a new vehicle to be owned together by Person I and Person J, also unrelated. The owner on the title of the new vehicle is listed as "Person I or Person J." The trade-in allowance is not allowed against the purchase price because Person J is not one of the persons on the original vehicle title.

250.3(2) *Trades involving family members.* This allowance is only for lineal relationships and does not extend to nonlineal family members. Consequently, this allowance is not extended to brothers, sisters, aunts, uncles, or cousins.

EXAMPLE A: Grandmother and Grandfather are married and own a vehicle subject to registration together. The owner on the title of the vehicle is listed as "Grandmother or Grandfather." Grandmother trades in the vehicle toward the purchase of a new vehicle. The owner on the title of the new vehicle is listed as "Grandmother or Grandson." The trade-in allowance is allowed against the purchase price because all parties are lineal family members.

EXAMPLE B: Aunt and Uncle are married and own a vehicle subject to registration together. The owner on the title of the vehicle is listed as "Aunt or Uncle." Aunt trades in the vehicle toward the purchase of a new vehicle. The owner on the title of the new vehicle is listed as "Aunt or Niece." The trade-in allowance is not allowed against the purchase price because Niece is not a lineal family member of Aunt or Uncle.

250.3(3) *Trades involving an entity.*

a. When an entity is involved, the names on the title of the trade-in and newly acquired vehicle generally must be the same, except for sole proprietorships, which are not distinguished from the individual owner.

b. A trade-in credit is not allowed when a corporate vehicle owner trades in a vehicle subject to registration on behalf of a stockholder to purchase a new vehicle in the stockholder's name, or vice versa.

EXAMPLE A: Corporation S owns a vehicle subject to registration. The owner on the title of the vehicle is listed as "Corporation S." Corporation S trades the vehicle in for a new vehicle of equivalent value, which is titled in the name of "Stockholder G." Stockholder G must pay the fee for new registration on the value of the new vehicle because no trade-in allowance is allowed.

EXAMPLE B: Business, Inc. and Person K own a vehicle subject to registration. The owner on the title of the vehicle is listed as "Business, Inc. or Person K." Person K trades in the vehicle toward the purchase of a new vehicle. The owner on the title of the new vehicle is listed as "Person K." The trade-in allowance is allowed against the purchase price because the original title is listed as "or" ownership and the received vehicle title contains only parties that were on the traded vehicle title.

250.3(4) *Trades involving a dealer.*

a. The dealer must be regularly engaged in the business of selling the type of vehicles involved in the trade.

EXAMPLE A: Person L trades a boat toward the purchase of a new vehicle subject to registration. The vehicle's purchase price is $10,000, and the dealer allows a trade-in allowance of $5,000 for the boat. The dealer is not regularly engaged in the business of selling boats. The trade-in amount of $5,000 for the boat does not reduce the amount subject to the fee for new registration because the traded vehicle is not one that the dealer sells in the regular course of business. The fee for new registration is due on $10,000.

EXAMPLE B: Person N purchases a new truck and uses a truck that Person N currently owns as a trade. Person N goes to Truck Dealer to purchase the new truck. The truck that Person N wants has to be ordered from the manufacturer and will take six months for delivery. Truck Dealer prepares a purchase order showing the retail price of $50,000 and a trade-in allowance for Person N's truck of $20,000. Since the truck being ordered will not be delivered for six months, Truck Dealer allows Person N to drive the traded truck until the new truck arrives. Truck Dealer still allows Person N the $20,000 trade-in allowance regardless of the additional miles Person N may put on the traded truck. Since the purchase order for the new truck shows a $20,000 trade-in allowance, the fee for new registration is imposed on $30,000.

EXAMPLE C: Person O owns a car dealership corporation and a separate farm tractor dealership corporation. Person P wishes to purchase a car worth $40,000 from Person O's car dealership. Person P uses a tractor as trade, and Person O's car dealership allows a trade-in allowance of $40,000. Person P furnishes no money. Since Person P's tractor was traded to the car dealership and not the tractor dealership, the trade-in allowance cannot be used for purposes of the fee for new registration. The fee for new registration is imposed on $40,000.

EXAMPLE D: Person Q owns two cars and wants to trade both cars toward the purchase of a new car. Car Dealer allows a trade-in allowance of $5,000 for the first car and $7,000 for the second car, for a total trade-in allowance of $12,000. The purchased car price is $14,000. Since Car Dealer is in the business of selling used cars, both of Person Q's cars can be used as a trade-in allowance. The fee for new registration is imposed on $2,000.

b. For purpose of the fee for new registration, the total trade-in amount will be deducted from the purchase price, even if the trade-in is used to pay off an outstanding loan balance. The amount the purchaser owes on the traded-in vehicle is not relevant in determining the purchase price of the new vehicle.

EXAMPLE A: Person D purchases a vehicle for $35,000 and trades in a vehicle as part of the transaction. The dealer gives a trade-in amount of $15,000 based on the actual value of the vehicle being traded. Person D still owes $10,000 on the traded vehicle. A portion of the $15,000 trade-in value is used to pay off the $10,000 remaining loan balance. In this example, $15,000 is allowed as a trade for fee for purposes of the new registration.

EXAMPLE B: Person E "trades down" a car by purchasing a vehicle for $20,000 and trades in a vehicle valued at $30,000. Person E also has a loan on the vehicle being traded in. The car dealership may give enough of a trade-in allowance to pay off the loan and have money left over to pay on the new vehicle. Even though the trade-in allowance may be quite large, the full amount of the trade should be allowed for purposes of the fee for new registration. In this case, the trade-in allowance is $30,000, and since that exceeds the price of the new vehicle, no fee for new registration is due.

This rule is intended to implement Iowa Code section 321.105A.

701—250.4(321) Manufacturer's rebate.

250.4(1) *Generally.* A manufacturer's rebate can be used to reduce the purchase price of a vehicle subject to the fee for new registration.

250.4(2) *Qualifications.*

a. To qualify, the rebate must be:

(1) A return of an amount that the purchaser would otherwise have paid;

(2) In the form of money;

(3) Offered by a manufacturer licensed under Iowa Code section 322.27; and

(4) Applied to the purchase price of the vehicle;

b. Additionally, to qualify, the rebate is part of a transaction that is strictly between a manufacturer and a purchaser.

(1) The rebate must be from an entity acting as a manufacturer of such vehicle being purchased when offering the rebate. The rebate cannot be from a vehicle manufacturer engaging in other activities, such as a manufacturer acting in the capacity of a credit card issuer or a financing program; and

(2) The purchaser must be in the process of purchasing the vehicle when the rebate is given. The rebate cannot be given to a customer in a situation similar to the credit card rebate program, in which the customer earns the right to the rebate over a period of time. Purchase of the vehicle must occur simultaneously with the receipt of the rebate. The rebate cannot be allowed unless the customer purchases the vehicle.

250.4(3) *Exclusion from rebate.* Payment methods, such as credit or debit cards, issued by vehicle manufacturers that are used as a rebate toward the price of the manufacturer's vehicle are not considered a manufacturer's rebate for the purposes of the fee for new registration. These types of rebates cannot be used toward reducing the purchase price of a vehicle subject to the fee for new registration.

EXAMPLE: Person R purchases a vehicle subject to registration with a purchase price of $30,000 and trades in a vehicle valued at $10,000. The manufacturer of the newly purchased vehicle gives Person R $1,000 on a manufacturer-issued credit card as a "rebate." Person R pays $19,000 in cash for the new vehicle. The fee for new registration is due on $20,000, because the "rebate" was issued on a credit card rather than applied directly to the price.

This rule is intended to implement Iowa Code section 321.105A.

701—250.5(321) Selling and purchasing the same vehicle. If a person sells a vehicle subject to registration and then buys the same vehicle back, the transaction is not exempt from the fee for new registration. These are two separate transactions, and both are subject to the fee for new registration.

This rule is intended to implement Iowa Code section 321.105A.

701—250.6(321) Federal excise tax. To be excluded from the fee for new registration, the federal excise tax must meet both of the following requirements:

250.6(1) It must be imposed upon the purchaser and be due at the time of the retail sale.

250.6(2) It must be billed or charged as a separate item.

This rule is intended to implement Iowa Code section 321.105A.

701—250.7(321) Sales to a Native American. If a dealer delivers a vehicle to a resident Native American on a reservation and, at a later time, the resident Native American registers the vehicle at the county treasurer's office, the fee for new registration is not due since the delivery took place on a reservation.

250.7(1) *Off-reservation delivery.* If the vehicle is delivered off a reservation, the fee for new registration is due even if the sole use of the vehicle is on a reservation.

250.7(2) *On-reservation delivery.* If delivery takes place on a reservation, but the owner is not a member of any federally recognized tribe, the fee for new registration is due.

This rule is intended to implement Iowa Code section 321.105A.

701—250.8(321) Sale of chassis with added equipment or accessories.

250.8(1) *Dealer-installed equipment.* If a dealer sells a chassis and the purchaser has the dealer install any equipment, the fee for new registration is due on the full purchase price, including the chassis and the equipment. This is a completed vehicle when driven off the dealer's lot.

250.8(2) *Third party-installed equipment.* If the chassis is purchased from a dealer and the equipment is installed by the purchaser from a third party, the fee for new registration is due on the chassis and sales tax is due on the equipment.

EXAMPLE A: Business S purchases a chassis from an auto dealer for $20,000. Business S wants a lift added to the chassis. The auto dealer agrees to sell and install the lift for $15,000. The auto dealer takes the chassis to a lift dealer for purchase and installation of the lift. After the installation, Business S returns to the auto dealer to take delivery of the completed vehicle. Business S requests the auto dealer itemize the chassis price of $20,000 and the lift price of $15,000. Business S pays the auto dealer $35,000 for the complete vehicle. The chassis and lift together are a vehicle subject to registration, because both constitute the completed vehicle, and the fee for new registration is due on $35,000.

EXAMPLE B: Business T purchases a chassis from an auto dealer for $20,000. Business T wants a lift added to the chassis. However, Business T will purchase the lift from a third party and not from the auto dealer. Business T pays the dealer $20,000 for the chassis. Business T drives the chassis to a lift dealer to purchase and install a lift for $12,000. The purchase of the chassis from the auto dealer is subject to the fee for new registration because it alone constitutes the completed vehicle purchased. The purchase and installation of the lift from the lift dealer are subject to Iowa sales tax and any applicable local option tax, rather than the vehicle fee for new registration.

This rule is intended to implement Iowa Code section 321.105A.

701—250.9(321) Sale of a boat or ATV with a trailer.

250.9(1) *Itemization.* If a boat or ATV dealer sells a boat or ATV with a trailer as a packaged deal, the dealer must itemize the boat or ATV, boat or ATV accessories, and trailer. The fee for new registration is due on the purchase price of the trailer.

250.9(2) *Nonitemization.* If the boat or ATV dealer does not itemize, it is assumed the full price of the packaged deal is for the purchase of a trailer and not for the boat or ATV and accessories. The fee for new registration will be calculated based on the full price of the packaged deal.

This rule is intended to implement Iowa Code section 321.105A.

701—250.10(321) Administration.

250.10(1) *Affidavit.* Vehicle registrants may utilize either a paper or electronic affidavit as a method of submission. The title and registration application created under Iowa Code section 321.20 is an affidavit for purposes of this rule.

250.10(2) *Exemption categories.* Exemptions are divided into eight categories as follows:

a. UT01 - Iowa Code sections 321.105A(2)*"c"*(19) and 321.105A(2)*"c"*(20).

b. UT02 - Iowa Code section 321.105A(2)*"c"*(1).

c. UT03 - Iowa Code sections 321.105A(2)*"c"*(3) and 321.105A(2)*"c"*(12).

d. UT04 - Iowa Code section 321.105A(2)*"c"*(14).

e. UT05 - Iowa Code section 321.105A(2)*"c"*(6).

f. UT06 - Iowa Code section 321.105A(2)*"c"*(2).

g. UT07 - Iowa Code section 321.105A(2)*"c"*(5).

h. UT08:

(1) UT08b - Iowa Code section 321.105A(2)*"c"*(10).

(2) UT08c - Iowa Code section 321.105A(2)*"c"*(8).

(3) UT08d - Iowa Code section 321.105A(2)*"c"*(16).

(4) UT08e - Iowa Code section 321.105A(2)*"c"*(7).

(5) UT08i - Iowa Code section 321.105A(2)*"c"*(18).

(6) UT08j - Iowa Code section 321.105A(2)*"c"*(13).

(7) UT08k - Iowa Code section 321.105A(2)*"c"*(11).

(8) UT08s - Iowa Code section 321.105A(2)*"c"*(17).

(9) UT08 - Other - Iowa Code sections 321.105A(2)*"c"*(4), 321.105A(2)*"c"*(9), 321.105A(2)*"c"*(15), and 321.105A(2)*"c"*(21) through 321.105A(2)*"c"*(31).

250.10(3) *Burden.* The burden of proof regarding whether an exemption applies is upon the person claiming the exemption.

250.10(4) *Signature.* Signatures are required on all affidavits. If a fleet (five or more vehicles) of vehicles is being registered, an affidavit for each vehicle within the fleet must be completed and signed.

250.10(5) *Claims.* Any claim for exemption from the fee for new registration made by a purchaser with a county treasurer is subject to review and ultimate determination by the department. If, after review, an exemption is found to have been claimed improperly, penalty and interest may apply in addition to the fee for new registration.

This rule is intended to implement Iowa Code section 321.105A.

701—250.11(321) Shell businesses.

250.11(1) The 90-day temporary period of operation under Iowa Code section 321.55(2) does not apply to a vehicle owned by a shell business.

250.11(2) Factors that indicate a business is a shell business include, but are not limited to, a lack of specific business activity or purpose and failure to maintain a physical location in the state in which the business is registered.

250.11(3) If the department determines that the nonresident owner of the vehicle is a shell business, it is presumed that:

a. The Iowa resident in control of the vehicle is the actual owner of the vehicle;

b. The vehicle is subject to Iowa registration; and

c. The payment of the fee for new registration is owed by the Iowa resident.

This rule is intended to implement Iowa Code section 321.105A.

701—250.12(321) Purchased for resale.

250.12(1) *Dealer purchase for resale or service use.* A motor vehicle dealer licensed under Iowa Code chapter 322 may title or title and register a vehicle using an exemption under either Iowa Code section 321.105A(2)*"c"*(14) or 321.105A(2)*"c"*(15) if the vehicle is operated in a manner consistent with the lawful use of dealer plates under Iowa Code section 321.57 and any associated rules.

250.12(2) *Held for resale qualification.* In order for a vehicle to be considered to be "held for resale," all of the following criteria must be met during all times that the vehicle is registered to the dealer:

a. The dealer must be licensed in Iowa pursuant to Iowa Code chapter 322;

b. Any use of the vehicle by the dealer must not constitute a taxable sale;

c. The dealer must keep the vehicle in its inventory for sale at all times;

d. The person using the vehicle must be aware of and accept that the vehicle may be sold at any time, resulting in the removal of the vehicle from that person's possession;

e. The dealer must permit the vehicle to be used without charge;

f. The dealer must not title the vehicle in its name and must operate the vehicle with dealer plates as provided in Iowa Code section 321.57.

250.12(3) *Held for resale disqualification.* If, at any time after the exemption is issued until the vehicle is no longer considered to be in the dealer's inventory, the dealer fails to maintain any criteria defined in subrule 250.12(2), the fee for new registration is due on the purchase price paid by the dealer at the time of acquisition of the vehicle.

EXAMPLE: Person R owns Auto Dealer, a sole proprietorship. Person R's child, Person U, needs a car, and Person R gifts a car worth $5,000 from Auto Dealer's inventory to Person U. The vehicle had previously been registered as a vehicle purchased for resale. Person U does not provide any consideration. Person U does not owe the fee for new registration on the transfer. However, Auto Dealer owes the fee for new registration on the purchase price paid by Auto Dealer at the time of acquisition. The vehicle was purchased for resale; however, it was not sold by Auto Dealer. As a result, Auto Dealer loses its dealer exemption for resale on this vehicle, and the fee for new registration is due on the purchase price paid by the dealer at the time of acquisition of each vehicle.

250.12(4) *Expired, revoked, or suspended licenses.*

a. Expiration or revocation. If a dealer license expires and is not renewed or the dealer license has been revoked, the dealer must title and register all the vehicles in the dealership inventory within 30 days of the license revocation or expiration. The fee for new registration is due on the purchase price paid by the dealer at the time of acquisition of each vehicle.

b. Suspension. If a dealer license is suspended, a dealer is not required to title or register the vehicles in the dealer's inventory because a suspension is merely a temporary interruption in the dealership business. The dealer's exemption remains intact during the period of suspension.

This rule is intended to implement Iowa Code section 321.105A.

701—250.13(321) Loans. Relief from a loan balance constitutes consideration for the purposes of the fee for new registration.

EXAMPLE A: A vehicle is titled in Person V's name with a loan also in Person V's name. Person V transfers the title to Person W, who assumes the unpaid balance of the loan. A new lien is filed. The fee for new registration is due on Person V's outstanding loan balance.

EXAMPLE B: A vehicle is titled in Person X's name with an outstanding loan balance of $10,000. Person X transfers the title to Person Y. Person Y takes out a $15,000 loan to pay off Person X's outstanding loan of $10,000 and also to have $5,000 for repairs to Person Y's house. The fee for new registration is due only on Person X's outstanding loan balance of $10,000.

This rule is intended to implement Iowa Code section 321.105A.

701—250.14(321) Leased vehicles.

250.14(1) The fee for new registration on leased vehicles is a liability of the owner (lessor) of the vehicle and not the lessee.

250.14(2) Owners/lessors may require the lessee to reimburse the owner/lessor, by adding the fee for new registration to the monthly lease payment or by requiring the lessee to pay the fee for new registration up front.

250.14(3) When a lessee chooses to terminate a lease and purchase the vehicle being leased, the purchase is subject to a fee for new registration on the purchase price. There is no refund of the fee for new registration paid on the lease price.

250.14(4) If an existing lease is transferred to another lessee, no additional fee for new registration is due so long as the title to the vehicle is maintained by the same lessor and the terms of the lease are not changed.

250.14(5) When a vehicle with an existing lease established in another state is registered in Iowa, the lease price is calculated as established in Iowa Code section 321.105A(3)*"b"* and is then prorated for the number of months remaining on the lease. No credit is allowed for any fee or tax paid to another state.

250.14(6) If a vehicle is leased between affiliates as defined in Iowa Code section 321.105A(3)*"f"*(3)(a) as enacted by 2024 Iowa Acts, House File 664, no fee for new registration is due on the lease so long as the fee was paid by the lessor prior to the lease.

This rule is intended to implement Iowa Code section 321.105A.

701—250.15(321) Exemption for vehicles purchased for the purpose of being leased and used exclusively for interstate commerce.

250.15(1) *Lease types.* The department makes a distinction between a true lease and a contract to haul. While an agreement may be a lease for purposes of the Interstate Commerce Commission, this does not mean it is a lease for purposes of the fee for new registration.

a. A true lease exists when the owner (lessor) gives the lessee exclusive possession of the lessor's property for a specified period.

b. A contract to haul exists when an owner contracts to do a piece of work while retaining control of the vehicle and methods of operation. A contract to haul is not a lease; therefore, the vehicle is not exempt.

250.15(2) *Intrastate and interstate delivery.*

a. An intrastate delivery occurs when property is picked up at one location in Iowa and delivered to another location in Iowa, regardless of whether the vehicle travels in another state in between pick-up and delivery.

b. An interstate delivery occurs when either the pick-up or delivery site is located outside of Iowa.

EXAMPLE A: Leasing Company A purchased a cargo van for the purpose of leasing it to XYZ Trucking. The lease agreement is for 36 months. XYZ Trucking will pick up property from Iowa businesses to be delivered out of state. XYZ Trucking never uses the van for intrastate deliveries within Iowa. XYZ Trucking uses this van exclusively in interstate commerce. All of the trips are either totally outside the state of Iowa, or, if a product is loaded in Iowa, the product is delivered outside of Iowa. As long as pick-up and delivery points are in different states, then the trip is considered interstate commerce. As such, the van in this example may be purchased by Leasing Company A exempt from the fee for new registration.

EXAMPLE B: Leasing Company A purchases a flatbed truck for the purpose of leasing it to XYZ Trucking, located within Iowa. The lease is for five months. XYZ Trucking will use the truck for deliveries out of state and in Iowa. Since some deliveries occur in Iowa, the subsequent use in Iowa is not solely for interstate commerce. The purchase by Leasing Company A (lessor) of the flatbed is subject to the fee for new registration.

This rule is intended to implement Iowa Code section 321.105A.

701—250.16(321) Exemption for certain Iowa Code chapter 326 vehicles.

250.16(1) Vehicles registered or operated under Iowa Code chapter 326 and used substantially in interstate commerce are exempt from the fee for new registration under Iowa Code section 321.105A(2)*"c"*(5).

250.16(2) The period for substantiating the mileage to qualify for the exemption for these types of vehicles by the department is fiscal year July 1 to June 30, with an exception if the initial registration period is a short year (less than 12 months). Mileage during that period will be totaled with the first full year for substantiation purposes.

250.16(3) Whether a vehicle is registered prorate or has county plates does not determine eligibility for exemption.

250.16(4) Records from the first four years of operation of the vehicle must be kept for at least ten years to prove the vehicle has consistently been eligible for the exemption. Summary records, such as the monthly or annual records required by the International Fuel Tax Agreement (IFTA), may be kept to prove the mileage requirement was met. Records are required for power units but not for trailers or semi-trailers.

250.16(5) The exempt status of a trailer or semi-trailer is based upon to what it is attached. If attached to an exempt power unit, the trailer or semi-trailer is also exempt.

EXAMPLE A: XYZ Trucking purchased two semi-tractors two years ago. An exemption was claimed because 25 percent of the mileage for each was out-of-state mileage and they met the registered weight requirement. Two years later, XYZ Trucking decided one of the semi-tractors will be used only in Iowa. The registered weight did not change, but the 25 percent out-of-state mileage requirement was not maintained for the first four years, so the exemption no longer applies. XYZ Trucking's book value is $60,000, and the market value is $75,000. The book value is less than the market value; the fee for new registration is imposed on the $60,000 book value.

EXAMPLE B: Two years ago, XYZ Trucking purchased a power unit and a semi-trailer. The power unit was used in excess of the 25 percent mileage requirement and met the 13-ton weight requirement, so an exemption was claimed. They were originally registered prorate. This year, XYZ Trucking decided to register the power unit and semi-trailer with county plates instead of renewing the prorate registration. Although the power unit and semi-trailer will be county-plated, XYZ Trucking will still use the power unit 25 percent outside of Iowa. The registered weight did not change. Since both the 25 percent mileage factor and the 13-ton registered weight factor are met, the fee for new registration is not due.

EXAMPLE C: Two years ago, XYZ Trucking purchased a power unit and a semi-trailer. Both the power unit and semi-trailer were used in excess of the 25 percent mileage requirement and met the 13-ton weight requirement, so an exemption was claimed. The power unit and the semi-trailer were originally registered prorate. This year, XYZ Trucking decided to register the semi-trailer with county plates instead of renewing the prorate registration. The power unit will still be used 25 percent outside of Iowa. The mileage of the semi-trailer does not matter because there is no record-keeping requirement for trailers or semi-trailers. The registered weight did not change. Since both the 25 percent mileage factor and weight requirements continue to be met, the fee for new registration is not due.

This rule is intended to implement Iowa Code section 321.105A.

701—250.17(321) Vehicles purchased outside of Iowa.

250.17(1) *Vehicles purchased with no intent for use in Iowa.* Vehicles that are purchased by a nonresident for use in a location other than Iowa are not subject to the fee for new registration upon move-in to Iowa. The determination of intention of use in Iowa is a factual determination. The county treasurer should consider any appropriate factors, including but not limited to the following:

a. Whether the vehicle was owned by the owner for a significant time prior to relocation to Iowa. A longer period of ownership while in another location may be indicative of intent of use in the

other location. Conversely, if the vehicle was purchased near the time of relocation to Iowa, this might suggest intent of use in Iowa.

b. Whether the vehicle was registered in another location.

c. Whether a substantial number of miles were driven in the vehicle in another location since the owner purchased the vehicle.

EXAMPLE: Person A, a resident of Moline, Illinois, purchased a vehicle from a dealership in Chicago, Illinois, one week before Person A moved to Davenport, Iowa. The vehicle was registered in Illinois. Person A was not aware at the time of purchase that Person A's employer would transfer Person A to Iowa. Person A's intent was not to use the vehicle in Iowa; therefore, Iowa's fee for new registration is not due.

250.17(2) *Vehicles purchased with intent of use in Iowa.* Vehicles subject to registration in Iowa are eligible for an exemption equal to a fee for new registration paid to another state or country. For the exemption to apply, the owner must show proof that the owner was legally required to, and did in fact, pay a fee for new registration, a sales or use tax, or an occupational tax to another state or country for the vehicle being registered in Iowa. Evidence of the payment may include but is not limited to purchase records, canceled checks, or invoices.

EXAMPLE A: Person L is an Iowa resident. While in Nevada, Person L purchased a new camper for $20,000. Nevada did not require Person L to pay a state fee for new registration or a state sales, use, or occupational tax. Person L brought the camper back to Iowa. The camper requires an Iowa title and registration. Since no state fee for new registration or state sales, use, or occupational tax was paid to the state of Nevada, Iowa's fee for new registration is due on the purchase price of $20,000.

EXAMPLE B: Person Q is an Iowa resident and spends the winter months in Florida. Person Q decides to purchase a new vehicle in Florida for $35,000. Person Q is required to pay 5 percent Florida state sales tax. Person Q chooses not to title or register the vehicle in Florida. After spending the winter months in Florida, Person Q returns to Iowa and brings the new vehicle. Since Person Q had to pay a 5 percent Florida state sales tax, Person C receives a credit for that amount against Iowa's fee for new registration.

EXAMPLE C: Iowa resident Person W purchases a vehicle for $25,000 while in Arizona. Person W was required to pay an Arizona state sales tax of 2 percent and a county tax of 1 percent. Person W returns to Iowa with the vehicle. The bill of sale shows a breakdown as follows:

Purchase Price.....$25,000
Arizona State Sales Tax.....$500
Arizona County Tax.....$250
Total Amount Due.....$25,750

When Person W titles and registers the vehicle in Iowa, the 5 percent Iowa fee for new registration would be $1,250. Person W receives credit only for the Arizona state sales tax of $500 but not the county sales tax. Iowa fee for new registration is as follows:

Iowa Fee for New Registration.....$1,250
Less Arizona State Sales Tax.....$500
Iowa Fee for New Registration Due.....$750

EXAMPLE D: Iowa resident Person Z purchases an $80,000 vehicle in California and is required to pay a 9 percent California state sales tax of $7,200. Person Z returns to Iowa with the vehicle. When Person Z titles and registers the vehicle in Iowa, the 5 percent Iowa fee for new registration would be $4,000. Since Person Z paid a California state sales tax of $7,200, which was more than the Iowa fee for new registration, the Iowa fee for new registration is not due.

This rule is intended to implement Iowa Code section 321.105A.

701—250.18(321) Business entity to business entity transfers with the same ownership and purpose. Transactions between two business entities may be exempted from the fee for new registration if the requirements described in Iowa Code section 321.105A(2)*"c"*(3) are met.

EXAMPLE A: Person F owns and operates a family farm as a sole proprietorship and wants to transfer assets (including a vehicle subject to registration) from Person F's personal name into a corporation (of which Person F or Person F's spouse is the sole shareholder). Person F filed articles of incorporation earlier this year with the secretary of state and intends to use the corporation to continue to operate Person F's family farm, the same purpose as the sole proprietorship. This transaction is eligible for the exemption described in Iowa Code section 321.105A(2)*"c"*(3) because the vehicle is being transferred from an eligible business type (sole proprietorship) to a corporation, with the ownership of the businesses being the same and the transaction occurring within two years of the corporation being formed, and the newly formed corporation was formed for the purpose of continuing the family farm business.

EXAMPLE B: Person G wants to start a construction business. Person G currently does not operate any business. Person G files articles of incorporation and wants to transfer a truck from Person G's personal name into the corporation. This transaction is not eligible for the exemption described in Iowa Code section 321.105A(2)*"c"*(3) because the purpose of the corporation is not to continue an existing eligible business.

EXAMPLE C: Person H operates a delivery business as a sole proprietorship and wants to expand. Person H gets together with two investors and files articles of incorporation with all three partners as shareholders and wants to transfer a van into the corporation. This transaction is not eligible for the exemption described in Iowa Code section 321.105A(2)*"c"*(3) because the ownership of the corporation is not the same as the sole proprietorship, since all of the stock of the corporation is not owned by Person H.

This rule is intended to implement Iowa Code section 321.105A.

701—250.19(321) Homemade vehicles.

250.19(1) Homemade vehicles are exempt from the fee for new registration as described in Iowa Code section 321.105A(2)*"c"*(16). For the purposes of the vehicle fee for new registration, a homemade vehicle is one that has been constructed from any combination of new, used, or homemade parts that does not resemble a vehicle that was manufactured under a specific year, make, and model by a manufacturer and is not intended for resale.

250.19(2) Homemade vehicles include:

a. A vehicle that has been structurally modified so that it does not have the same appearance as a similar vehicle from the same manufacturer.

EXAMPLE: A vehicle with modified fenders, engine compartment lid, and front end, but still recognizable as the make/model of the vehicle, is not considered homemade;

b. A vehicle that has been constructed entirely from homemade parts and materials not obtained from other vehicles; or

c. A vehicle that has been constructed by using major component parts from one or more manufactured vehicles and cannot be identified as a specific make and model.

This rule is intended to implement Iowa Code section 321.105A.

701—250.20(321,423) Glider kit vehicles.

250.20(1) A glider kit vehicle is exempt from the fee for new registration upon sale or transfer by the person who purchased the parts and assembled the vehicle if sales or use tax was paid when the parts were purchased and the vehicle has never been registered previously.

250.20(2) A glider kit vehicle is subject to the fee for new registration, barring other applicable exemptions, if the glider kit vehicle is subsequently sold. Glider kit parts may be eligible for the resale exemption if the purchaser of the parts can satisfy the requirements of rule 701—225.3(423) to qualify for the exemption provided by Iowa Code section 423.3(2).

This rule is intended to implement Iowa Code sections 321.105A and 423.3.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapter 251
"Automobile Rental Excise Tax"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, 423.42, and 423C.4
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 423C

Public Hearing

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

December 3, 2024 3 to 4 p.m.	Via virtual/videoconference: meet.google.com/iei-hezt-fuc

Public Comment

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

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Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
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Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt new Chapter 251. This chapter provides guidance on the excise tax imposed on the rentals of automobiles and the Department's administration of the tax. The Department proposes revisions to remove portions of the rules that the Department determined are unnecessary, obsolete, or duplicative of statutory language as required by Executive Order 10. Further, the Department proposes removing existing rule 701—251.4(423C) and adding the language of that rule to existing rule 701—251.2(423C), where it would be better suited.

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 to the proposed rulemaking beyond those that are imposed by the underlying statutes.

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

The public will benefit from the proposed rulemaking because it helps to reduce confusion about the applicability and administration of the excise tax on the rental of automobiles. Further, the public will benefit from the proposed rulemaking because the rulemaking removes language that duplicates the underlying statutes or language that was obsolete or not necessary.

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

- **Quantitative description of impact:**

There is no economic impact associated with the proposed rulemaking beyond what is contained in the underlying statutes.

- **Qualitative description of impact:**

The proposed rulemaking will reduce uncertainty about the applicability and administration of the excise tax on automobile rentals. Further, the proposed rulemaking adds clarity and removes obsolete and unnecessary language.

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 the proposed rulemaking beyond what would otherwise be required to administer the underlying statutes.

- **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 cost of inaction of updating the rules in the proposed rulemaking would lead to confusion and frustration given the unnecessary and obsolete information present. The benefits to the proposed rulemaking are to eliminate that unnecessary and obsolete language to make it easier for the public to find guidance on topics, including by placing existing rule language that is currently separated together when the topics are related.

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

The proposed rulemaking is not costly or intrusive. The purpose is to provide guidance about the applicability and administration of the excise tax on the rental of automobiles. The Department considered what information to provide in the rules and what information is provided on forms and concluded that this proposed rulemaking in conjunction with available forms will help guide the public on this excise tax.

The Department considered the option of not implementing rules and determined the revision and retention of some rules, elimination of some rules, and reorganization of language from some existing rules into other rules better aligned with that subject matter would provide useful assistance to the public and reduce confusion.

6. **Alternative methods considered by the agency:**

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

The Department considered the option of not implementing rules. However, the Department determined that the proposed rulemaking, in conjunction with the use of the applicable forms, was necessary to provide guidance and clarification to the public beyond what is provided in the underlying statutes.

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

The Department determined that retention of rules in the proposed rulemaking with the proposed amendments will reduce confusion about the subjects of those rules. Proceeding without rules could negatively impact members of the public by limiting their knowledge about the applicability and procedures related to the automobile rental excise tax.

Small Business Impact

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

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

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

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

The proposed rulemaking does not have a substantial impact on small business because the proposed rulemaking does not make any distinctions based on the size of a business and does not impose any requirements on businesses, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 251 and adopt the following **new** chapter in lieu thereof:

CHAPTER 251
AUTOMOBILE RENTAL EXCISE TAX

701—251.1(423C) Definitions and characterizations. For the purposes of this chapter, terms have the same meaning as defined in Iowa Code section 423C.2. In addition, the following definitions and characterizations of words apply.

"Automobile" means the same as defined in Iowa Code section 423C.2(2) and does not include delivery trucks designed primarily to carry cargo rather than passengers.

"Lessor" is a person engaged in the business of renting automobiles to users. Included within the meaning of the term "lessor" are motor vehicle dealers licensed under Iowa Code chapter 322 to sell new and used automobiles who also rent automobiles to users. A person need not be engaged in a profit-making enterprise to be in the business of renting automobiles.

701—251.2(423C) Tax imposed upon rental of automobiles.

251.2(1) *Generally.* A tax at the rate of 5 percent is imposed on the rental price of any automobile if the rental transaction is taxed under Iowa sales or Iowa use tax law. The tax imposed is in addition to the Iowa state sales or use tax. However, if the rental transaction is not subject to the state sales or use tax, then no automobile rental excise tax is due.

a. Sales tax. Sales tax is due on the rental price of the "rental" of an automobile if possession or the right to possession of the automobile is transferred, under a rental contract, in Iowa.

b. Use tax. Use tax is due on the rental price if an automobile is rented outside Iowa, used in Iowa under the rental contract, and payment of the rental price is made in Iowa at the termination of the rental agreement.

251.2(2) *Administration.* The director of revenue is required to administer the excise tax on automobile rental as nearly as possible in conjunction with the administration of the state sales tax.

a. Monthly reporting. On a monthly basis, the correct amount of automobile tax collected and due must be reported and remitted to the department electronically via GovConnectIowa.

b. Permit. No permit, other than an Iowa sales and use tax permit, is required to collect the tax imposed under Iowa Code chapter 423C. However, the director may require persons responsible for collecting the automobile rental excise tax to register with the department.

c. Other aspects to administration. 701—Chapters 10, 11, 201, 202, and 203 provide more information on other details of administering this tax.

701—251.3(423C) Lessor's obligation to collect tax. The lessor shall collect automobile rental excise tax from the user or from any other person paying the rental price for an automobile. The lessor

shall collect the tax by adding the tax to the rental price of the automobile. When collected, the tax shall be stated on any billing or invoice as a distinct item separate and apart from the rental price of the automobile and separate and apart from any state or local option sales or service tax or any state use tax.

These rules are intended to implement Iowa Code chapter 423C.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapter 252
"State-Imposed Water Service Excise Tax"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 423G.5

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 423G and 17A and sections 423.1 and 423.3

Public Hearing

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

December 3, 2024 3 to 4 p.m.	Via virtual/videoconference: meet.google.com/iei-hezt-fuc

Public Comment

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

Matt Bishop
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Purpose and Summary

The purpose of the proposed rulemaking is to rescind and adopt new Chapter 252. This chapter describes the Department's interpretation of Iowa Code chapter 423G as it applies to the water service excise tax. The Department proposes removing portions of the rules that the Department determined are obsolete, inaccurate, unnecessary, or duplicative of statutory language pursuant to Executive Order 10.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

The proposed rulemaking does not create costs for any classes of person. Any cost is associated with the underlying statute imposing the tax.

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

The public, including water utilities, will benefit from guidance on the imposition and administration of the water service excise tax.

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

- **Quantitative description of impact:**

There is no economic impact associated with the rules beyond what is contained in statutes.

- **Qualitative description of impact:**

These rules provide clarification on how to comply with the Iowa Code sections on the water service excise tax. Failing to have rules on the water service excise tax would cause confusion, additional questions to the Department, and potential errors in calculating and remitting the water service excise tax.

3. **Costs to the State:**

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

There are no costs to the agency of implementing the rules beyond those that would otherwise be required to administer the statutes.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues. However, these chapters provide essential information and clarification that make it more likely that the correct amount of tax will be collected and remitted to the Department.

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

The cost of inaction would be failing to update the chapters to remove obsolete or inaccurate language and language that is duplicative of statute. The benefit of the rules is additional clarity and guidance to various entities on how to comply with the underlying statutes to collect and remit the correct amount of tax.

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

The proposed rulemaking is not costly or intrusive. The Department considered the option of not having nonmandated rules on the administration of the water service excise tax but determined that the rules provide useful guidance to water utilities and consumers.

6. **Alternative methods considered by the agency:**

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

The Department considered the option of not having nonmandated rules on the administration of the water service excise tax but determined that the rules provide useful guidance to water utilities and consumers.

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

The absence of these rules would cause confusion about the administration of the water service excise tax.

Small Business Impact

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

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

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

This chapter does not have a substantial impact on small business. These rules do not impose any costs on small business other than the taxes imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 252 and adopt the following **new** chapter in lieu thereof:

CHAPTER 252
STATE-IMPOSED WATER SERVICE EXCISE TAX

701—252.1(423G) Definitions.

252.1(1) *Incorporation of definitions.* To the extent they are consistent with Iowa Code chapter 423G, all words and phrases used in this chapter mean the same as defined in Iowa Code section 423.1.

252.1(2) *Chapter-specific definitions.* For the purposes of this chapter, unless the context otherwise requires:

"Facilities" means any storage tanks, water towers, wells, plants, reservoirs, aqueducts, hydrants, pumps, pipes, or any other similar devices, mechanisms, equipment, or amenities designed to hold, treat, sanitize, or deliver water.

"State-imposed tax" or *"tax,"* unless otherwise indicated, means the water service excise tax imposed by Iowa Code section 423G.3.

"Water utility" means the same as defined in Iowa Code section 423.3(103). "Corporation" as used in Iowa Code section 476.1 and as incorporated by Iowa Code section 423.3(103) includes municipal corporations.

This rule is intended to implement Iowa Code sections 423G.2 and 423G.3.

701—252.2(423G) Imposition. A state-imposed tax of 6 percent is imposed upon the sales price of water service furnished by a water utility to a purchaser.

This rule is intended to implement Iowa Code section 423G.3.

701—252.3(423G) Administration.

252.3(1) *Generally.* The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director.

252.3(2) *Application of 701—Chapter 11.* The requirements of 701—Chapter 11 apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423G.5.

701—252.4(423G) Charges and fees included in the provision of water service.

252.4(1) *Sales integral to the ability to furnish water service.* The water service excise tax applies to the sale of water by piped distribution to consumers or users, including sales of accompanying services that are integral to furnishing water by piped distribution, even if the water service and accompanying services are billed separately.

252.4(2) *Examples of sales integral to the provision of water service.* Sales of services to consumers or users that are considered integral to the furnishing of water by piped distribution include but are not limited to the following:

a. Nonitemized tangible personal property included with the sale of water service or an accompanying service that is integral to the provision of water service. More information on nonitemized tangible personal property is contained in subparagraph 252.4(4)*"a"*(2).

b. Water sold, regardless of whether the water is metered.

c. Service, account, or administrative charges or fees for water service, including but not limited to new customer account charges and minimum charges for access to water service, whether the customer uses the water service or not.

d. Fees for connection, disconnection, or reconnection to or from a water utility's facilities, including tap fees.

e. Fees for maintenance, inspection, and repairs of the water distribution system, water supplies, and facilities, including but not limited to fees for labor or materials.

f. Fees for using or checking water meters.

g. Water distribution system infrastructure and improvement fees.

252.4(3) *Examples of sales that are not water service or are not integral to the provision of water service.* Sales of services that are not integral to the furnishing of water by piped distribution include but are not limited to the following:

a. Residential service contracts regulated under Iowa Code chapter 523C.

b. Sales or rentals of tangible personal property, other than water, sold for a separately itemized price. More information on itemized tangible personal property is contained in subparagraph 252.4(4) *"a"*(1).

c. Returned check fees.

d. Deposits, including but not limited to check and meter deposits.

e. Fees for printed bills, statements, labels, and other documents.

f. Fees for late charges and nonpayment penalties.

g. Leak detection fees.

252.4(4) *Sales generally not subject to water service excise tax.* Water utilities may make sales that may or may not be integral to the sale of water service but that are not subject to water service excise tax because those nonintegral sales are subject to sales tax under Iowa Code section 423.2 as the sale of tangible personal property enumerated nonwater services or specified digital products.

a. Sales of tangible personal property. Whether the sale of tangible personal property that is integral to water service is subject to the water service excise tax depends on whether the tangible personal property is sold to the consumer or user for a separately itemized price.

(1) Itemized tangible personal property. Sales or rentals of tangible personal property by a water utility for a separately itemized price are not subject to the water service excise tax but may be subject to sales and use tax.

(2) Nonitemized tangible personal property. If the sale of tangible personal property is not itemized but is instead bundled with the sale of water service, including sales of services listed in subrule 252.4(2), then the entire sales price is subject to the water service excise tax.

b. Painting of hydrants. The painting of hydrants constitutes painting services under Iowa Code section 423.2(6)*"aj."* Painting is subject to sales tax and is not subject to water service excise tax.

c. Pipe fitting and plumbing. Some repairs of a water distribution system may constitute pipe fitting and plumbing under Iowa Code section 423.2(6)*"an."* Pipe fitting and plumbing services are subject to sales tax and are not subject to water service excise tax.

252.4(5) *Exemptions.* The exemptions from sales tax under Iowa Code section 423.3 also apply to sales subject to water service excise tax. For example, a water utility that purchases water service from a different water utility may be eligible to claim the sale for resale exemption pursuant to Iowa Code section 423.3(2).

This rule is intended to implement Iowa Code sections 423G.4 and 423G.5.

701—252.5(423G) When water service is furnished for compensation.

252.5(1) *Itemized sales of water service.* Water service is furnished for compensation when water service is sold for a separately itemized price.

EXAMPLE A: Itemized sale of water service. Z is an entity that provides water from a well by piped distribution to various homes in the community. Each home that is connected to the well pays $20 per month, which is used by Z for maintaining the water distribution system. Z is a water utility making sales of water service and must collect and remit tax on the $20 monthly fee charged to each of Z's members.

EXAMPLE B: Sale for resale. An apartment owner purchases water from a city water utility and distributes the water to each unit through a system of pipes. The city meters the apartment owner's use of water each month and charges the apartment owner for the water service. The apartment owner separately bills each of the tenants $40 per month for water service, including the cost of water and maintenance on the water distribution system. The apartment owner is a water utility and must collect and remit tax on the $40 monthly charge for water service. The apartment owner may purchase the water from the city exempt from tax as a sale for resale.

252.5(2) *Water service sold for an identifiable price.* Water service is furnished for compensation when the price of the water service is identifiable from an invoice, bill, catalog, price list, rate card, receipt, agreement, or other similar document, including where the total sales price increases when water service is included in the sale.

EXAMPLE: Cost varies with inclusion of water service. A campground provides three campsite packages to its customers:

Package A includes only campsite access for $10 per night.

Package B includes campsite access and an electrical hookup for $20 per night.

Package C includes campsite access, an electrical hookup, and water service for $30 per night.

Sales of package C by the campground include sales of water service. The campground must collect and remit tax on $10—the identifiable sales price of water service.

252.5(3) *Water service not furnished for compensation; incidental sales.* No sale of water service for compensation occurs where water service is not sold for a separately itemized or identifiable price and is incidental to the rental of real property.

EXAMPLE A: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) owner owns a well and pipes water to the lots. The MHC owner charges tenants $500 per month for each lot rental. Water from the well is included in the $500 rental charge. The MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit tax because water is not being furnished for compensation; it is incidental to the rental of real property.

EXAMPLE B: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) purchases water from a city water utility and distributes the water to each lot in the community through a system of pipes. The city meters the MHC's use of water each month and charges the MHC for the water service and the applicable tax. The MHC charges its tenants $500 for lot rental. As in the previous example, the MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit tax because water is not being furnished for compensation; it is incidental to the rental of real property.

This rule is intended to implement Iowa Code section 423G.3.

701—252.6(423G) Itemization of tax required. A water utility shall add the tax to the sales price of the water service, and the tax, when collected, shall be stated as a distinct item on any bill, receipt, agreement, or other similar document. The tax shall be identified as the water service excise tax, and the amount of tax paid shall be displayed clearly on the bill, receipt, agreement, or other similar document provided to the purchaser.

This rule is intended to implement Iowa Code section 423G.3.

701—252.7(423G) Date of billing—effective date and repeal date. For purposes of determining whether sales tax or water service excise tax applies to billings that span across the July 1, 2018, effective date of Iowa Code chapter 423G or the future repeal date described in Iowa Code section 423G.7, the provisions of rule 701—204.7(423) apply.

This rule is intended to implement Iowa Code section 423G.5.

701—252.8(423G) Filing returns; payment of tax.

252.8(1) *Application of 701—Chapter 202.* The requirements of 701—Chapter 202 apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

252.8(2) *Frequency of return filing and payment of tax based on combined water service excise tax and sales and use tax.* With respect to the tax thresholds used for determining whether a retailer must file a return and remit sales and use tax monthly or annually as described in rule 701—202.1(423), the threshold for determining how frequently a water utility must file a return and remit the water service excise tax is based on the sum of the total amount of sales and use tax collected and the total amount of water service excise tax collected.

This rule is intended to implement Iowa Code section 423G.5.

701—252.9(423G) Permits.

252.9(1) *Application of 701—Chapter 201.* The requirements of 701—Chapter 201 apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

252.9(2) *Separate water service excise tax permit required.* All water utilities must register for a water service excise tax permit and remit the tax under that permit. Water utilities that also make other sales subject to sales tax must obtain a water service excise tax permit and a sales tax permit and must remit all sales tax under the sales tax permit and all water service excise tax under the water service excise tax permit.

This rule is intended to implement Iowa Code section 423G.5.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapter 253
"State-Imposed and Locally Imposed Hotel and Motel Taxes"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, 423.42, and 423A.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 423A

Public Hearing

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

December 3, 2024 3 to 4 p.m.	Via virtual/videoconference: meet.google.com/iei-hezt-fuc

Public Comment

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

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to rescind Chapter 253 and adopt a new Chapter 253 regarding the Department's role in the administration of state and local hotel and motel taxes. These rules interpret the underlying statutes about the applicability, collection, and remittance of the state and locally imposed hotel and motel taxes. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language as required by Executive Order 10. Further, the Department proposes revisions to the chapter to add clarity and better organization to aid the public's understanding of state and local hotel and motel taxes. The Department also renumbered some rules due to other edits and for organizational reasons.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

The proposed rulemaking does not impose costs beyond what is imposed by the underlying statutes.

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

The public, including local jurisdictions that levy a local hotel and motel tax, will benefit from information about the applicability and administration of state and locally imposed hotel and motel taxes.

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

- **Quantitative description of impact:**

There is no economic impact of the proposed rules beyond what is provided in the underlying statutes.

- **Qualitative description of impact:**

The qualitative benefit of the proposed rulemaking beyond what is already provided by the underlying statutes is the value of having rules that describe the applicability and administration of state and locally imposed hotel and motel taxes in order to reduce confusion and to provide the public and local jurisdictions access to the information in the rules.

3. **Costs to the State:**

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

There are no costs to the State beyond what is required to administer the relevant statutes. This proposed rulemaking provides clarity about the current and ongoing process of administering state and locally imposed hotel and motel taxes and does not provide any significant changes to the process.

- **Anticipated effect on state revenues:**

There are no anticipated effects on state revenues beyond what is contained in the relevant statutes. The proposed rulemaking provides clarity about the current and ongoing administration of state and locally imposed hotel and motel taxes.

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

The cost of inaction of updating the rules in the proposed rulemaking would lead to confusion and frustration given the obsolete and unnecessary information in the current rules. The benefits to the proposed rulemaking are to eliminate that unnecessary and obsolete information and provide clarity to better reflect current practice and to make it easier for the public, including local jurisdictions, to find guidance on state and locally imposed hotel and motel taxes.

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

The proposed rulemaking is not costly or intrusive. The purpose of the proposed rulemaking is to provide guidance on the applicability and administration of state and locally imposed hotel and motel taxes. The Department did not consider the option of not providing the proposed rulemaking because the Department determined the proposed rulemaking provides useful clarification and guidance to the public and local jurisdictions.

6. **Alternative methods considered by the agency:**

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

The Department considered the option of not implementing rules. However, the Department determined that the proposed rulemaking, in conjunction with the use of any applicable forms, is necessary to provide guidance and clarification to the public and local jurisdictions beyond what is provided in the underlying statutes.

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

The Department determined that the retention of the rules in the proposed rulemaking with the proposed amendments will reduce confusion about the applicability and administration of state and locally imposed hotel and motel taxes. Proceeding without rules could negatively impact members of the public and local jurisdictions by limiting their access and knowledge about procedures relating to these taxes.

Small Business Impact

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

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

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

The proposed rulemaking does not have a substantial impact on small business because the proposed rulemaking does not make any distinctions based on the size of a business and does not impose any requirements on business, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 253 and adopt the following **new** chapter in lieu thereof:

CHAPTER 253
STATE-IMPOSED AND LOCALLY IMPOSED HOTEL AND MOTEL TAXES

701—253.1(423A) Definitions.

253.1(1) *Incorporation of definitions.* To the extent they are consistent with Iowa Code chapter 423A and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code chapter 423A.

253.1(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

"Land use district" means a district created under Iowa Code chapter 303.

"Locally imposed tax" means the hotel and motel tax levied by Iowa Code section 423A.4.

"Retailer" means a person required to collect hotel and motel tax, including but not limited to lodging providers, lodging facilitators, and lodging platforms.

"State-imposed tax" means the hotel and motel tax levied by Iowa Code section 423A.3.

"Tax" or *"hotel and motel tax"* means the state-imposed hotel and motel tax levied by Iowa Code section 423A.3 and any locally imposed hotel and motel tax levied by Iowa Code section 423A.4.

This rule is intended to implement Iowa Code sections 423A.2, 423A.3, 423A.4, 423A.5, and 423A.5A.

701—253.2(423A) Administration. Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to retailers required to collect hotel and motel tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423A.6.

701—253.3(423A) Filing returns; payment of tax; penalty and interest.

253.3(1) *Incorporation of 701—Chapter 202.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 202 apply to retailers required to collect hotel and motel tax in the

same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

253.3(2) *Filing returns.* Retailers required to collect and remit hotel and motel tax must file returns as required in Iowa Code section 423.31.

253.3(3) *Combined sales and hotel and motel tax return.*

a. On the monthly sales tax return, a retailer shall report the gross sales subject to the hotel and motel tax for the month, listing allowable deductions and calculating tax for the month. The information required for the computation of the hotel and motel tax liability is separate from that required for the computation of the retail sales tax liability and must be separately stated and computed even though total tax liability may be paid with a single remittance.

b. The monthly returns are due on the last day of the month following the close of each calendar month during which the tax is collected. For example, the return for tax collected during April 2025 is due on or before May 31, 2025.

253.3(4) *Application of partial payments.*

a. All payments received with the return will be applied to satisfy state sales tax and hotel and motel tax liabilities, which include penalty and interest.

b. Application of partial payments received with the tax return and any subsequent partial payment received for that tax period will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2)*"d."* The denominator in the ratio shall be the total of the hotel and motel tax due and the state sales tax due less any monthly sales tax deposits. The numerators in the ratio formula shall be the amounts of hotel and motel tax due and the net state sales tax due.

EXAMPLE: Hotel owes a total of $1,000 in net state sales tax and hotel and motel tax for the month. Of the $1,000 owed, $600 is for hotel and motel tax and $400 is for state sales tax. Hotel files its monthly sales tax return accompanied by a $500 partial payment. The $500 partial payment would be applied based on the following computation:

$$\frac{600}{1{,}000} \times 500 = \$300 \quad \text{Hotel and motel tax}$$

$$\frac{400}{1{,}000} \times 500 = \$200 \quad \text{State sales tax}$$

253.3(5) *Application of payments upon termination by a land use district.* If a land use district terminates its local hotel and motel tax, lodging within the district becomes subject to any local hotel and motel tax imposed by a city or county within the corporate boundaries of that district on the date of termination. If a city or county imposes a local hotel and motel tax within the district, all revenues received from or moneys refunded to lodging within the district after the date on which the land use district terminates its local hotel and motel tax are treated as collected from or refunded to lodging in such city or county. If no city or county imposes a local hotel and motel tax within the district, all revenues received from or moneys refunded to lodging within the district at least 180 days after the date on which the land use district terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund as described in Iowa Code section 423A.6(1).

This rule is intended to implement Iowa Code sections 423A.3, 423A.4, and 423A.6.

701—253.4(423A) Permits.

253.4(1) *Incorporation of 701—Chapter 201.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 201 apply to retailers required to collect hotel and motel tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

253.4(2) *Sales tax permit required.*

a. There is no separate hotel and motel tax permit; retailers required to collect and remit hotel and motel tax shall obtain an Iowa sales tax permit.

b. Any lodging facilitator not in the business of renting rooms to transient guests but that facilitates rentals of lodging at varying locations in Iowa to transient guests may register once under this chapter.

c. A lodging facilitator is not required to register under this chapter if the lodging facilitator and its affiliates do not exceed the transaction and sales thresholds in Iowa Code section 423A.5A.

This rule is intended to implement Iowa Code sections 423A.3, 423A.4, 423A.5A, and 423A.6.

701—253.5(423A) Special collection and remittance obligations.

253.5(1) *Exclusion from facilitation fee; itemization of components of sales price not required.* A retailer is not required to separately itemize any component part of the sales price as separate and distinct from the rest of the sales price. Component parts of the sales price could include discount room charges, facilitation fees, or other similar charges. Regardless of how such charges are presented to a user, these charges are included in the definition of "sales price" as defined by Iowa Code section 423A.2(1)*"k"* and are subject to the hotel and motel taxes.

253.5(2) *Obligations of lodging providers for rentals not involving lodging facilitators or lodging platforms.* A lodging provider must collect and remit the hotel and motel tax on the entire sales price of the rental if the transaction does not involve a lodging facilitator or lodging platform. In transactions that do not involve lodging facilitators or lodging platforms, only the lodging provider has a hotel and motel tax collection and remittance obligation on the transaction.

EXAMPLE 1: Lodging provider. H owns a hotel located in Iowa. H offers rooms for rent to transient guests. Users can book rooms directly with H—in person, by phone, or through H's website—or through lodging facilitators. H is a lodging provider as defined in Iowa Code section 423A.2(1)*"h"* and must collect and remit hotel and motel tax.

EXAMPLE 2: Lodging provider—property management company. M offers property management and listing services on behalf of lake homeowners. O owns a lake home. O enters into an agreement with M, under which M will manage the property, list the property for rent, enter into rental agreements with users, and receive money from users for the rental of the property.

The lake home is lodging as defined in Iowa Code section 423A.2(1)*"e."* M is a lodging provider as defined in Iowa Code section 423A.2(1)*"h"* as a consequence of operating and managing the lodging and making the lodging available for rent. Therefore, M must collect and remit the hotel and motel tax to the department.

EXAMPLE 3: Collection and remittance by a lodging provider. H operates a hotel and is a lodging provider. A user books a room by calling H's telephone number and paying a sales price of $100 to rent the room for one night. H's hotel is located in a jurisdiction with a 7 percent locally imposed hotel and motel tax. H is required to charge the user $112. H is required to add the $5 state-imposed tax as separate and apart from the sales price and separate and apart from the locally imposed tax. H is required to add the $7 locally imposed tax as separate and apart from the sales price and separate and apart from the state-imposed tax. H is required to remit $12, the total hotel and motel tax, to the department. Iowa Code section 423A.5A provides more information about the collection and remittance of hotel and motel tax.

253.5(3) *Obligations of retailers in transactions involving lodging facilitators.* When a user rents lodging through a lodging facilitator, the lodging facilitator shall collect from the user the hotel and motel tax on the entire sales price paid by the user to the lodging facilitator and the lodging provider shall collect from the user the hotel and motel tax on the entire sales price paid by the user to the lodging provider.

a. Remittance of tax when lodging facilitators do not charge the user a facilitation fee. If the lodging facilitator does not charge the user a facilitation fee, the lodging facilitator is required to transmit the entire hotel and motel tax collected from the user to the lodging provider. The lodging

provider is required to remit the tax received from the lodging facilitator, together with any hotel and motel tax collected by the lodging provider directly from the user, to the department.

EXAMPLE: H owns a hotel and is a lodging provider. A user books a room for one night at H's hotel using T, a travel agency. The total sales price is $100. T coordinates the user's payment by collecting and transmitting the $100 sales price plus tax from the user to H. T is a lodging facilitator. T does not retain any part of the user's $100 payment nor impose an additional fee to the user for facilitating the transaction with H. After the user has stayed at H's hotel, T receives a $20 commission from H. T and H are not affiliates.

The lodging is located in a jurisdiction with a locally imposed hotel and motel tax of 7 percent. The commission H pays to T is not a facilitation fee. Iowa Code section 423A.2(1)*"d"* provides more information on facilitation fees. Therefore, there is no hotel and motel tax applied to the commission paid to T. T is required to collect $12 of hotel and motel tax (12 percent combined hotel and motel tax rate × $100 sales price) and remit the $12 to H when T facilitates payment of the sales price to H. H is required to receive the $12 tax on the sales price from T and then remit the entire $12 tax to the department. T does not have an obligation to remit any hotel and motel tax to the department on this transaction.

b. Remittance of tax when lodging facilitators charge the user a facilitation fee. If the lodging facilitator charges the user a facilitation fee, the lodging facilitator is required to transmit the portion of the hotel and motel tax attributable to the discount room charge that is charged by the lodging provider to the lodging provider and remit to the department the remaining hotel and motel tax, which represents tax on the facilitation fee charged to the user. The lodging provider is required to remit the tax received from the lodging facilitator, together with any hotel and motel tax collected by the lodging provider directly from the user, to the department.

EXAMPLE 1: F operates an online travel company. On its website, F allows users to search for, book, and pay for hotel rooms. F's website includes listings from various hotels. Users are allowed to pay for the hotel room through a checkout page on F's website. F retains a portion of each sale as compensation for arranging the rental.

A user finds and selects a hotel room in Iowa on F's website. The user pays for the room through F's website. The lodging provider that owns the hotel is not an affiliate of F. The total price charged to the user includes an amount retained by F for arranging the rental of the hotel room. In this transaction, F is a lodging facilitator. The amount F retains from the user as compensation for arranging the rental is a facilitation fee. Iowa Code section 423A.2(1)*"c," "d,"* and *"f"* provides more information about lodging facilitators and facilitation fees.

EXAMPLE 2: H operates a hotel and is a lodging provider. F operates an online travel company and is therefore a lodging facilitator. A user books a room at H's hotel through F's website. The total sales price charged to the user is $100. The $100 sales price includes a $20 facilitation fee that is retained by F. H charges F a discount room charge of $80.

The lodging is located in a jurisdiction with a locally imposed hotel and motel tax of 7 percent. The total price F must charge to the user is $112, which is the sum of the sales price, the 5 percent state-imposed hotel and motel tax, and the 7 percent locally imposed hotel and motel tax.

F is required to add the $5 state-imposed tax separate and apart from the sales price and separate and apart from the locally imposed tax. F is required to add the $7 locally imposed tax separate and apart from the sales price and separate and apart from the state-imposed tax. On any document F provides to the user confirming the transaction, F is required to separately state the sales price ($100), the state-imposed tax ($5), and the locally imposed tax ($7). F is not required to identify to the user the portion of the sales price attributable to either the discount room charge or the facilitation fee.

F is required to remit to H that portion of hotel and motel taxes collected on $80, the sales price that represents the discount room charge. F remits $9.60 hotel and motel tax (i.e., 12 percent hotel and motel tax rate × $80 discount room charge) to H. F remits $2.40 hotel and motel tax (i.e., 12 percent hotel and motel tax rate × $20 facilitation fee) to the department. H remits the $9.60 hotel and motel

tax to the department. Iowa Code section 423A.5A provides more information on the collection and remittance of hotel and motel tax.

EXAMPLE 3: Assume the same facts as in Example 2. However, at check-in time, the user upgrades with H to a larger room for an additional sales price of $50. The user pays this additional $50 directly to H. H is required to charge the user $56, which is the sum of the additional sales price, the 5 percent state-imposed hotel and motel tax, and the 7 percent locally imposed hotel and motel tax. H remits the $6 hotel and motel tax, as well as the $9.60 hotel and motel tax received from F as described in Example 2, to the department.

253.5(4) *Obligations of lodging platforms.* Where a retailer is a lodging platform, the retailer must collect and remit the hotel and motel tax on the entire sales price of the transaction to the department.

EXAMPLE 1: Z operates a home-sharing platform. Z allows individual property owners to list rooms or entire properties with sleeping accommodations for rent to transient guests on the home-sharing platform. Users search, book, and pay for lodging through Z's platform.

O lists O's house on Z's home-sharing platform. O is not an affiliate of Z. A user books and pays for O's listing using Z's home-sharing platform. In this transaction, Z is a lodging platform as described in Iowa Code section 423A.2(1)*"g."*

EXAMPLE 2: Z operates the home-sharing platform described in Example 1 above. O owns a cabin in Iowa. The cabin is located in a local jurisdiction that imposes a 7 percent locally imposed hotel and motel tax. O lists O's property for short-term rentals on Z's marketplace. O offers O's property for rent for a three-day weekend for $900 and guests are also required to pay a $20 towel fee and a $50 cleaning fee. On this transaction, Z imposes a $30 service charge on the user for processing the transaction on Z's website. A user reserves and pays for the cabin on Z's website.

The total sales price is $1,000 (i.e., $900 lake home rental + $20 towel fee + $50 cleaning fee + $30 service charge) before taxes. Z is required to charge the user $1,120. Z must add the $50 state-imposed tax separate and apart from the sales price and separate and apart from the locally imposed tax. Z is required to add the $70 locally imposed tax separate and apart from the sales price and separate and apart from the state-imposed tax. As a lodging platform, Z does not remit any part of the $120 in tax to O. Instead, Z is required to remit the $120 in tax to the department.

This rule is intended to implement Iowa Code sections 423A.3, 423A.4, and 423A.5A.

701—253.6(423A) Certification of funds.

253.6(1) *Certification of funds.* Within 45 days after the date that the monthly returns and payments are due, the director will certify to the treasurer of state the amount of locally imposed tax to be transferred from the general fund to the local transient guest tax fund that is to be distributed to each city, county, and land use district that has adopted the tax. Payments received after the date of certification will remain in the general fund until the next certification.

253.6(2) *Revenues credited to local fund.* All locally imposed hotel and motel tax revenues received under Iowa Code chapter 423A are to be credited to the local transient guest tax fund. Revenues include all interest and penalties applicable to any locally imposed hotel and motel tax report or remittance, whether resulting from delinquencies or audits.

This rule is intended to implement Iowa Code sections 423A.6 and 423A.7.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapters 259 through 262
"Fuel Tax Administration; Motor Fuel and Undyed Special Fuel; Liquified Petroleum Gas, Compressed Natural Gas, Liquefied Natural Gas; Electric Fuel Excise Tax"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 452A.2(15), 452A.8(2)"c" and "d," 452A.8(2)"e"(3), 452A.8(4), 452A.15(6), 452A.17(1)"a"(6), 452A.41(3), 452A.59, 452A.68(3), 452A.72, 452A.76(2), 452A.85(2) and 423.25

State or federal law(s) implemented by the rulemaking: Iowa Code sections 422.110 and 423.3 and chapters 452A and 17A

Public Hearing

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

December 3, 2024 2 to 3 p.m.	Via videoconference: meet.google.com/ima-dbfg-ttv

Public Comment

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

Matt Bishop
Department of Revenue
Hoover State Office Building
1305 East Walnut Street
Des Moines, Iowa 50319
Phone: 515.452.9205
Email: matt.bishop@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to rescind and adopt new Chapters 259, 260, 261, and 262. These chapters describe the Department's interpretation of Iowa Code chapter 452A as it applies to fuel excise taxes. Chapter 259 contains rules on the administration of all fuel excise taxes. Chapter 260 provides guidance on the collection and remittance of the excise tax on motor fuel and undyed special fuel. Chapter 261 provides such guidance on the excise tax on liquified petroleum gas, compressed natural gas, and liquefied natural gas. Chapter 262 provides such guidance on the excise tax on electric fuel. The Department proposes a revised version of these chapters to remove rules and portions of the rules that were determined obsolete, inaccurate, or unnecessary, or that duplicate statutory language, as required by Executive Order 10.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

The proposed rulemaking does not create costs for any classes of person. Any cost is associated with the underlying statute imposing the tax.

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

The public, including suppliers, distributors, blenders, retailers, users, and dealers, will benefit from guidance on the imposition and administration of the excise taxes on fuel.

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

- **Quantitative description of impact:**

There is no economic impact associated with the rules beyond what is contained in statute.

- **Qualitative description of impact:**

These rules provide clarification on how to comply with the Iowa Code sections on fuel excise taxes. Failing to provide rules on fuel excise taxes would cause confusion, additional questions to the Department, and potential errors in calculating and remitting fuel excise taxes.

3. **Costs to the State:**

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

There are no costs to the Department of implementing the rules beyond those that would otherwise be required to administer the statutes.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues. However, these chapters provide essential information and clarification that make it more likely that the correct amount of tax will be collected and remitted to the Department.

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

The cost of inaction would be failing to update the chapters to remove obsolete or inaccurate language and language that is duplicative of statute. The benefit of the rules is additional clarity and guidance to various entities on how to comply with the underlying statutes to collect and remit the correct amount of tax.

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

Some sections of Iowa Code chapter 452A require that the Department promulgate rules on their administration. The proposed rulemaking is not costly or intrusive. The Department considered the option of not having nonmandated rules on the administration of motor fuel excise taxes but determined that the rules provide useful guidance to taxpayers.

6. **Alternative methods considered by the agency:**

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

Some sections of Iowa Code chapter 452A require that the Department promulgate rules on their administration. The Department considered the possibility of not providing nonmandated rules in these chapters but determined that it provides useful guidance beyond what is provided by statute.

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

The absence of these chapters would cause confusion about the administration of fuel excise taxes.

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?

These chapters do not have a substantial impact on small business. These rules do not impose any costs on small business other than the taxes imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 259 and adopt the following **new** chapter in lieu thereof:

CHAPTER 259
FUEL TAX ADMINISTRATION

701—259.1(452A) Definitions. For purposes of 701—Chapters 259, 260, 261, and 262, the following definitions apply:

"B-20" means biodiesel blended fuel formulated with a minimum percentage of 20 percent by volume of biodiesel, if the formulation meets the standards provided in Iowa Code section 214A.2. A similar notation refers to biodiesel blended fuel containing other percentages of biodiesel. For example, "B-5" means biodiesel blended fuel formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided in Iowa Code section 214A.2.

"Biodiesel distribution percentage" means the number of gallons of biodiesel blended fuel classified as B-20 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state during the determination period. The determination period is the previous calendar year.

"Carrier" means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state.

"End user" of special fuel means a person who has purchased a minimum of 240,000 gallons of special fuel each year in the two preceding years who elects to make delayed payments to a licensed supplier and must use electronic funds transfer.

"Ethanol distribution percentage" means the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state during the determination period. The determination period is the previous calendar year.

"Foreign supplier" means a person licensed as a supplier to collect and report the tax, but who does not have jurisdictional connections with this state.

"Fuel(s)" means and includes motor fuel, special fuel, and electric fuel as defined in Iowa Code chapter 452A.

"Invoiced gallons" means gross gallons as shown on the bill of lading or manifest.

"Motor fuel" means a substance or combination of substances that is intended to be or is capable of being used for the purpose of operating an internal combustion engine, including but not limited to a motor vehicle, and is kept for sale or sold for that purpose and includes the following:

1. All products commonly or commercially known or sold as gasoline (including ethanol blended gasoline, casinghead, and absorption or natural gasoline) regardless of their classifications or uses, and including transmix that serves as a buffer between fuel products in the pipeline distribution process.

2. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles, which when subjected to distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials designation D-86), shows not less than 10 percent distilled (recovered) below 347° F (175° C) and not less than 95 percent distilled (recovered) below 464° F (240° C).

"Motor fuel" does not include special fuel and does not include liquefied gases that would not exist as liquids at a temperature of 60° F and a pressure of 14 7/10 pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph "2," in which event the resulting product shall be deemed to be motor fuel. "Motor fuel" also does not include methanol unless blended with other motor fuels for use in an aircraft or for propelling motor vehicles.

"Person" means and includes natural persons, partnerships, firms, associations, corporations, representatives appointed by any court, and political subdivisions of this state or any other group or combination acting as a unit and the plural as well as the singular number applies.

"Petrodiesel" means petroleum-based diesel fuel. Petrodiesel contains no biodiesel.

"Reefer" or *"reefer unit"* means a refrigeration unit powered by fuel.

"Taxpayer" means anyone responsible for paying fuel taxes directly to the department of revenue under Iowa Code chapter 452A.

"Withdrawn from terminal" means physical movement from a supplier to a distributor or eligible end user or from an alcohol manufacturer to a nonterminal location and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal. Exchange of product by suppliers while in the distribution channel and the physical movement of alcohol from an alcohol manufacturer to an Iowa licensed supplier's alcohol storage at a terminal are not to be considered "withdrawn from terminal."

This rule is intended to implement Iowa Code sections 452A.2, 452A.57 and 452A.59.

701—259.2(452A) Taxpayers required to keep records.

259.2(1) The records required to be kept by this rule must be preserved for a period of three years and will be open for examination by the department during this period of time. The department, after an audit and examination of the records, may authorize the disposal of the records required to be kept upon written request by the taxpayer. 701—subrule 11.3(3) contains additional information for taxpayers using an electronic data interchange.

259.2(2) Every supplier or restrictive supplier required to file a monthly return under Iowa Code section 452A.8, every importer required to file a semimonthly return under Iowa Code section 452A.8, and every exporter, terminal or nonterminal storage facility operator, distributor, blender, and dealer is required to keep and preserve records in compliance with 701—Chapter 11. Such persons are also required to keep the following records relating to the purchase or sale of fuel:

a. Copies of bills of lading or manifests.
b. Copies of sales and purchase invoices.
c. Sales records and purchase records.
d. Copies of filed returns and supporting schedules.
e. Record of payment.
f. Export schedules.
g. Delivery tickets.
h. Copies of reports, returns, and supporting schedules filed with the importing state.
i. Exemption certificates.

This rule is intended to implement Iowa Code section 452A.8.

701—259.3(452A) Audit—costs.

259.3(1) The department has the right and duty to examine or cause to be examined the books, records, memoranda, or documents of a taxpayer for the purpose of verifying the correctness of a return filed or determining the tax liability of any taxpayer.

259.3(2) The costs incurred in examining the records of a taxpayer are at the taxpayer's expense when the records are kept at an out-of-state location. Cost will include meals, lodging, and travel expenses, but will not include salaries of department personnel.

This rule is intended to implement Iowa Code sections 452A.10, 452A.62, 452A.55, and 452A.69.

701—259.4(452A) Estimate gallonage.

259.4(1) *Inadequate records.* In the event the taxpayer's records are lacking or inadequate to support any return filed by the taxpayer, or to determine the taxpayer's liability, the department has the power to estimate the gallonage upon which tax is due.

259.4(2) *Determination of estimate.* Estimated gallonage will be based upon such factors as, but not limited to, the following:

a. Prior experience of the taxpayer;

b. Taxpayers in similar situations;

c. Industry averages;

d. Records of suppliers or customers; and

e. Other pertinent information the department may possess, obtain or examine.

This rule is intended to implement Iowa Code section 452A.64.

701—259.5(452A) Timely filing of returns, reports, remittances, applications, or requests.

259.5(1) The returns, reports, remittances, applications, or requests required under Iowa Code chapter 452A or 701—Chapters 259 through 262 shall be filed through GovConnectIowa unless otherwise required by the department.

259.5(2) Such documents provided by mail are deemed filed within the required time if:

a. Postpaid,

b. Properly addressed, and

c. Postmarked on or before midnight of the day on which due and payable.

Any return that is not signed and any return that does not contain substantially all of the pertinent information are not considered "filed" until such time as the taxpayer signs or supplies the information to the department.

259.5(3) The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts, unless remittance is required to be transmitted electronically; and if either condition is not met, a penalty will be assessed. Remittances transmitted electronically are considered to have been made on the date the remittance is added to the bank account designated by the treasurer of the state of Iowa. If the final filing date falls on a Saturday, Sunday, or holiday, the next day that is not a Saturday, Sunday, or holiday is the final filing date.

259.5(4) The director may require by rule that reports and returns be filed by electronic transmission.

259.5(5) All licensees must file returns by electronic transmission. All suppliers, restricted suppliers, importers, terminals, blenders, and nonterminal storage facilities with at least 5,000 gallons of product on their return or report must also file the schedules which support the return or report by electronic transmission.

259.5(6) All returns, reports, remittances, applications, or requests should be mailed to: Motor Fuel Refunds, Iowa Department of Revenue, Tax Management Division—Fuel Tax, P.O. Box 10465, Des Moines, Iowa 50306-0465, unless electronic transmission is required.

In the event a dispute arises as to the time of filing, or a return, report, or remittance is not received by the department, the provisions of Iowa Code section 622.105 are controlling. This rule applies only when the document is not received or the postmark on the envelope is illegible, erroneous, or omitted.

This rule is intended to implement Iowa Code sections 452A.8 and 452A.61.

701—259.6(452A) Statute of limitations, supplemental assessments and refund adjustments.

259.6(1) After a return is filed, the department must examine it, determine fuel taxes due, and give notice of assessment to the taxpayer. Iowa Code sections 452A.64 and 452A.67 and rule 701—259.5(452A) contain additional information on the failure to file returns and the period for examination.

259.6(2) The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

259.6(3) If the assessment or refund adjustment is appealed (protested under rule 701—7.9(17A)) and is resolved, whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code section 452A.67.

701—259.7(452A) Extension of time to file. The department may grant an extension for the filing of any required return or tax payment or both.

259.7(1) *Application for extension.* In order for an extension to be granted, the application requesting the extension must be filed, in writing, with the department prior to the due date of the return or remittance. In determining whether an application for extension is timely filed, the provisions of rule 701—259.5(452A) shall apply. The application for extension must be accompanied by an explanation of the circumstances justifying such extension.

259.7(2) *Length of extension.* The extension period will not exceed 30 days.

259.7(3) *Penalties in the event of an extension.* In the event an extension is granted, the penalties under Iowa Code section 452A.65 applicable to late-filed returns or remittances will not accrue until the expiration of the extension period. The interest on tax due under the same section will accrue as of the original filing date.

This rule is intended to implement Iowa Code section 452A.61.

701—259.8(452A) Penalty and interest. Rules 701—10.6(421) and 701—10.2(421) contain information on failure to timely file a return or failure to timely pay the tax. Rule 701—10.8(421) contains information on penalty exceptions. Rule 701—10.72(452A) contains additional information on interest on refunds. Rule 701—10.71(421) contains additional information on penalty and enforcement provisions.

This rule is intended to implement Iowa Code chapter 452A.

701—259.9(452A) Application of remittance. All payments are to be first applied to the penalty and then to the interest. The balance, if any, will then be applied to the amount of tax due. If a taxpayer remits a payment on or before the due date, but the payment is insufficient to discharge the tax liability, the entire amount of the payment applies to the tax, and the penalty and interest are based on the unpaid portion of the tax. If the department determines there is additional tax due from a taxpayer, interest and penalty accrue on that amount from the date it should have been reported and paid.

This rule is intended to implement Iowa Code sections 452A.59, 452A.65 and 452A.66.

701—259.10(452A) Reports, returns, records—variations.

259.10(1) The department will prescribe and furnish forms upon which reports, returns, and applications are to be made to the department under Iowa Code chapter 452A. Claims for refund will be made on forms provided by the department or in any other manner as prescribed by the director. Licensees may substitute forms for their use, other than official forms, if all the requirements in department rule 701—8.3(17A) are met.

259.10(2) If the information required in these documents is presented to the department on forms or in a manner other than the prescribed form, or approved substitute form, the return, application, or claim for refund or credit shall not be deemed "filed." The forms may be furnished by the department (except those pertaining to division III interstate operations, which are available from the department of transportation) and, therefore, the fact that the reporting party does not have the prescribed form is not an excuse for failure to file.

259.10(3) The department may also prescribe the form of the records that the reporting parties are required to keep in support of the reports/returns they file. The department may approve the form of the records that are being kept by any reporting party and must approve the form of record being kept if that form contains all of the information on the prescribed form, the information is compiled in such a manner as to make it easily ascertainable by department personnel, and substantially complies with the prescribed form.

This rule is intended to implement Iowa Code section 452A.60.

701—259.11(452A) Invoices.

259.11(1) *Requirements for invoices.* Whenever an invoice is required to be kept or prepared by Iowa Code chapter 452A or these rules, the invoice must:

a. Be prepared by someone other than the purchaser and include the seller's name, address, and identification number.

b. Include the purchaser's name and address.

c. Contain a serial number of three or more digits.

d. Include the calendar date of purchase.

e. Indicate the type of fuel purchased. Diesel fuel must be designated as dyed or undyed.

f. Indicate the quantity of fuel purchased in gross gallons.

g. Indicate the total purchase price and show separately the amount of state and federal fuel tax included in the purchase price or include a statement that all state and applicable federal taxes are included in the purchase price.

h. For ethanol blended gasoline or biodiesel blended fuel, state its designation as provided in Iowa Code section 214A.2.

i. Be prepared on paper that will prevent erasure or alteration or on another form approved by the department.

259.11(2) *Credit card invoices.* Credit card invoices are acceptable if they meet substantially all the requirements of rule 701—259.11(452A). For refund purposes, presentation of a credit card invoice or billing statement is prima facie evidence that the fuel tax has been paid.

This rule is intended to implement Iowa Code sections 452A.10, 452A.12, and 452A.60.

701—259.12(452A) Taxes erroneously or illegally collected.

259.12(1) *Generally.* Licensees are entitled to a refund of taxes, penalty, and interest erroneously or illegally collected by the department.

259.12(2) *Refund requests.* The request for refund must be (1) in writing, (2) filed with the department within three years of the time the tax was paid (3) filed by the licensee who remitted the tax to the department, and (4) accompanied by documentation supporting the claim for refund.

a. Computational errors. If the erroneous collection was the result of a computational error on the part of the taxpayer and that error is discovered by the department during an examination of the taxpayer's records within three years of the overpayment, the taxes will be refunded and a written request will not be necessary.

b. Penalties and interest. If the request includes the return of erroneously or illegally collected (assessed) penalty or interest, the interest or penalty shall be refunded in the same proportion as the tax.

c. Sales or use tax. A refund issued under this rule will be reduced by sales or use tax if applicable. There is no minimum refund amount for refunds claimed under the provisions of Iowa Code section 452A.72.

259.12(3) *Amended returns.*

a. Generally. Amended returns must be filed for the tax periods in which an error occurred.

b. Motor fuel and undyed special fuel suppliers. Motor fuel and undyed special fuel suppliers must inform the department upon which bill(s) of lading, by number, and upon which monthly return(s) the tax was erroneously paid. The gallonage upon which a refund is requested on motor fuel

or undyed special fuel must be reduced by the distribution allowance provided in Iowa Code section 452A.5.

c. Restrictive suppliers, importers, and blenders. Restrictive suppliers, importers, and blenders must inform the department upon which bill(s) of lading or invoice, by number, and upon which monthly or semimonthly return(s) the tax was erroneously paid and an explanation of the erroneous payment. An amended return must be filed for the tax period in which the error occurred.

This rule is intended to implement Iowa Code section 452A.72.

701—259.13(452A) Information confidential.

259.13(1) *Generally.* Iowa Code section 452A.63, which makes all information obtained from reports, returns, or records required to be filed or kept under Iowa Code chapter 452A confidential, applies generally to the director, deputies, auditors, agents, officers, or other employees of the department. The information may be divulged to appropriate public officials, including:

a. Member(s) of the Iowa general assembly,

b. Committees of either chamber of the Iowa legislature,

c. State officers,

d. Persons who have responsibility for the enforcement of Iowa Code chapter 452A,

e. Officials of the federal government entrusted with enforcement of federal motor vehicle fuel tax laws, and

f. Officials of other states who have responsibility to enforce motor vehicle fuel tax laws and who will furnish like information to the department.

259.13(2) *Exception.* An exception to this rule is that the appropriate state agency may make available to the public the total gallons of motor fuel, undyed special fuel, and ethanol blended gasoline withdrawn from terminals or imported into the state by suppliers, restrictive suppliers, and importers. The public request must be made within 45 days following the last day of the month in which the tax is required to be paid.

This rule is intended to implement Iowa Code section 452A.63.

701—259.14(452A) Audit and examination. The compliance division of the department may examine reports, returns, and records; make audits; and determine the correct amount of tax, interest, penalties, and fines due and take all actions authorized to collect the same, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code sections 452A.62 and 452A.76.

701—259.15(452A) Practice and procedure before the department of revenue. The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.

701—259.16(452A) Time for filing an appeal. Any person wishing to contest an assessment, denial of all or any portion of a refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, must file an appeal as directed in 701—Chapter 7. If a taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payments pursuant to 701—subrule 7.9(3) and file a refund claim within the period provided by law for filing claims.

This rule is intended to implement Iowa Code section 452A.64.

701—259.17(452A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections 423.35 and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

259.17(1) *When required.*

a. Classes of business. When the director determines, based on departmental records, other state or federal agency statistics, or current economic conditions, that certain segments of the petroleum business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every licensee operating a business within this class unless it is shown to the director's satisfaction that a particular licensee within a designated class is solvent and that the licensee previously timely remitted the tax. If the director selects certain classes of licensees for posting a bond or security, rulemaking will be initiated to reflect a listing of the classes in the rules.

b. New applications for fuel tax permits. Notwithstanding the provisions of paragraph *"a"* above, the director has determined that importers will be required to post a bond in the amount of $25,000 and other applicants for a new fuel tax permit will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would likely not be able to timely remit the tax, or (2) the new applicant held a prior fuel tax license and the remittance record of the tax under the prior license falls within one of the conditions in paragraph *"c"* below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior license, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in *"c"* or such person had a previous fuel tax permit revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous licensee. For example, X, a corporation, had a previous fuel tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a fuel tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

c. Existing licensees—amount of bond or security. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 701—259.24(452A). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27, penalty waiver.

(1) Suppliers will be requested to post a bond or security when they have had one or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months. The bond or security will be an amount sufficient to cover six months' fuel tax liability or $5,000, whichever is greater.

(2) Restrictive suppliers will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or $2,000, whichever is greater.

(3) Blenders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or $2,000, whichever is greater.

(4) Compressed natural gas, liquefied natural gas, and liquefied petroleum gas dealers and users will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or $500, whichever is greater.

d. Bond or security required. Eligible purchasers and end users will be required to post a bond or security when they have failed to pay the tax to a supplier. They will not be allowed to register as an eligible purchaser or end user again until the bond or security requirement has been complied with.

The bond or security will be an amount sufficient to cover six months' fuel tax based on previous purchases.

e. Waiver of bond. If a licensee has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the licensee maintains a good filing record for a period of two years, the licensee may request that the department waive the continued bond or security requirement. Importer bonds will not be waived.

259.17(2) *Type of security or bond.* When it is determined that a licensee or applicant for a fuel tax permit is required to post collateral to secure the collection of the fuel tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities, or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, cashier's check, money order, or certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An assignment from the bank must accompany the original certificate of deposit filed with the department for the bank to be released from liability. When a licensee elects to post cash rather than a certificate of deposit as a bond, conversion to a certificate of deposit will not be allowed. When the licensee is a corporation, an officer of the corporation may assume personal responsibility for the payment of fuel tax. Security requirements for the officer will be evaluated as provided in 259.17(1) above as if the officer applied for a fuel tax license as an individual.

259.17(3) *Existing license holders.* Existing license holders may be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or filing returns timely during the past 12 months when filing returns on a monthly basis. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or $500, whichever is greater. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27 (penalty waiver). The department may waive the bond under circumstances described in paragraph 259.17(1)*"e."*

259.17(4) *Type of security.* The types of security or bond considered as sufficient are described in subrule 259.17(2).

This rule is intended to implement Iowa Code sections 423.35 and 452A.66.

701—259.18(452A) Supplier, restrictive supplier, importer, exporter, blender, dealer, or user licenses.

259.18(1) *Requirements for license.* In order to become licensed as a fuel supplier, restrictive supplier, importer, exporter, blender, dealer, or user, the person must electronically file an application with the department. The license is valid until revoked or canceled and is nonassignable. The application is to include but not be limited to the following information:

a. The name under which the licensee will transact business in the state.

b. The location of the principal place of business of the licensee and the mailing address if different.

c. The social security number or federal identification number of the licensee.

d. The type of ownership.

e. The name and complete residency address of the owner(s) of the business or, if a corporation or association, the names and addresses of the principal officers.

f. The type of license being requested.

g. Exporters only—the state and license number for that state in which the fuel is being exported.

259.18(2) *Assignment of a license.* Licenses are not assignable. A person must apply for a new license when:

a. Buying the business of another license holder, even if the new owner operates under the same name.

b. Changing of the name under which the licensee conducts business.

c. Merging or otherwise combining businesses, resulting in a new or different entity.

259.18(3) *Denial of a license.* The department may deny a license to any applicant who may be denied a sales tax permit under rule 701—201.10(423). Rule 701—201.10(423) also contains a characterization of the terms "tax administered by the department" and "substantially delinquent" in

paying a tax. Rule 701—7.9(17A) contains information about rights to appeal denial of an application for a license.

259.18(4) *Revocation of a license.* The department may revoke the license of any licensee whose sales tax permit may be revoked under rule 701—201.11(423). Rule 701—201.10(423) contains characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. The department may also revoke the license of any licensee who abuses the privileges for which the license was issued; who files a false return; or who fails to file a return (including supporting schedules), pay the full amount of tax due, produce records requested, or extend cooperation to the department. Rule 701—7.9(17A) contains more information about rights to appeal.

259.18(5) *Efficient administration of motor fuel laws.* When necessary for the efficient administration of Iowa Code chapter 452A, the director may regard persons or facilities in possession of motor fuel, special fuel, biofuel, alcohol, or alcohol derivative substances as blenders, dealers, eligible purchasers, exporters, importers, restrictive suppliers, suppliers, terminal operators, or nonterminal storage facility operators. The department will notify the person or facility of the various requirements under the motor vehicle fuel tax laws and will ensure that a license is issued.

This rule is intended to implement Iowa Code sections 452A.4 and 452A.6.

701—259.19(452A) Reinstatement of license canceled for cause.

259.19(1) *Reinstatement generally.* A license canceled for cause will be reinstated only on such terms and conditions as the cause may warrant. Terms and conditions will include payments of any applicable fuel tax liability including interest and penalty that is due the department.

259.19(2) *Requirements after cancellation.* Upon the cancellation of a motor vehicle fuel tax license, the licensee will be required to pay all delinquent fuel tax liabilities including interest and penalty, to file returns, and to post a bond and have refrained from activities requiring a license under Iowa Code sections 452A.4 and 452A.6 during the waiting period as required by the director prior to the reinstatement or issuance of a new motor vehicle fuel tax license.

259.19(3) *Waiting periods.* The director may impose a waiting period during which the licensee must refrain from activities requiring a license pursuant to the penalties provided in Iowa Code section 452A.74.

a. Waiting periods of up to 90 days may be imposed as a condition for the restoration of a license or the issuance of a new license after cancellation for cause.

b. The department may require a statement that the licensee has fulfilled all requirements of said order canceling the license for cause and the dates on which the license holder refrained from restricted activities.

259.19(4) *Offenses.* Each of the following situations will be considered one offense for the purpose of determining the waiting period to reinstate a license canceled for cause or issuing a new license after being canceled for cause unless otherwise noted.

a. Failure to post a bond as required.

b. Failure to file a report or return timely.

c. Failure to pay tax timely (including unhonored payments, failure to pay and late payments).

d. Failure to file a return and pay tax as shown on the return (counts as one offense).

259.19(5) *Length of waiting period.* The hearing officer or director of revenue may order a waiting period after the cancellation for cause not to exceed:

a. Waiting periods for multiple offenses.

(1) Five days for one through five offenses.

(2) Seven days for six or seven offenses.

(3) Ten days for eight or nine offenses.

(4) Thirty days for ten offenses or more.

b. Waiting periods for multiple cancellations. The hearing officer or director of revenue may order a waiting period not to exceed:

(1) Forty-five days if the second cancellation for cause occurs within 24 months of the first cancellation for cause.

(2) Sixty days if the second cancellation for cause occurs within 18 months of the first cancellation for cause.

(3) Ninety days if the second cancellation for cause occurs within 12 months of the first cancellation for cause.

(4) Ninety days if the third cancellation for cause occurs within 36 months of the second cancellation for cause.

This rule is intended to implement Iowa Code section 452A.68.

701—259.20(452A) Fuel used in implements of husbandry. Dyed special fuel is exempt from tax. Motor fuel or undyed special fuel is subject to refund when used in implements of husbandry as defined in Iowa Code section 321.1(32). A vehicle as defined in Iowa Code section 321.1(90) is not an implement of husbandry. The department of revenue, the state department of transportation, the department of public safety, and any other peace officer as requested by such department is empowered to enforce the use of special fuel or motor fuel in any illegal manner, including the inspection and testing of fuel in the fuel supply tank of an implement of husbandry.

This rule is intended to implement Iowa Code section 452A.76.

701—259.21(452A) Excess tax collected. If a licensee collects tax on exempt fuel or collects more tax than is due, the licensee must return the excess tax paid to the purchaser if the tax has not been paid to the department. If the tax has been paid to the department, the department will return the excess tax paid to the consumer upon appropriate documentation.

This rule is intended to implement Iowa Code section 452A.22.

701—259.22(452A) Retailer gallons report.

259.22(1) The department is required to compile information reported to it by retail dealers regarding the number of gallons of the various fuel classifications sold by retail dealers in the previous calendar year and submit a report to the governor and the legislative services agency by April 1 of each year.

a. Each retail dealer is required to file a report with the department detailing the number of motor fuel gallons sold during the previous calendar year on both a companywide basis and a site-by-site basis as required by the department.

b. The retail dealer report is due by January 31 following the close of the calendar year.

259.22(2) The report filed by the department will include information in the aggregate relating to total sales of gasoline, ethanol blended gasoline, diesel fuel, and biofuels. The report will also include appropriate percentage sales of various fuel products. The report will not include individual retail dealer information, trade secret information, or confidential information.

259.22(3) Any entity selling or otherwise providing gasoline, ethanol blended gasoline, diesel fuel, or biofuels in this state to an end user will be presumed to be a retail dealer under Iowa Code section 452A.2(40).

This rule is intended to implement Iowa Code section 452A.33.

ITEM 2. Rescind 701—Chapter 260 and adopt the following **new** chapter in lieu thereof:

CHAPTER 260
MOTOR FUEL AND UNDYED SPECIAL FUEL

701—260.1(452A) Tax rates—time tax attaches—responsible party.

260.1(1) *Fuel distribution percentages.*

a. Ethanol distribution percentage.

(1) Except as otherwise provided in this paragraph, this paragraph shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. An excise tax of 30 cents is imposed on each gallon of motor fuel other than ethanol blended gasoline classified as E-15 or higher.

(2) On and after July 1, 2030, an excise tax of 30 cents is imposed on each gallon of ethanol blended gasoline classified as E-15 or higher.

(3) Before July 1, 2030, the rate of the excise tax on ethanol blended gasoline classified as E-15 or higher shall be based on the ethanol distribution percentage as specified in Iowa Code section 452A.3 and subparagraph 260.1(1)*"a"*(4). The ethanol distribution percentage is the number of gallons of ethanol blended gasoline classified as E-15 or higher that are distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state. The department shall determine the percentage for each determination period beginning January 1 and ending December 31 based on data from reports filed pursuant to Iowa Code section 452A.33. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period.

(4) The rate of the excise tax on ethanol blended gasoline classified as E-15 or higher is as follows:

Ethanol Distribution Percentage	Per Gallon Excise Tax on E-15 or Higher
0% to 10%	$0.240
>10% to 12%	$0.245
>12% to 14%	$0.250
>14% to 16%	$0.255
>16% to 18%	$0.260
>18% to 20%	$0.265
>20% to 22%	$0.270
>22% to 26%	$0.275
>26% to 35%	$0.280
>35% to 45%	$0.285
>45% to 65%	$0.290
>65% to 85%	$0.292
>85% to 95%	$0.295
>95% to 100%	$0.300

b. Biodiesel distribution percentage.

(1) Except as otherwise provided in this paragraph, the rate of the excise tax on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state, other than biodiesel blended fuel classified as B-20 or higher, is 32.5 cents.

1. Except as otherwise provided in this paragraph, this paragraph shall apply to the excise tax imposed on each gallon of biodiesel blended fuel classified as B-20 or higher used for any purpose for the privilege of operating motor vehicles in this state.

2. On and after July 1, 2030, the rate of the excise tax on each gallon of biodiesel blended fuel classified as B-20 or higher is 32.5 cents.

3. Before July 1, 2030, the rate of the excise tax shall be based on the biodiesel distribution percentage as specified in Iowa Code section 452A.3 and subparagraph 260.1(1)*"b"*(3). The biodiesel distribution percentage is the number of gallons of biodiesel blended fuel classified as B-20 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state. The department shall determine the

percentage for each determination period beginning January 1 and ending December 31 based on data from reports filed pursuant to Iowa Code section 452A.33. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period.

(2) The determination period for the biodiesel distribution percentage is January through December each calendar year.

(3) The rate of the excise tax on biodiesel blended fuel classified as B-20 or higher is as follows:

Biodiesel Distribution Percentage	Per Gallon Excise Tax on B-20 or Higher
0% to 50%	$0.295
>50% to 55%	$0.298
>55% to 60%	$0.301
>60% to 65%	$0.304
>65% to 70%	$0.307
>70% to 75%	$0.310
>75% to 80%	$0.313
>80% to 85%	$0.316
>85% to 90%	$0.319
>90% to 95%	$0.322
>95% to 100%	$0.325

260.1(2) *Attachment, payment, and remittance of tax.*

a. Attachment of tax. The tax attaches when the fuel is withdrawn from a terminal or imported into Iowa.

b. Payment of tax. The tax is payable to the department by the supplier, restrictive supplier, importer, blender, or any person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer or any other person who possesses taxable fuel upon which the tax has not been paid. In the event a licensee sells fuel upon which the tax has not been paid to a second licensee of the same license type, the first licensee, which would be the seller, shall remit the tax to the department unless mutually agreed upon by both licensees of the transaction that the second licensee shall remit the tax to the department.

c. Remittance of tax.

(1) Suppliers, restrictive suppliers, and blenders. The tax is to be remitted to the department by a supplier, restrictive supplier, or blender by the last day of the month following the month in which the fuel is withdrawn from a terminal or imported.

(2) Importers. The tax is to be remitted by an importer by the last day of the month for fuel imported in the first 15 days of the month and by the fifteenth day of the following month for fuel imported after the fifteenth day of the previous month.

(3) Nonlicensees. Nonlicensees who possess taxable fuel upon which the tax has not been paid must file returns and pay the tax the same as a restrictive supplier (monthly). All licensees must make payment by electronic funds transfer.

260.1(3) *Inventory tax.* Retailers, eligible purchasers, and other persons having title to motor fuel, undyed special fuel, or hydrogen in storage and held for sale on the effective date of an increase in the excise tax rate, including an increase in the excise tax rate due to a reclassification of fuel types, imposed on motor fuel, undyed special fuel, or hydrogen are subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel or undyed special fuel that will be subject to the increased excise tax rate. Suppliers and other persons holding fuel that has not yet been taxed are not subject to the inventory tax.

a. Persons subject to the tax imposed under this subrule shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within 30 days of the prescribed inventory date.

b. The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage. The inventory tax rate is equal to the increased excise tax rate less the previous excise tax rate. The inventory tax does not apply to an increase in the tax rate of a specified fuel, except for compressed natural gas, unless the increase in the tax rate of that fuel is in excess of one-half cent per gallon.

This rule is intended to implement Iowa Code sections 452A.3, 452A.8 and 452A.85.

701—260.2(452A) Exemption.

260.2(1) *Exported fuel.* Motor fuel or undyed special fuel sold for export or exported from this state to another state, territory, or foreign country is exempt from the excise tax.

a. The fuel is deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the fuel withdrawn from the terminal is outside the state of Iowa. The mode of transportation is not of consequence.

b. In the event fuel is taxed and then subsequently exported, an amount equal to the tax previously paid will be allowable as a refund, upon receipt by the department of the appropriate documents, to the party who originally paid the tax.

c. If the sale of exported fuel is completed in Iowa, then the sale is subject to Iowa sales tax if it is not exported for resale or otherwise exempt from sales tax. The sale is completed in Iowa if the foreign purchaser takes physical possession of the fuel in this state (rule 701—220.2(423)).

260.2(2) *Exempt purposes.* "Exempt purposes" as they relate to dyed fuel requirements in Iowa Code section 452A.3(3)*"b"* are described in Iowa Code section 452A.17(1)*"a."* This exemption does not apply to fuel used for idle time, power takeoffs, reefer units, or pumping credits, or fuel used by contract carriers.

This rule is intended to implement Iowa Code sections 452A.3 and 452A.17.

701—260.3(452A) Responsibilities of blenders at nonterminal locations.

260.3(1) *Generally.* A person who blends ethanol blended gasoline or biodiesel blended fuel at a nonterminal location must:

a. Obtain a blender's license. Blending ethanol with gasoline, or blending biodiesel with petrodiesel, may result in additional tax due or an allowable refund depending on the ethanol content of the mixture and the tax paid on its components.

b. Make payments of any additional tax due that may result from blending depending on the content of the mixture.

c. Obtain a refund permit to receive allowable refunds of any overpayment of tax that may result from blending depending on the content of the mixture.

EXAMPLE 1: A blender blends three parts ethanol E-100 with 17 parts gasoline to create ethanol blended gasoline classified as E-15 or higher. The blended product is taxed as ethanol blended gasoline E-15 or higher, and the blender may be due a refund for excess tax paid on the gasoline used to create the blended product.

EXAMPLE 2: A blender blends one-part biodiesel B-100 with four parts petrodiesel to create biodiesel blended fuel classified as B-20 or higher. The blended product is taxed as biodiesel B-20 or higher undyed, and the blender may be due a refund for excess tax paid on the petrodiesel used to create the blended product.

EXAMPLE 3: A blender blends one part biodiesel B-100 with 19 parts petrodiesel to create biodiesel blended fuel classified as B-5. The blended product is taxed as special fuel undyed, and the blender may owe additional tax to the department on the biodiesel B-100 used to create the blended product.

EXAMPLE 4: A blender blends one part biodiesel blended fuel classified as B-20 with five parts biodiesel blended fuel classified as B-2 to create biodiesel blended fuel classified as B-5. The blended

product is taxed as special fuel undyed other than B-20 or higher, and the blender may owe additional tax to the department on the biodiesel blended fuel classified as B-20 used to create the blended product.

260.3(2) *Blenders of ethanol blended gasoline.*

a. E-15 or higher additional tax due example where ethanol is owned by a blender and gasoline is purchased by the blender from a supplier.

(1) A blender who owns the ethanol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier.

(2) The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due.

(3) Example. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be 24¢ per gallon. The actual tax rates for the appropriate period may be found on the department's website at revenue.iowa.gov.

EXAMPLE:	
Blender purchases 7,000 gallons tax-paid gasoline (7,000 ×.30) =	$2,100.00
Blender adds 3,000 gallons untaxed ethanol	$.00
Total tax paid on products	$2,100.00
Total tax due on 10,000 gallons ethanol blended gasoline E-15 or higher (10,000 ×.24) =	$2,400.00
Additional Amount Due	$300.00

b. E-15 or higher refund example where ethanol and gasoline are purchased by a blender from a supplier. A blender who purchases ethanol and gasoline from a supplier must pay tax on both the ethanol purchased and the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. Example. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be 24¢ per gallon. The actual tax rates for the appropriate period may be found on the department's website at revenue.iowa.gov.

EXAMPLE:	
Blender purchases 7,000 gallons tax-paid gasoline (7,000 ×.30) =	$2,100.00
Blender purchases 3,000 gallons tax-paid ethanol (3,000 ×.24) =	$720.00
Total tax paid on products	$2,820.00
Total tax due on 10,000 gallons ethanol blended gasoline E-15 or higher (10,000 ×.24) =	$2,400.00
Amount of Refund Allowable	$420.00

c. E-10 to E-14 example where ethanol and gasoline are purchased by a blender from any source. A blender who purchases ethanol and gasoline from any source must pay tax on both the ethanol purchased and the gasoline purchased. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. Example. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon, the tax rate for ethanol is presumed to be 24¢ per gallon, and the tax rate for ethanol blended gasoline E-10 is presumed to be 30¢ per gallon. The actual tax rates for the appropriate period may be found on the department's website at revenue.iowa.gov.

EXAMPLE:	
Blender purchases 7,200 gallons tax-paid gasoline (7,200 ×.30) =	$2,160.00
Blender purchases 800 gallons tax-paid ethanol (800 ×.24) =	$192.00

Total tax paid on products	$2,352.00
Total tax due on 8,000 gallons ethanol blended gasoline E-10 (8,000 ×.30) =	$2,400.00
Additional Amount Due	$48.00

d. E-15 or higher refund example where ethanol blended gasoline E-10 to E-14 and ethanol blended gasoline E-15 or higher are purchased by a blender from a supplier. A blender who purchases ethanol blended gasoline E-10 to E-14 and ethanol blended gasoline E-15 or higher from a supplier must pay tax on both the ethanol blended gasoline E-10 to E-14 purchased and the ethanol blended gasoline E-15 purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. Example. For purposes of the following example, the tax rate for E-10 to E-14 purchased is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be 24¢ per gallon. The actual tax rates for the appropriate period may be found on the department's website at revenue.iowa.gov.

EXAMPLE:

Blender purchases 7,000 gallons tax-paid ethanol blended gasoline E-10 to E-14 (7,000 ×.30) =	$2,100.00
Blender purchases 3,000 gallons tax-paid ethanol blended gasoline E-15 or higher (3,000 ×.24) =	$720.00
Total tax paid on products	$2,820.00
Total tax due on 10,000 gallons ethanol blended gasoline E-15 or higher (10,000 ×.24) =	$2,400.00
Amount of Refund Allowable	$420.00

e. Ethanol blended gasoline E-15 or higher blending errors. Where a blending error occurs and an insufficient amount of ethanol has been blended with gasoline so that the mixture fails to qualify as ethanol blended gasoline E-15 or higher, a 1 percent tolerance applies in determining the tax on the blended product as described below:

(1) If the amount of the ethanol erroneously blended with gasoline is at least 14 percent of the total blended product by volume, the ethanol and gasoline blended product is considered ethanol blended gasoline E-15 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of ethanol erroneously blended with gasoline is less than 14 percent of the total blended product by volume, the total blend of gasoline and ethanol is subject to tax as motor fuel other than ethanol blended gasoline E-15 or higher at the prevailing rate of tax.

1. Blending errors occur only if a blender intends to produce ethanol blended gasoline E-15 or higher. If a blender does not intend to produce ethanol blended gasoline when blending ethanol and gasoline, and the mixture contains less than 14 percent ethanol by volume, no error has occurred and the mixture is subject to tax as motor fuel other than ethanol blended gasoline E-15 or higher.

2. The following formulas are used to compute blending errors:

Actual gasoline + actual ethanol = total gallons of blended product

Total gallons of blended product × .14 = required ethanol

3. Examples. The following factors are assumed for all examples:

The blender in each example intends to blend ethanol blended gasoline E-15 or higher. Figures are rounded to the nearest whole gallon; ethanol blended gasoline E-15 or higher is taxed at 24¢ per gallon; gasoline is taxed at 30¢ per gallon. The actual tax rates for the appropriate period may be found on the department's website at revenue.iowa.gov. Penalty and interest charges are not computed in the examples.

EXAMPLE 1:

Actual gasoline	=	8,500 gal.

Actual ethanol	=	1,500	gal.
Total blended product	=	10,000	gal.
10,000 ×.14	=	1,400	gal. required ethanol

The actual ethanol (1,500 gallons) is more than the required ethanol (1,400 gallons), which means that the tax is applied according to subparagraph 260.4(2)*"e"*(1) as follows:

10,000 gal. of blended product ×.24	=	$2,400	tax on ethanol blended gasoline E-15 or higher

EXAMPLE 2:

Actual gasoline	=	9,200	gal.
Actual ethanol	=	800	gal.
Total blended product	=	10,000	gal.
10,000 ×.14	=	1,400	gal. required ethanol

The actual ethanol (800 gallons) is less than the required ethanol (1,400 gallons), which means that the entire blend is considered motor fuel other than ethanol blended gasoline E-15 or higher and the tax is applied according to subparagraph 260.4(2)*"e"*(2) as follows:

10,000 gal. of blended product ×.30	=	$3,000	tax on motor fuel other than ethanol blended gasoline E-85 or higher

260.3(3) *Blenders of biodiesel blended fuel.*

a. Biodiesel B-20 or higher additional tax due.

(1) A blender who owns the biodiesel being used to blend with diesel must purchase the diesel from a supplier and pay the appropriate tax to the supplier.

(2) The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due.

(3) Examples. For purposes of the following examples, the tax rate for B-20 or higher is presumed to be 29.5¢ per gallon and the tax rate for special fuel other than B-20 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period may be found on the department's website at revenue.iowa.gov.

EXAMPLE 1:

Blender purchases 8,000 gallons tax-paid petrodiesel (8,000 ×.325) =	$2,600.00
Blender adds 2,000 gallons untaxed biodiesel =	$.00
Total tax paid on products =	$2,600.00

The blended product is 10,000 gallons of special fuel, which includes 2,000 gallons (20 percent by volume) of biodiesel. Thus, the product is taxed as B-20 or higher.

Total tax due on 10,000 gallons blended B-20 or higher (10,000 ×.295) =	$2,950.00
Additional Amount Due =	$350.00

EXAMPLE 2:

Blender purchases 7,600 gallons tax-paid petrodiesel (7,600 ×.325) =	$2,470.00
Blender adds 400 gallons untaxed biodiesel =	$.00
Total tax paid on products =	$2,470.00

The blended product is 8,000 gallons of special fuel, which includes 400 gallons (5 percent by volume) of biodiesel. Thus, the product is taxed as special fuel undyed classified as other than B-20 or higher.

Total tax due on 8,000 gallons special fuel undyed classified as other than B-20 or higher (8,000 ×.325) =	$2,600.00
Additional Amount Due =	$130.00

EXAMPLE 3:

Blender purchases 7,750 gallons tax-paid B-2 (7,750 ×.325) =	$2,518.75
Blender adds 250 gallons untaxed biodiesel =	$.00
Total tax paid on products =	$2,518.75

7,750 gallons of B-2 contains 155 gallons (2 percent) of biodiesel. The blended product is 8,000 gallons of special fuel, which includes 405 gallons (155 + 250, or 5 percent by volume) of biodiesel. Thus, the product is taxed as special fuel undyed classified as other than B-20 or higher.

Total tax due on 8,000 gallons special fuel undyed classified as other than B-20 (8,000 ×.325) =	$2,600.00
Additional Amount Due =	$81.25

b. Diesel purchased by blender.

(1) A blender who purchases diesel products from a supplier must pay the appropriate tax on all diesel products purchased.

(2) The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for any additional amount due.

(3) The blender must also obtain a refund permit to receive a refund of any overpayment of tax on the blended product.

(4) Examples. For purposes of the following examples, the tax rate for B-20 or higher is presumed to be 29.5¢ per gallon and the tax rate for special fuel other than B-20 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period may be found on the department's website at revenue.iowa.gov.

EXAMPLE 1:

Blender purchases 8,000 gallons tax-paid petrodiesel (8,000 ×.325) =	$2,600.00
Blender purchases 2,000 gallons tax-paid biodiesel (2,000 ×.295) =	$590.00
Total tax paid on products =	$3,190.00

The blended product is 10,000 gallons of biodiesel blended fuel classified as B-20 or higher, which includes 2,000 gallons (20 percent by volume) of biodiesel. Thus, the product is taxed as biodiesel blended fuel classified as B-20 or higher.

Total tax due on 10,000 gallons of blended fuel classified as B-20 or higher (10,000 ×.295) =	$2,950.00
Amount of Refund Allowable =	$240.00

EXAMPLE 2:

Blender purchases 7,600 gallons tax-paid petrodiesel (7,600 ×.325) =	$2,470.00
Blender purchases 400 gallons tax-paid biodiesel (400 ×.295) =	$118.00
Total tax paid on products =	$2,588.00

The blended product is 8,000 gallons of biodiesel blended fuel classified as other than B-20 or higher, which includes 400 gallons (5 percent by volume) of biodiesel. Thus, the product is taxed as special fuel other than B-20 or higher.

Total tax due on 8,000 gallons blended B-5 (8,000 ×.325) =	$2,600.00
Additional Amount Due =	$12.00

EXAMPLE 3:

Blender purchases 4,000 gallons tax-paid B-2 (4,000 ×.325) =	$1,300.00
Blender purchases 4,000 gallons tax-paid B-20 (4,000 ×.295) =	$1,180.00
Total tax paid on products =	$2,480.00

4,000 gallons of B-2 contains 80 gallons (2 percent) of biodiesel, and 4,000 gallons of B-20 contains 800 gallons (20 percent) of biodiesel. The blended product is 8,000 gallons of special fuel, which includes 880 gallons (80 + 800, or 11 percent by volume) of biodiesel. Thus, the product is taxed as special fuel other than B-20 or higher.

Total tax due on 8,000 gallons B-11 or higher (8,000 ×.301) =	$2,600.00
Amount of Refund Allowable =	$120.00

260.3(4) *Blending errors.*

a. Blending tolerance. Where a blending error occurs and an insufficient amount of biodiesel has been blended with petrodiesel so that the mixture fails to qualify as B-20 or higher as defined in rule 701—259.1(452A), a 1 percent tolerance applies in determining the tax on the blended product as described below:

(1) If the amount of the biodiesel erroneously blended with petrodiesel is at least 19 percent of the total blended product by volume, the biodiesel and petrodiesel blended product is considered B-20 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of biodiesel blended with petrodiesel is less than 19 percent of the total blended product by volume, the entire mixture is considered taxable diesel other than B-20 or higher and subject to tax at the prevailing rate.

b. Intention to blend. Blending errors occur only if a blender intends to produce B-20 or higher. If a blender does not intend to produce B-20 or higher when blending biodiesel and petrodiesel, and the mixture contains less than 19 percent biodiesel by volume, no error has occurred and the mixture is subject to tax as diesel other than B-20 or higher.

c. Computation of blending errors. The following formulas are used to compute blending errors:

Actual biodiesel + actual petrodiesel = total gallons of blended product

Total gallons of blended product × .19 = required biodiesel

d. Examples. The following factors are assumed for all examples:

The blender in each example intends to blend B-20 or higher. Figures are rounded to the nearest whole gallon; B-20 or higher is taxed at .295¢ per gallon; diesel other than B-20 or higher is taxed at .325¢ per gallon. The actual tax rates for the appropriate period may be found on the department's website at revenue.iowa.gov. Penalty and interest charges are not computed in the examples.

EXAMPLE 1:

Actual petrodiesel	=	6,400 gal.
Actual biodiesel	=	1,600 gal.
Total blended product	=	8,000 gal.
8,000 ×.19	=	1,520 gal. required biodiesel

The actual biodiesel (1,600 gallons) is more than the required biodiesel (1,520 gallons). Thus, the tax is applied according to subparagraph 260.4(3)*"c"*(1) as follows:

8,000 gal. of blended product ×.295	=	$2,360 tax on B-20 or higher

EXAMPLE 2:

Actual petrodiesel	=	6,600 gal.
Actual biodiesel	=	1,400 gal.
Total blended product	=	8,000 gal.

8,000 ×.19	=	1,520 gal. required biodiesel

The actual biodiesel (1,400 gallons) is less than the required biodiesel (1,520 gallons). Thus, the tax is applied according to subparagraph 260.4(3)*"c"*(2) as follows:

8,000 gal. of blended product ×.325	=	$2,600 tax on diesel other than B-20 or higher

EXAMPLE 3:

A blender erroneously mixes 3,000 gallons of B-2 with 5,000 gallons of B-30 with the intent of creating B-20 or higher. 3,000 gallons of B-2 contains 60 gallons (2 percent) of biodiesel. 5,000 gallons of B-30 contains 1,500 gallons (30 percent) of biodiesel. Thus, the 8,000 gallons (3,000 + 5,000) of blended product includes 1,560 gallons (60 + 1,500) of biodiesel and 6,440 gallons (8,000 – 1,560) of petrodiesel.

Actual petrodiesel	=	6,440 gal.
Actual biodiesel	=	1,560 gal.
Total blended product	=	8,000 gal.
8,000 ×.19	=	1,520 gal. required biodiesel

The actual biodiesel (1,560 gallons) is greater than the required biodiesel (1,520 gallons), which means that the entire blend is considered B-20 or higher and the tax is applied according to subparagraph 260.4(3)*"c"*(1) as follows:

8,000 gal. of blended product ×.295	=	$2,360 tax on B-20 or higher

This rule is intended to implement Iowa Code section 452A.8.

701—260.4(452A) Tax returns—computations.

260.4(1) *Supplier—nexus.*

a. Determination of tax liability amount. The fuel tax liability for a supplier is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the supplier within the state or by the supplier with an Iowa nexus from a terminal outside the state during the preceding calendar month, less deductions for fuel exported in the case of in-state withdrawals and the distribution allowance provided for in Iowa Code section 452A.5.

b. Supplier responsibility. Tax shall not be paid when the sale of ethanol occurs within a terminal from an ethanol manufacturer to a licensed supplier. The tax shall be paid by the licensed supplier when the invoiced gross gallonage of the ethanol or the ethanol part of the ethanol blended gasoline is withdrawn from a terminal for delivery in this state. This makes the licensed supplier responsible for the tax on both the ethanol and the gasoline portions of the ethanol blended gasoline and for the reporting and accounting of this fuel as ethanol blended gasoline on the supplier report.

c. Terminals outside of Iowa. If fuel is withdrawn by a supplier with no nexus in Iowa, but who voluntarily agrees to collect and report the tax, from a terminal outside of Iowa for importation into Iowa, the tax liability is computed in the same manner as in paragraph 260.4(1)*"a"* with the exception that no deduction is allowable for exports.

260.4(2) *Restrictive supplier.* The fuel tax liability for a restrictive supplier is to be computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the preceding calendar month.

260.4(3) *Importer.* The fuel tax liability for an importer is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the applicable reporting period.

260.4(4) *Nonlicensee.* The tax liability for a nonlicensee is computed the same as for a restrictive supplier. If motor fuel or undyed special fuel is exported from this state with no tax paid and

subsequently returned to this state because all or a portion of it was not delivered where destined, the tax must be paid to the department by the nonlicensee.

All gallon entries on the return for determining the tax liability must be rounded to the nearest whole gallon.

This rule is intended to implement Iowa Code sections 452A.3, 452A.5, 452A.8, and 452A.9.

701—260.5(452A) Distribution allowance. The tax computation for a supplier includes a distribution allowance of 1.6 percent of the motor fuel gallonage and 0.7 percent of the undyed special fuel gallonage removed from the terminal during the reporting period. The distributor purchasing the fuel from the supplier is entitled to 1.2 percent of the motor fuel distribution allowance. The distributor or dealer purchasing fuel from a supplier is entitled to 0.35 percent of the undyed special fuel distribution allowance. The distribution allowance does not apply to fuel exported.

This rule is intended to implement Iowa Code sections 452A.5 and 452A.8.

701—260.6(452A) Supplier credit—uncollectible account.

260.6(1) *Generally.* A licensed supplier who is unable to recover the tax from an eligible purchaser or end user is not liable for the tax and may credit the amount of unpaid tax against a later remittance of tax.

260.6(2) *Qualification for credit.*

a. To qualify for the credit, the supplier must notify the department in writing of the uncollectible account no later than ten calendar days after the due date for payment of the tax.

b. Notification is to be provided to the department via email at idrmotorfuel@iowa.gov. The notification must include all information required by the department.

c. Disqualification for credit.

(1) A supplier does not qualify for the credit if the purchaser did not elect to apply for the eligible purchaser or end user status or did not qualify to be an eligible purchaser.

(2) The credit does not apply if the supplier sells additional fuel to a delinquent eligible purchaser or end user after notifying the department that the supplier has an uncollectible debt with an eligible purchaser.

260.6(3) *Cancellation of eligible status.* Upon notification from the supplier that an eligible purchaser is in default of the tax payment, that person's eligible purchaser or end user status will be canceled by the department. The eligible purchaser or end user status will not be reinstated until such time as the purchaser posts securities to guarantee future tax payments as provided in 701—paragraph 259.17(1)*"d."*

260.6(4) *Eligible purchasers.*

a. Registration. Any distributor of motor fuel or special fuel or end user of special fuel who requests authorization to make delayed payments of the motor vehicle fuel tax must first register with the department to become an eligible purchaser.

b. Payment of tax. The eligible purchaser must pay the tax to the supplier by electronic funds transfer one business day prior to the date the tax is to be paid by the supplier.

c. Validity. Once approved, the eligible purchaser status is valid until voluntarily canceled by the eligible purchaser or canceled by the department of revenue. More information is contained in 701—subrule 259.18(4).

This rule is intended to implement Iowa Code section 452A.8.

701—260.7(452A) Refunds. Refunds are allowable for the tax paid on motor fuel and undyed special fuel as identified in Iowa Code section 452A.17. Iowa Code section 452A.17(1)*"a"* contains the complete list of allowable refunds.

260.7(1) *Federal government.* For fuel sold to the United States or to any agency or instrumentality of the United States, the tax is subject to refund regardless of how the fuel is used. The

name of the federal agency or instrumentality must appear on the invoice as the purchaser of the fuel for the purchase to be eligible for a refund.

a. The department will consider the factors found in 701—subrule 212.12(3) to determine whether an organization is an instrumentality of the United States government.

b. The American Red Cross, Project Head Start, Federal Land Banks and Federal Land Bank Associations, among others, have been determined to be instrumentalities of the federal government.

c. Ineligible for refunds. Receivers or trustees appointed in the federal bankruptcy proceedings are subject to the excise tax and ineligible for refund. The refund is not available to employees of the federal government who purchase fuel individually and are later reimbursed by the federal government.

260.7(2) *The state and political subdivisions.*

a. Generally. Fuel sold to the state of Iowa, agencies of the state, or any political subdivision of the state and that is used for public purposes may be eligible for a refund. This refund is not available to agencies or instrumentalities of political subdivisions.

b. Political subdivision attributes. The general attributes and factors in determining if an entity is a political subdivision of the state of Iowa are whether the entity has:

(1) A specific geographic area;

(2) Public officials elected at public elections;

(3) Taxing power;

(4) A general public purpose or benefit; and

(5) The attributes, factors or powers listed in subparagraphs 260.7(2)*"a"*(1) to *"a"*(4) delegated to it by the state of Iowa.

c. Employees. The refund is not available to employees of a governmental unit who purchase fuel individually and are later reimbursed by the governmental unit. The name of the governmental unit must appear on the invoice as the purchaser of the fuel or the refund will not be allowed.

260.7(3) *Contract carriers.*

a. Fuel sold to a contract carrier who has a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school is refundable.

b. If the contract carrier also uses fuel for purposes other than the transportation of pupils, the refund will be based on that percentage of the total amount of fuel purchased which reflects the pupil transportation usage.

c. A refund requested by a contract carrier will be reduced by the applicable sales tax unless otherwise exempt. The name of the contract carrier must appear on the invoice as the purchaser of the fuel or the refund will not be allowed.

260.7(4) *Unlicensed vehicles, stationary engines, machinery and equipment used for nonhighway purposes, implements used in agricultural production, and home heating.* Fuel used in unlicensed vehicles, stationary engines, machinery and equipment used for nonhighway purposes, implements used in agricultural production, and fuel used for home heating.

260.7(5) *Idle time.*

a. Claims. Persons who wish to claim a refund for idle time (the engine is running but not propelling the vehicle) must first apply to the department and provide statistical information on how the refund amount will be calculated.

b. Qualification.

(1) Normally, to qualify for a refund the vehicle must be equipped with an on-board monitoring device that records the actual time the engine is idling and the amount of fuel consumed while idling.

(2) If the device only records the idle time and not fuel used, the refund amount will be calculated at one-half gallon of fuel consumed per one hour of idle time.

(3) The computation must also consider the miles driven in Iowa versus total miles driven. The department will require a review of interstate carrier reports before approval of the computation method.

260.7(6) *Power takeoff.*

a. Generally. Persons operating vehicles that have auxiliary equipment powered by the power takeoff may apply for a refund for that portion of the fuel used for powering the auxiliary equipment.

b. Exempt percentage. The person requesting the refund must furnish the department with statistical information on how the exempt percentage is established. The percentage can be established by using the following methods:

(1) Determine the actual fuel usage by the hour while the auxiliary equipment is in use compared to total hours the engine is running.

(2) Establish total miles per gallon for the vehicle when auxiliary equipment is not in use compared to miles per gallon while the equipment is in use.

(3) Other computation methods to be reviewed by the department prior to approval.

260.7(7) *Fuel used in relation to cement and solid waste.* It has been predetermined that tax on fuel used in the mixing of cement into concrete, the off-loading of the concrete, and the loading and off-loading of solid waste will be refunded on the basis of 30 percent of the fuel placed in the fuel supply tank of the vehicle provided proper records are maintained. Proper records shall consist of records of fills for each vehicle from tax-paid bulk storage tanks or sales tickets where fuel is purchased directly from a service station. Each vehicle must be identifiable by a unit number so the department can trace fuel usage to specific vehicles. An additional allowance will be granted where it can be substantiated through the use of separate meters that operate to measure the fuel when the vehicle is stationary or the use of separate tanks that fuel the vehicle only when the vehicle is stationary that the actual nonhighway fuel usage exceeds 30 percent.

260.7(8) *Refrigeration units (reefers).*

a. Generally. Tax paid on fuel for reefer units is subject to refund.

b. Documentation. The person must maintain records of fuel purchases to substantiate the tax-paid purchases. Invoices must meet the criteria set forth in rule 701—259.11(452A). In addition, the invoices must separately state fuel purchased and placed in the reefer unit.

260.7(9) *Pumping credits.*

a. Generally. A refund will be allowed for taxes paid on fuel once that fuel has been placed in the fuel supply tank of a motor vehicle when the motor of that vehicle is used as a power source for off-loading procedures.

b. Documentation. Meter readings from the pump used in the off-loading procedure or the invoice, manifest, or bill of lading number covering the product off-loaded must be retained.

c. Claim amounts. Unless a different amount can be proven, the claims for refund will be:

(1) One-half gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products off-loaded when using motor fuel or undyed diesel fuel to power the motor; and

(2) One gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products off-loaded when using L.P.G. to power the motor.

260.7(10) *Transport diversions.*

a. Generally. When a transport load of fuel is sold tax-paid with a destination in this state and later diverted to a destination outside the state, the person who actually paid the Iowa tax is entitled to a refund.

b. Refund claims. To secure a refund, the person must file a completed claim form provided by the department with supporting documentation including a copy of the bill of lading, invoices, or document showing where and to whom the fuel was delivered, a copy of the reporting form, and evidence of payment to the state where the fuel was actually delivered.

260.7(11) *Casualty loss.*

a. Notification. In the event fuel is lost or destroyed through fire, explosion, lightning, flood, storm, earthquake, terrorist attack, or other casualty, the taxpayer has ten days from the discovery of the loss to inform the department in writing of such loss. The notification must contain the amount of gallonage lost or destroyed, which must be in excess of 100 gallons.

b. Refund. An application for refund must be submitted to the department within 60 days of the notification. This application must contain a notarized affidavit sworn to by the person having immediate custody of the fuel at the time of the loss or destruction setting forth, in full detail, the circumstances of the loss or destruction and the number of gallons.

c. Presumption when fuel is in storage. If the fuel was in storage where several fuel purchases were commingled, it is a rebuttable presumption that the fuel lost through casualty was a part of the last delivery into the storage just prior to the loss.

d. Exclusion from refund. No refund is allowed for fuel lost through evaporation, theft, normal leakage, or unknown causes. However, leakage resulting from a major accident or catastrophe is subject to refund.

260.7(12) *Exports by eligible purchasers (distributors).* Distributors who have purchased tax-paid fuel and sell the fuel to consumers outside the state may apply for a refund of the Iowa tax paid. The distributor must retain records as provided in rule 701—259.2(452A) to support the request for refund.

260.7(13) *Blending errors for special fuel.*

a. Dyed special fuel commingled with undyed special fuel.

(1) If dyed special fuel is inadvertently mixed with tax-paid undyed special fuel to the extent that the undyed fuel must have additional dye added to meet federal dying requirements to qualify as exempt dyed fuel, the tax is refundable on the undyed special fuel. The refund request must contain the number of gallons of undyed fuel lost through the mixing error and documentation as to how the gallonage was determined.

(2) The request for refund must contain documentation that the commingled product was destroyed or sold for purposes of refinement at a terminal.

b. Motor fuel commingled with special fuel.

c. If motor fuel is blended in error with dyed special fuel to produce a commingled product that must be destroyed or refined for subsequent use, the tax-paid fuel is subject to refund.

d. The request for refund must contain documentation that the commingled product was destroyed or sold for purposes of refinement at a terminal.

260.7(14) *Native Americans.*

a. Generally. Sales by Native Americans to others of their own tribe located on federally recognized Native American reservations or settlements of which they are tribal members are exempt from the tax.

b. Purchases of fuel by seller. Fuel must be purchased by the Native American seller with the tax included in the purchase price unless the seller's status under a particular license authorizes the seller to purchase tax-free fuel.

c. Purchase of fuel by purchasers. Exempt sales from a Native American seller who purchased fuel with the tax attached to a Native American purchaser are eligible for refund of tax paid. Either the purchasers can file a claim for refund of the tax paid or the purchaser's tribe can file a claim for refund of the tax paid by the tribe on the fuel sold to the purchaser.

d. Recordkeeping. Native American sellers are subject to the recordkeeping requirements of Iowa Code chapter 452A.

This rule is intended to implement Iowa Code section 452A.17.

701—260.8(452A) Claim for refund—payment of claim.

260.8(1) *Generally.* Only claimants holding a refund permit may receive refunds.

260.8(2) *Proof of claim.*

a. Exempt purpose. Requests for refunds for fuel used for an exempt purpose should include the following information:

(1) Refund permit number,

(2) Type of fuel,

(3) Total number of gallons/tons of fuel used to calculate the refund amount,

(4) The beginning and ending dates of the tax period,
(5) Net cost of fuel,
(6) Iowa sales tax due (net cost of fuel times sales tax rate),
(7) Other items depending on the type of permit and claim type,
(8) The total amount of refund claimed, and
(9) Additional information as required.

b. Other refunds types. Persons requesting a refund for casualty loss, transport diversions, blending errors of motor fuel and ethanol, and blending errors of special fuel must file in writing on the forms provided by the department and must attach supporting documents explaining why a refund is due.

260.8(3) *Designation of agent.*

a. Generally. Refunds are made and the amount of the refund is paid to the person who actually paid the tax.

b. Designation. Persons requesting a refund for idle time, power takeoff, reefer units, pumping credits, or transport diversions may designate another person as an agent to file the claim and receive the refund.

(1) Documentation. The person acting as an agent for others must provide the department with the following information including, but not limited to, the name, address, and federal identification number or social security number of the person on whose behalf they are requesting the refund.

(2) Duration. Once a person is designated as an agent, this designation remains in force until the department is notified in writing that the agency agreement is no longer enforceable. A governmental agency may designate another governmental agency as an agent for filing and receiving any tax refund authorized in Iowa Code section 452A.17.

260.8(4) *Deposit of refund.* If the person so designates, the department will direct deposit the refund in the person's designated bank account. In lieu of direct deposit, the permit holder will receive a state warrant.

This rule is intended to implement Iowa Code sections 452A.17, 452A.19, 452A.21, and 452A.72.

701—260.9(452A) Refund permit.

260.9(1) *Generally.* To obtain the refund provided for in Iowa Code chapter 452A and rule 701—260.7(452A), the claimant must have an active refund permit.

260.9(2) *Application.* The application for a refund permit is provided by the department and will contain, but not be limited to, the following information:

a. The name and location of the business and the mailing address if different,
b. The type of ownership,
c. The social security number or federal identification number of the applicant, and
d. The type of refund requested.

260.9(3) *Cost and effective dates.* The refund permit remains in effect until revoked or canceled or until the permit becomes invalid.

260.9(4) *Recordkeeping.* All refund permit holders are required to keep invoices and copies of returns if filed, supporting schedules, and studies for documentation to support the refund.

This rule is intended to implement Iowa Code section 452A.18.

701—260.10(452A) Revocation of refund permit.

260.10(1) *Revocation.* Iowa Code section 452A.19(1) provides the circumstances under which a refund permit may be revoked.

260.10(2) *Waiting period for reissuance.* If a permit is revoked for reasons provided in Iowa Code section 452A.19(1), the permit will not be reissued for a period of at least one year after the revocation.

260.10(3) *Nonuse.* Permits that have not been used to claim a refund for at least three years will be invalidated but are subject to reinstatement or issuance of a new permit without a waiting period upon proper application.

260.10(4) *Procedure.* Rule 701—7.39(17A) provides more information about the revocation or invalidation of permits.

This rule is intended to implement Iowa Code section 452A.19.

701—260.11(452A) Income tax credit in lieu of refund.

260.11(1) *Tax credit in lieu of refund permit.* A person or corporation may claim the refund allowable under Iowa Code section 452A.17(2) as an income tax credit rather than apply for a refund permit.

260.11(2) *Cancellation of refund permit.* If a person or corporation holds a refund permit and elects to receive an income tax credit, the person or corporation must cancel the refund permit within 30 days after the first day of its year or the permit becomes invalid and application must be made for a new permit.

260.11(3) *Effective dates.* Once the election to receive an income tax credit has been made, it remains in effect until the election is changed.

260.11(4) *Exclusions from credit.* The income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, blending errors, idle time, power takeoffs, reefer units, exports by distributors, and excess tax paid on ethanol blended gasoline.

This rule is intended to implement Iowa Code sections 422.110, 452A.17(2), and 452A.21.

701—260.12(452A) Reduction of refund—sales and use tax.

260.12(1) *Generally.* Refunds of the fuel tax paid on sales of fuel will be reduced by any applicable sales or use tax. Iowa Code section 423.3(56) and rule 701—218.11(423) provide more information on the exemption from sales or use tax when the fuel tax has been imposed and paid.

260.12(2) *Exclusion from reduction of refund.* Refunds of the fuel tax paid on sales of fuel used for other exempt purposes under Iowa Code chapter 423 and fuel lost through casualty will not be reduced by the applicable sales or use tax.

260.12(3) *Applicable sale price.* The sales price upon which the sales and use tax will be applied shall include all federal excise taxes but will not include the Iowa fuel tax.

This rule is intended to implement Iowa Code sections 423.3(356) and 452A.17.

701—260.13(452A) Terminal withdrawals—meters. Any refinery or terminal within this state must be fixed with meters that totalize the gross gallons withdrawn. All bills of lading or manifests must show the gross gallons withdrawn. A temperature-adjusted or other method shall not be used except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All fuel withdrawn from a refinery or terminal within this state must pass through these meters.

This rule is intended to implement Iowa Code sections 452A.2, 452A.8, 452A.15(2), and 452A.59.

701—260.14(452A) Terminal and nonterminal storage facility reports and records.

260.14(1) *Generally.* Each terminal and nonterminal storage facility operating in Iowa must file a monthly inventory report with the department.

260.14(2) *Report information.* The report shall include, but not be limited to, the following information:

a. Name and license number of the company that owns and operates the terminal or nonterminal storage facility.

b. Location of the terminal or nonterminal storage facility.

c. Month and year covered by the report.

d. Terminal code assigned by the Internal Revenue Service or the storage facility license number assigned by the department.

e. Beginning inventory.

f. Total receipts for the month with each receipt providing the following information:

(1) Gross gallons received by schedule code and fuel type and, if diesel fuel, whether dyed or undyed fuel,

(2) Bill of lading number,

(3) Date of receipt,

(4) Seller,

(5) Carrier,

(6) Mode of transportation, and

(7) Destination state.

g. Total withdrawals for the month, with each withdrawal providing the following information:

(1) Gross gallons withdrawn by schedule code and by fuel type and, if diesel fuel, whether dyed or undyed fuel,

(2) Bill of lading number,

(3) Date of withdrawal,

(4) Consignor,

(5) Consignee,

(6) Mode of transportation,

(7) Destination state,

(8) Origin state, and

(9) Carrier.

h. The actual ending inventory and any gains or losses.

i. The signature or electronic signature of the person responsible for preparing the report.

j. Any additional information as the department may require.

260.14(3) *Civil penalty.*

a. Failure to file. The director may impose a civil penalty against any person who fails to file the reports required under Iowa Code section 452A.15(2) or 452A.15(3).

b. Amount. The penalty is $100 for the first violation and increases by $100 for each additional violation occurring in the calendar year in which the first violation occurred.

This rule is intended to implement Iowa Code section 452A.15(2).

701—260.15(452A) Transportation reports.

260.15(1) *Generally.* The reports required under Iowa Code section 452A.15(1) are to be filed by railroad carriers, common carriers, contract carriers, distributors transporting fuel for others, and anyone else transporting fuel from without the state and unloading it at other than terminal storage within the state.

260.15(2) *Report information.*

a. Reports are to be filed monthly.

b. Reports must include all fuel that was imported into Iowa and unloaded at other than terminal storage, all fuel withdrawn from Iowa terminal storage and delivered in Iowa, and all fuel withdrawn from Iowa terminal storage and exported from Iowa.

c. For each report, the following information for each delivery is to be included:

(1) The name, address, and federal identification number or social security number of the person to whom actually delivered.

(2) The name, address, and federal identification number or social security number of the originally named consignee, if delivered to anyone other than the originally named consignee.

(3) The point of origin, the point of delivery, and the date of delivery.

(4) The number and initials of each tank car and the number of gallons contained therein, if shipped by rail.

(5) The name of the boat, barge, or vessel, and the number of gallons contained therein, if shipped by water.

(6) The registration number of each tank truck and the number of gallons contained therein, if transported by motor truck.

(7) The manner, if delivered by other means, in which the delivery is made.

(8) Such additional information relative to shipments of motor fuel or special fuel as the department may require.

260.15(3) *Civil penalties.*

a. Failure to file. The director may impose a civil penalty against any person who fails to file the reports required under Iowa Code section 452A.15(1).

b. Penalty amount. The penalty is $100 for the first violation and increases by $100 for each additional violation occurring in the calendar year in which the first violation occurred.

This rule is intended to implement Iowa Code section 452A.15.

701—260.16(452A) Bill of lading or manifest requirements. Whenever a bill of lading or manifest is required to be issued, carried, retained, or submitted by these rules, it shall contain the following information:

1. Name and address of the refinery, terminal, ethanol plant, biodiesel plant or point of origin.
2. Date of withdrawal or import.
3. Name of the shipper-supplier-consignor.
4. Name of the purchaser-consignee.
5. Place of actual destination.
6. Name of the transporter.
7. Gross gallons by fuel type.
8. Designation for ethanol blended gasoline or biodiesel blended fuel as provided in Iowa Code section 214A.2.
9. Statement designating whether diesel fuel is dyed or undyed.
10. Machine printed serial number of not less than four digits.

This rule is intended to implement Iowa Code sections 452A.10, 452A.12, 452A.60, and 452A.76.

ITEM 3. Rescind 701—Chapter 261 and adopt the following **new** chapter in lieu thereof:

CHAPTER 261
LIQUEFIED PETROLEUM GAS—COMPRESSED NATURAL GAS—LIQUEFIED NATURAL GAS—HYDROGEN

701—261.1(452A) Definitions and applicability.

261.1(1) For the purpose of this chapter, terms have the same meaning as provided in Iowa Code sections 452A.2 and 452A.57 and rule 701—259.1(452A). Additionally, the following definitions apply:

"C.N.G." means compressed natural gas.

"Invoiced gallons" means gross gallons as shown on the bill of lading or invoice. A temperature-adjusted method may be used as it applies to liquefied petroleum gas.

"Licensed metered pumps or metered pumps" means pumps that have been metered, inspected, tested for accuracy, sealed and licensed by the state department of agriculture pursuant to Iowa Code section 452A.8(2).

"Licensed metered storage or metered storage" means storage facilities containing "licensed metered pumps."

"L.N.G." means liquefied natural gas.

"L.P.G." means liquefied petroleum gas.

"Owner" means and includes the owner or the employees, agents, or persons under the control of the owner.

"Special fuel" means liquefied petroleum gas, liquefied natural gas, compressed natural gas, or hydrogen.

261.1(2) *Applicability of other rules.* All rules in 701—Chapters 259 and 260 apply if not specifically stated in this chapter.

This rule is intended to implement Iowa Code chapter 452A.

701—261.2(452A) Tax rates—time tax attaches—responsible party—payment of the tax.

261.2(1) *Attachment of tax.*

a. L.P.G. The excise tax on L.P.G. attaches when the special fuel is placed in a fuel supply tank of a motor vehicle.

b. C.N.G., L.N.G., and hydrogen. The excise tax on C.N.G. and L.N.G. attaches at the time of delivery into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

261.2(2) *Responsibility for collection and remittance.* The person responsible for the tax must collect the tax from the purchaser and remit the tax to the department. Iowa Code section 452A.8(2) *"e"* contains more information on the person responsible for the tax.

261.2(3) *Licensing.* The person responsible for placing L.P.G. into the fuel supply tank of a motor vehicle and the person responsible for placing C.N.G., L.N.G., or hydrogen into compressing equipment must hold a license as a dealer or user as defined in Iowa Code section 452A.4.

261.2(4) *Returns.* The return and tax are due no later than the last day of the month following the month the L.P.G. was placed in a vehicle or C.N.G., L.N.G., or hydrogen was placed into compressing equipment. The tax must be remitted by means of electronic funds transfer, unless the licensee can show that this method of payment would cause undue hardship on the licensee. The return must be remitted by means of electronic transmission.

261.2(5) *Penalty and interest.* Rule 701—259.8(452A) provides information on penalty and interest.

This rule is intended to implement Iowa Code section 452A.8.

701—261.3(452A) Persons authorized to place L.P.G., L.N.G., C.N.G., or hydrogen in the fuel supply tank of a motor vehicle.

261.3(1) *Generally.* The only persons authorized to place L.P.G., L.N.G., C.N.G., or hydrogen into the fuel supply tank of a motor vehicle are: licensed L.P.G., L.N.G., C.N.G., or hydrogen dealers, or licensed L.P.G., L.N.G., C.N.G., or hydrogen users.

261.3(2) *L.P.G., L.N.G., C.N.G., or hydrogen dealer's license.* Anyone who delivers untaxed L.P.G. into the fuel supply tank of a motor vehicle or places untaxed C.N.G., L.N.G., or hydrogen into compression equipment must be licensed as an L.P.G., L.N.G., C.N.G., or hydrogen dealer. A dealer may also fuel the dealer's own vehicles under this license.

261.3(3) *L.P.G., L.N.G., C.N.G., or hydrogen user's license.* Anyone who delivers untaxed L.P.G., L.N.G., C.N.G., or hydrogen upon which fuel tax has not been previously paid, into the fuel supply tank of a motor vehicle, which tank is owned or leased by the person delivering it and which vehicle will be for highway use, must be licensed as an L.P.G., L.N.G., or C.N.G. user. If that same person delivers the fuel into tanks owned by others, that person must be licensed as a dealer in lieu of being licensed as a user.

261.3(4) *L.P.G. "mobile" tank authorization.*

a. When a person has an L.P.G. storage tank which is "mobile" and the storage is moved from location to location, that person may be issued an L.P.G. user's license.

(1) This licensee will be allowed to move the storage tank to a new location without procuring a new license for each new location.

(2) The issuance of this license is discretionary with the director, and the license will be issued only when the person requesting the license shows a need for mobile storage.

(3) The license will be issued to the licensee at the licensee's principal place of business, and each mobile storage tank is deemed a separate pump at that location.

b. The operation of such licensed mobile storage shall be subject to the following conditions:

(1) Each mobile storage tank must:

1. Be fixed with licensed, metered pumps.
2. Be assigned a separate number.
3. Have the gallonage reported on a per-tank basis.
4. Display in a size no smaller than six inches in height and ¾ inches in width, the unit number and licensee's license number.

(2) There may be a total of only nine mobile storage tanks operated under a single license. If the licensee operates more than nine such storage tanks, the licensee must obtain a separate license for each multiple of nine or fraction thereof.

(3) When a licensee changes the licensee's principal place of business, the licensee is responsible for canceling the license and must apply for a new license for the new principal place of business.

(4) All records required to be kept shall be maintained at the licensee's principal place of business.

(5) Except for the requirement of having a separate license for each location where L.P.G. is used, the licensee is subject to all the requirements of other licensed L.P.G. users.

261.3(5) *Authorization for emergency filling by distributors.*

a. Upon request from a stranded motorist, L.P.G. distributors may place up to 20 gallons of L.P.G. into the fuel supply tank of a stranded vehicle without being considered an unlicensed L.P.G. dealer in violation of Iowa Code section 452A.74(1).

b. For emergency fills, distributors must remit the tax on a licensed dealer form and pay the tax before the last day of the month following the month of the emergency fill.

This rule is intended to implement Iowa Code section 452A.8.

701—261.4(452A) Requirements to be licensed. To become licensed as an L.P.G., L.N.G., C.N.G., or hydrogen user or dealer, a person must file with the department a completed application form for the appropriate license. A separate license is required for each place of business or location where L.P.G., L.N.G., C.N.G., or hydrogen is regularly delivered or placed into the fuel supply tank of motor vehicles. Iowa Code section 452A.4 and 701—subrule 259.18(1) contain licensing requirements.

This rule is intended to implement Iowa Code section 452A.8.

701—261.5(452A) Licensed metered pumps.

261.5(1) *Location pumps.*

a. Criteria. In order for the department to grant a L.P.G, L.N.G, C.N.G, or hydrogen dealer or user license, all pumps designed to fuel motor vehicles at a location must be:

(1) Metered,
(2) Inspected,
(3) Tested for accuracy,
(4) Sealed, and
(5) Licensed by the department of agriculture and land stewardship.

b. Multiple pumps. If there is more than one pump at a location to be licensed, each pump will be assigned a separate pump number, and the licensee will report the gallonage each month with reference to such number.

261.5(2) *Temperature correction.*

a. Each L.P.G. distributor, dealer, or user may elect to measure L.P.G. for the tax purposes either temperature compensated to 60° F, or without temperature compensation.

b. If the L.P.G. distributor, dealer, or user elects to measure L.P.G. temperature compensated to 60°F for tax purposes, the L.P.G. distributor, dealer or user must use meters that are of an automatic temperature compensating type that compute gross gallons corrected to 60°F.

This rule is intended to implement Iowa Code section 452A.8.

701—261.6(452A) Single license for each location.

261.6(1) *Place of business or location.* A single license is required for each separate place of business or location where L.P.G., L.N.G., C.N.G., or hydrogen is delivered into the fuel supply tank of a motor vehicle.

a. All dealer or user operations at that location will be conducted under that license.

b. A licensee may have a different type of license (dealer, user) for each separate location where L.P.G., L.N.G., C.N.G., or hydrogen is dispensed.

EXAMPLE: If a licensee holds an L.P.G., L.N.G., C.N.G., or hydrogen dealer's license for location A and an L.P.G., L.N.G., C.N.G., or hydrogen user's license for location B, the licensee may sell fuel to others or fuel the licensee's own vehicles at location A, but the licensee may only fuel the licensee's own vehicles at location B.

261.6(2) *Reports.*

a. For reporting purposes, a licensee may file a separate return for each license.

b. Consolidated returns.

(1) A licensee may file a consolidated return reporting all sales made at all locations for which a license is held if authorized by the department.

(2) A consolidated return may not be used to combine dealer and user operations. All working papers used in the preparation of the information required must be available for examination by the department.

This rule is intended to implement Iowa Code section 452A.4.

701—261.7(452A) Dealer's and user's license nonassignable.

261.7(1) *Generally.* An L.P.G., L.N.G., C.N.G., or hydrogen dealer's license or user's license cannot be assigned.

261.7(2) *Situations considered assignments.* The following is a nonexclusive list of situations that will be considered an assignment and therefore require an application for a new license:

a. A change in the name under which the licensee conducts business.

b. A change in the location where the business is conducted.

c. A sale of the business, even if the new owner(s) operates under the same business name.

d. A merger or other business combination that results in a new or different entity.

This rule is intended to implement Iowa Code section 452A.4.

701—261.8(452A) Separate storage—bulk sales—highway use.

261.8(1) If a person is operating as an L.P.G. dealer's or user's licensee and also makes bulk sales for nonhighway use, the licensee must maintain separate storage for bulk sales and sales for highway use.

261.8(2) If any amount of L.P.G. in a storage facility is used directly from bulk storage for highway purposes or if the storage is connected to a device which is designed in such a way as to be able to fuel motor vehicles, all fuel dispensed from the storage shall be dispensed through licensed metered pumps.

261.8(3) Tax is due on all fuel dispensed through licensed metered pumps unless such fuel is exempt as evidenced by exemption certificates.

This rule is intended to implement Iowa Code section 452A.8.

701—261.9(452A) Combined storage—bulk sales—highway sales or use.

261.9(1) *Generally.* If a person is operating as an L.P.G. dealer's or user's licensee, L.P.G. may be dispensed for bulk nontaxable sales and for taxable highway sales from the same storage if, and only if, the following requirements are complied with:

a. All pumps that are of such a design to be able to fuel motor vehicles must be licensed, sealed, metered, and inspected as provided in rule 701—261.3(452A).

b. All fuel passing through the pumps is taxed unless supported by exemption certificates.

c. All pumps that are not licensed, sealed, metered, and inspected are of such a design that it is impossible to use them to place fuel into the fuel supply tank of a motor vehicle.

d. Accurate records are kept showing all purchases of fuel and all nontaxable bulk sales of fuel.

261.9(2) *Presumption.* All L.P.G. placed in this combined storage is presumed to be for highway use and taxable unless supported by exemption certificates (for fuel passing through the licensed pumps) or detailed records showing bulk sales for nonhighway use or to other users or dealers (for fuel passing through the nonlicensed pumps).

261.9(3) *Separate storage.* If at any time the licensee fails to comply with the requirements of this rule, separate storage for taxable sales and nontaxable bulk sales will be required under rule 701—261.8(452A).

This rule is intended to implement Iowa Code section 452A.8.

701—261.10(452A) Exemption certificates.

261.10(1) *Certificate use.*

a. If L.P.G. is dispensed from metered highway storage for other than highway purposes, an exemption certificate must be completed by the seller and signed by the purchaser.

b. The dealer or user must retain completed exemption certificates.

c. Certificate information. The exemption certificate must include but is not limited to the following information:

(1) Date,

(2) Seller's name and license number,

(3) Invoice number covering the fuel sold if sold by a dealer,

(4) Identification of fuel's intended use,

(5) Name, address, and signature of the purchaser or user.

d. The exemption certificate will be provided by the department, or a dealer or user may provide the exemption certificate if it contains all information required by the director.

261.10(2) *Exempt sales.*

a. Exempt sale types. Exempt sales of L.P.G. from metered highway storage are limited to the following uses:

(1) Placed directly into a fuel supply tank that is connected to the heating or cooling unit installed on a highway "reefer" unit, provided the fuel supply tank is not connected nor has provisions for connection directly or indirectly to the power source of the highway motor vehicle.

(2) Placed directly into the fuel supply tank of a nonhighway motor vehicle.

(3) Placed into carryout containers.

b. Nonexempt sales. All other sales for other than highway use must be from bulk storage and not from metered highway storage.

This rule is intended to implement Iowa Code section 452A.8.

701—261.11(452A) L.P.G. sold to the state of Iowa, its political subdivisions, contract carriers under contract with public schools to transport pupils or regional transit systems.

261.11(1) *Exempt sales.*

a. If L.P.G. is sold to the state of Iowa, its agencies, a political subdivision of the state, or a regional transit system for public use, or a use specified in Iowa Code section 452A.57(11), and placed in storage, it may be sold tax-free.

b. Fuel sold by a dealer and delivered directly into the fuel supply tank of a motor vehicle must be sold tax-paid.

c. Since the L.P.G. delivered into storage is not subject to tax, the governmental unit or regional transit system need not be licensed as a special fuel user. However, if the L.P.G. is used by a governmental unit or regional transit system for other than "public purposes," it must obtain a user's license and pay the tax on all highway L.P.G. used from the storage.

261.11(2) *L.P.G. sold to a contract carrier under contract with public schools to transport pupils.*

a. When special fuel is sold directly to contract carriers who have a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school, the fuel shall be sold tax-paid.

b. If the contract carrier is licensed as an L.P.G. fuel dealer or user, the licensee may buy the fuel tax-free, but the tax must be remitted on the monthly dealer or user return.

c. Any contract carrier who has paid the tax is entitled to a refund.

(1) A refund requested by contract carriers will be reduced by the applicable sales tax, unless otherwise exempt.

(2) All contract carriers must apply to the department for a refund registration even if they currently hold a motor fuel tax license.

(3) 701—subrule 260.8(4) provides more information about this refund type.

This rule is intended to implement Iowa Code sections 452A.3 and 452A.17.

701—261.12(452A) Refunds.

261.12(1) *Availability.* Refunds of taxes paid on L.P.G., C.N.G., or hydrogen used for other than highway use are available if the tax has been paid.

261.12(2) *Refund process.*

a. To qualify for a refund, all of the following need to be met:

(1) The special fuel was used for a purpose other than to propel motor vehicles,

(2) The person requesting the refund has a refund permit,

(3) The claim is filed within the appropriate time and in the appropriate manner.

b. The income tax credit set forth in rule 701—260.11(452A) applies equally to special fuel.

This rule is intended to implement Iowa Code section 452A.17.

701—261.13(452A) Notice of meter seal breakage.

261.13(1) *Notice.* The department must be notified within 24 hours when the seal of any sealed meter is broken. The reason for the breakage does not affect this notification requirement.

261.13(2) *Content of notice.* Notice must contain but is not limited to the following information:

a. The name, address, and license number of the person who controls the meter.

b. The meter number.

c. The type of fuel pumped through the meter.

d. The date of seal breakage.

e. The name and address of the person(s) responsible for the seal breakage, if known.

f. The reason for seal breakage.

g. The meter reading before seal breakage.

h. The meter reading after the meter is resealed.

i. The signature of the person who controls the meter.

261.13(3) *Reports.*

a. For reporting purposes, the meter is be considered two meters, one before the seal breakage and one after. The return must note the seal breakage.

b. Meter readings.

(1) The meter readings of the meter before the seal breakage must be reported by meter number as usual.

(2) The meter readings after the meter was resealed must be reported by using the meter number plus the letter "A."

(3) The two readings must appear on the same return schedule.

This rule is intended to implement Iowa Code sections 452A.3, 452A.8, 452A.59, and 452A.62.

701—261.14(452A) Location of records—special fuel users and dealers.

261.14(1) *Generally.* The records required to be prepared and kept by special fuel dealers and users under Iowa Code section 452A.10 and 701—subrule 259.3(5) must be maintained at the location that appears on the license unless the licensee keeps the records at a central location as described in 701—subrule 261.16(2).

261.14(2) *Central location.*

a. If the licensee has more than one license, all of the records for each separate license may be kept at a central location so long as the records for each license are kept separated.

b. The central location where the records must be kept is within the state unless:

(1) The licensee brings the records into the state when requested to do so by the department for purposes of audit, or

(2) The licensee agrees to pay the cost (as defined in rule 701—259.3(452A)) of an out-of-state audit.

This rule is intended to implement Iowa Code sections 452A.10 and 452A.74(2).

ITEM 4. Rescind 701—Chapter 262 and adopt the following **new** chapter in lieu thereof:

CHAPTER 262
ELECTRIC FUEL EXCISE TAX

701—262.1(452A) Definitions and applicability.

262.1(1) *Definitions.* For the purpose of this chapter, terms have the same meaning as provided in Iowa Code sections 452A.2 and 452A.40 and rule 701—259.1(452A).

262.1(2) *Applicability of other rules.* All rules in 701—Chapters 259 and 260 apply if not specifically stated in this chapter.

This rule is intended to implement Iowa Code section 452A.41.

701—262.2(452A) Tax imposed. Electric fuel excise tax must be remitted to the department by a license holder regardless of whether the licensed electric fuel dealer or licensed electric fuel user sells the fuel or gives the fuel to customers for no charge. This tax shall be calculated based on the kilowatt-hours of electric fuel delivered.

This rule is intended to implement Iowa Code section 452A.41.

701—262.3(452A) Licensing.

262.3(1) *License requirements.*

a. License required. A person shall not sell or dispense electric fuel within this state at a location other than a residence or otherwise act as a licensed electric fuel dealer or user without a license. The holder of an electric fuel user's license is authorized to dispense electric fuel, measured in kilowatt-hours, into the batteries or other energy storage devices of electric motor vehicles owned or controlled by the holder.

b. No license required for residential charging. A person may dispense electric fuel at a residence without a license. "Residence" is defined in Iowa Code section 452A.40. For purposes of this rule, "residence" includes apartment buildings or other multiresidential facilities and houses regardless of whether the owner lives in the house. "Residence" does not include hotels, including extended-stay hotels, motels, or other facilities rented to transient guests.

EXAMPLE 1: Hotel A owns and operates an electric fuel charging station in its parking lot and offers electric fuel to its guests at no charge. Hotel A also owns an electric vehicle it uses as a shuttle for its guests and charges the vehicle at its charging station. Hotel A must obtain an electric fuel dealer's license because it dispenses fuel to customers as well as an electric fuel user's license because it charges its own vehicle at its charging station.

EXAMPLE 2: Hotel B hosts an electric fuel charging station in its parking lot and offers electric fuel to its guests for a fee. Hotel B owns an electric vehicle it uses as a shuttle for its guests and charges the

vehicle at the charging station in its parking lot. The charging station in Hotel B's parking lot is owned by Station Retailer C. Station Retailer C must obtain an electric fuel dealer's license. Hotel B does not need to obtain an electric fuel license.

EXAMPLE 3: Homeowner D lists Homeowner D's house on a short-term home rental online platform. Homeowner D has an electric fuel charging station installed in the garage attached to the house. Guest E agrees to rent Homeowner D's house for a week. Guest E charges an electric vehicle using Homeowner D's charging station. Homeowner D does not need to obtain an electric fuel license.

EXAMPLE 4: Person F owns ten houses that each have electric fuel charging stations installed. Person F only resides in one of the houses and uses the other nine as rental properties. Person F does not need to obtain an electric fuel dealer license for any of the ten houses Person F owns.

EXAMPLE 5: Person G operates a motor carrier business as a sole proprietor. Person G owns an electric vehicle and uses the electric vehicle for the business. Person G operates the business from Person G's residence and charges the electric vehicle at that residence. Because Person G charges the electric vehicle at a residence, Person G does not need to obtain an electric fuel user license.

c. No license required for entities only dispensing nontaxable electric fuel. A person that only sells or dispenses electric fuel for which an exemption or refund may be claimed is not required to obtain a license to dispense such fuel.

EXAMPLE 1: Utility A is a municipal utility, wholly controlled by a municipality in Iowa. Utility A owns electric vehicle charging stations and only charges its own fleet of vehicles or other municipally owned vehicles at the charging stations. Utility A does not need an electric fuel user license since such sale or dispensing of electric fuel is not subject to tax pursuant to Iowa Code section 452A.17(1) *"a"*(3).

EXAMPLE 2: Utility B is a municipal utility, wholly controlled by a municipality in Iowa. Utility B owns electric vehicle charging stations where it charges its own fleet of vehicles. Utility B also allows individuals or private businesses to charge electric vehicles at its charging stations. Because Utility B is selling or dispensing fuel for nonpublic purposes when individuals or private businesses use its charging stations, Utility B must obtain an electric fuel dealer license.

262.3(2) *License applications.* Applications for a license must be filed electronically via GovConnectIowa and must be complete with all information required under Iowa Code section 452A.42(2). Applications must indicate the date on which the applicant began or plans to begin selling or dispensing electric fuel.

262.3(3) *Electric fuel users.* An electric fuel user's license does not grant authority to the holder of the license to sell or dispense electric fuel to consumers. A person wishing to sell or dispense fuel for vehicles the person owns or controls as well as to a consumer must obtain both an electric fuel user's license and an electric fuel dealer's license for each location from which electric fuel will be sold or dispensed.

262.3(4) *No fee imposed.* There is no fee to apply for or hold a license to sell or dispense electric fuel.

262.3(5) *License for each place of business or location.* A license is required for each separate place of business or location where electric fuel is placed into the battery or other storage device of an electric vehicle.

262.3(6) *Denial of license application.* The department may deny a license for any of the reasons provided in Iowa Code section 452A.42(4).

262.3(7) *Bonding procedures.* Existing license holders may be required to post a bond or security when they have had two or more delinquencies in remitting the electric fuel tax or filing returns timely during the past 12 months. The bond or security will be an amount sufficient to cover 12 months' electric fuel tax liability or $500, whichever is greater. The simultaneous late filing of the return and late payment of the tax will count as one delinquency. However, the late filing of the return or late payment of the tax will not count as a delinquency if the license holder can satisfy one of the penalty waiver conditions set forth in Iowa Code section 421.27. More information regarding waiver of bond is available in 701—paragraph 259.21(1)*"e."*

This rule is intended to implement Iowa Code sections 452A.17 and 452A.42.

701—262.4(452A) Filing of returns and payment of tax.

262.4(1) *Required information on returns.* Licensed dealers and users of electric fuel must file with the department a biannual electric fuel excise tax return. For each location where electric fuel is placed into the battery or other storage device of an electric vehicle, the return must include the following information:

a. The name and license number of the entity that owns the charging facility.

b. In the case of a sole proprietorship, the individual owner's name.

c. In the case of a partnership, the names of all partners.

d. The address of the location.

e. Total number of kilowatt-hours delivered or placed into the battery or other storage device of an electric vehicle.

262.4(2) *Return and payment due date.* The electric fuel excise tax return must be filed with the department no later than the last date of the month following the close of the tax periods prescribed in Iowa Code section 452A.41. The return must be accompanied by remittance of the tax due for the period of the return.

262.4(3) *Electronic filing required.* Returns must be filed and payments must be remitted electronically through govconnect.iowa.gov.

262.4(4) *Consolidated return.* A license holder that holds more than one electric fuel license must file one consolidated return reporting sales made at all locations for which a license is held.

262.4(5) *International Fuel Tax Agreement returns not impacted.* The electric fuel excise tax return is separate and independent from the tax returns required under the International Fuel Tax Agreement.

This rule is intended to implement Iowa Code section 452A.41.

701—262.5(452A) Charging station verification and testing.

262.5(1) *Reporting of kilowatt-hours.*

a. Licensed dealers and users may rely upon the following methods to determine kilowatt-hours sold for reporting on a return:

(1) Electric meters that measure only electricity sold as electric fuel.

(2) Software included in a charging station that tracks kilowatt-hours that flow through the station.

b. If neither subparagraph 262.5(1)*"a"*(1) or 262.5(1)*"a"*(2) is available, prior to filing any returns, licensed dealers and users shall contact the department for approval of a method to calculate electricity used as electric fuel as determined by an electricity study.

262.5(2) *Testing of charging stations.* The department of agriculture and land stewardship tests all charging stations owned by licensed dealers and users pursuant to standards set forth in Iowa Code section 452A.41. The department of agriculture and land stewardship will report to the department any charging station that is not compliant with those standards.

This rule is intended to implement Iowa Code section 452A.41.

701—262.6(452A) Refunds.

262.6(1) *Filing of refund claim.* Taxpayers seeking to claim a refund of electric fuel tax must obtain a refund permit pursuant to Iowa Code section 452A.44. Because returns will be filed and tax paid on a biannual basis, refund claims may be filed and will only be processed on a biannual basis after the tax period for which the refund is sought has closed.

262.6(2) *Sales tax.* Electric fuel used in an exempt manner may be subject to sales tax. Rule 701—260.13(452A) contains more information regarding reductions in refunds due to the applicability of sales or use tax on exempt electric fuel sales.

262.6(3) *International Fuel Tax Agreement refunds not impacted.* This refund process is separate and independent from any refund process authorized under 761—Chapter 505 related to the International Fuel Tax Agreement.

This rule is intended to implement Iowa Code section 452A.44.

701—262.7(452A) Exemption certificates.

262.7(1) If electric fuel is sold or dispensed for a nontaxable purpose, the purchaser may complete and provide an exemption certificate produced by the department to the license holder. The certificate is to be retained by the license holder consistent with Iowa Code section 452A.43.

262.7(2) The exemption certificate must include but not be limited to the following information:

a. The date.

b. The license holder's name.

c. The license holder's electric fuel dealer or electric fuel user license number applicable to the sale.

d. The invoice number covering the fuel sold if it is sold by an electric fuel dealer.

e. An indication of the use to which the fuel will be put.

f. The name, address, and signature of the purchaser.

This rule is intended to implement Iowa Code sections 452A.17 and 452A.43.

Regulatory Analysis

Notice of Intended Action to be published: Chapter 1000
"General Requirements"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 123.10 and 123.49

State or federal law(s) implemented by the rulemaking: Iowa Code sections 17A.18, 123.3, 123.4, 123.10, 123.24, 123.30, 123.31, 123.31A, 123.31B, 123.33, 123.35, 123.38, 123.39, 123.49 and 123.49A

Public Hearing

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

December 3, 2024 9 to 10 a.m.	Via videoconference: meet.google.com/cec-wnfw-kxv

Public Comment

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

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

Purpose and Summary

This proposed chapter describes guidelines surrounding requirements that licensees and permittees must follow pertaining to their license or permit type, in addition to processes and procedures involved for certain license privileges. Because this content is currently under the Alcoholic Beverage Division's rules as 185—Chapters 4 and 5, those existing chapters are outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. The proposed changes to the rules update the rule on vending machines to reflect changes in the industry since the time the original rule was written. In a separate rulemaking, 185—Chapters 4 and 5 are proposed to be rescinded. This rulemaking proposes to readopt the content of those chapters under the Department as 701—Chapter 1000. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

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

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

Licensees and permittees will benefit from the proposed rulemaking by better understanding the applicable license and permit requirements, in addition to processes and procedures involved for certain license privileges.

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

- **Quantitative description of impact:**

There is no economic impact from the proposed rules beyond what is contained in statute. There is the potential for additional licensees utilizing self-service machines to enter the alcoholic beverage marketplace, although that economic impact is yet to be determined.

- **Qualitative description of impact:**

The proposed rules reduce uncertainty and help licensees and permittees better understand requirements pertaining to their license or permit type. Additionally, there is an opportunity for the growing business model of retail alcohol licensees that utilize self-service machines to expand further in the state. This was an area identified as a means that should no longer have a strict prohibition, and the rule should be amended with guardrails to protect the public health, safety, and welfare of Iowans. With the guardrails provided outright to the public in the rules, this expanding business model is available for potential licensees to learn and be aware of the restrictions and expectations before starting or investing in this type of business model.

3. **Costs to the State:**

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

There are no costs to the agency as a result of implementing the rules beyond those that would otherwise be required to administer the statutes. The Department must have processes in place to enforce compliance regulations in the alcoholic beverage marketplace.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

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

There are minimal costs associated with the proposed rules beyond what is provided in statute. The benefit of the rules is reducing confusion about the requirements licensees and permittees must follow pertaining to their license or permit type.

Proposed rule 701—1000.14(123) seeks to benefit affected licensees by establishing less stringent requirements for dramshop liability insurance coverage. Currently, dramshop liability insurance must provide coverage from the day the license takes effect through the expiration date of the license. The proposed rule states that the licensee must maintain dramshop liability insurance coverage for the entire period for which the license is or is to be in effect. By implementing this proposed date coverage requirement, licensees may have the opportunity to obtain more flexible coverage without the need for possible policy rewrites to meet current requirements.

Proposed rule 701—1000.23(123) seeks to create a significant benefit to licensees utilizing self-service machines. Currently, the Department grants or denies rule waiver applications for this business model to operate in the state based on the lengthy and thorough review conducted. Historically, licensees seek this waiver after they have purchased a franchise or equipment related to this business model and are surprised to learn it is actually prohibited. It would be highly beneficial to adopt rules clearly stating expected guardrails that will need to be implemented in order to protect the public health, safety, and welfare of Iowans so that potential licensees are aware of the restrictions and expectations of this business model before starting or investing in the business. The updated rule will protect public health and better meet licensees' needs for guidance.

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

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on the requirements licensees and permittees must follow pertaining to their license or permit type.

6. **Alternative methods considered by the agency:**

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

The Department considered the possibility of not providing the rules in this chapter but determined that the chapter provides useful guidance to licensees and permittees beyond what is provided by the applicable statutes.

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

The Department determined that proceeding without these rules would lead to confusion and create additional questions to the Department. Additionally, proposed rules 701—1000.14(123) and 701—1000.23(123) would be more restrictive in their current form, which is contrary to the goal 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?

Proposed rule 701—1000.23(123) benefits small businesses by revising the outright prohibition of vending machines to dispense alcoholic beverages and proposing guardrails to protect public health, safety, and welfare of Iowans. Potential licensees would benefit by becoming aware of the restrictions and expectations of this business model before starting or investing in the business model. This business model largely exists for small business owners, and the proposed rulemaking would establish compliance standards and justify the potential financial burden to the licensee that will invest a substantial amount of capital to purchase the vending machine and software. The other rules in the proposed rulemaking do not have substantial impact since the rules do not make any special distinctions for small businesses.

Additionally, proposed rule 701—1000.14(123) benefits small businesses by removing the requirement for dramshop policy date coverage to be effective from the day the license takes effect through the expiration date of the license. The proposed rule states that the licensee must maintain liability insurance coverage for the entire period for which the license is to be in effect. This change is expected to simplify and establish less stringent compliance requirements for retail alcohol licensees that need to obtain dramshop liability insurance.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1000:

CHAPTER 1000
GENERAL REQUIREMENTS

701—1000.1(123) Definitions.

"Department" means the department of revenue.

"Director" means the director of the Iowa department of revenue or the director's designee.

This rule is intended to implement Iowa Code sections 123.3 and 123.4.

701—1000.2(123) Requirements. All applicants for licenses, permits, or certificates of compliance are subject to the following requirements, where applicable, prior to receiving a new or renewed license, permit, or certificate of compliance.

1000.2(1) *Cleanliness of premises.* The interior and exterior of the licensed premises shall be kept clean, free of litter or rubbish, painted and in good repair. Licensees and permittees shall at all times keep and maintain their respective premises in compliance with all laws, orders, rules, and ordinances of the state, county, and local authority, including but not limited to the applicable health and fire regulations.

1000.2(2) *Toilet facilities.* All licensees who mix, serve, or sell alcoholic beverages for consumption on the licensed premises shall provide for their patrons adequate, conveniently located indoor or outdoor toilet facilities. Compliance with county, city, and department of inspections, appeals, and licensing rules and regulations regarding toilet facilities, including any waivers granted by those authorities, shall constitute compliance with this rule. Outdoor toilet facilities shall be approved by the department of inspections, appeals, and licensing and the local authority where the licensed premises is located.

1000.2(3) *Water.* All licensed premises shall be equipped with hot and cold running water from a source approved by an authorized health department.

1000.2(4) *Financial standing and reputation.* A local authority or the director may consider an applicant's financial standing and good reputation in addition to the other requirements and conditions for obtaining a license, permit, or certificate of compliance. An application for a license, permit, or certificate of compliance is subject to denial by the director or local authority if the applicant fails to demonstrate that the applicant complies with the lawful requirements and conditions for holding the license, permit, or certificate of compliance.

a. In evaluating an applicant's "financial standing," the local authority or the director may consider such factors as but not limited to the following:

(1) Verified source(s) of financial support and adequate operating capital for the applicant's proposed establishment.

(2) A record of timely submission of all required federal, state, or local tax returns or forms and prompt payment of all taxes due.

(3) A record of prompt payment to the local authority of fees or charges made by a local authority for municipal utilities or other municipal services incurred in conjunction with the proposed establishment.

(4) A record of prompt payment or satisfaction of administrative penalties imposed pursuant to Iowa Code chapter 123.

(5) A record of maintaining, and providing prompt payment for, dramshop liability insurance coverage as required pursuant to Iowa Code chapter 123.

(6) A record of prompt payment for license, permit, or certificate fees.

(7) A record of prompt payment for alcoholic liquor orders placed with the department.

b. In evaluating an applicant's "good reputation," the local authority or the director may consider such factors as, but not limited to, the following:

(1) A pattern or practice of sales of alcoholic beverages to persons under the legal age for which the licensee, or the licensee's agents or employees, have pled or have been found guilty.

(2) A pattern or practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued.

(3) Sales to intoxicated persons.

(4) Licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol and the recency of such convictions.

(5) Licensee or permittee misdemeanor convictions and the recency of such convictions.

(6) A pattern or practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of failing to cooperate with the department of public safety, the department, the county attorney, the county sheriff and sheriff's deputies, the city police department, or the city attorney.

(7) A pattern or practice by the licensee of violating local ordinances established by the local authority pursuant to Iowa Code section 123.39(2).

(8) A pattern or practice by the licensee of failing to report any change in the ownership or interest of the business pursuant to Iowa Code section 123.39(1)*"b"*(3).

c. In addition to other reasons specified by statute or rule, the department may refuse to issue a license or permit or may revoke, suspend, or not renew any license or permit for which it has jurisdiction if the centralized collection unit of the department has issued a certificate of noncompliance pursuant to the procedures set forth in Iowa Code chapter 272D.

This rule is intended to implement Iowa Code sections 123.3(40), 123.10(11), and 272D.8(2).

701—1000.3(123) Display of license, permit, or placards. All licenses, permits, or placards issued by the department must be prominently displayed in full view on the licensed premises.

This rule is intended to implement Iowa Code sections 123.4 and 123.30.

701—1000.4(123) Determination of population. Decennial Censuses and Special Censuses done by the U.S. Census Bureau are recognized as being the official population of a town for the purpose of deciding the price of licenses in that town, but estimates done by the U.S. Census Bureau cannot be viewed as being the official population when deciding the price of licenses.

This rule is intended to implement Iowa Code section 123.10(11).

701—1000.5(123) Local ordinances permitted. The foregoing rules shall in no way be construed as to prevent any county, city or town from adopting more restrictive ordinances or regulations governing licensed establishments within their jurisdiction.

This rule is intended to implement Iowa Code section 123.39.

701—1000.6(123) Licensed premises.

1000.6(1) *Criteria.* The following criteria must be met before a "place" (as used in Iowa Code section 123.3(29)) may be licensed as a "place susceptible of precise description satisfactory to the director."

a. The "place" must be owned by or under the control of the prospective licensee or permittee for the entire duration of the applied-for license or permit.

b. The "place" must be solely within the jurisdiction of one local approving authority.

c. The "place" must be described by a sketch of the "premises" as defined in Iowa Code section 123.3(29) and showing the boundaries of the proposed "place"; showing the locations of selling/serving areas within the confines of the "place"; showing all entrances and exits; and indicating the measurements of the "place."

d. The "place" must satisfy the health, safety, fire and seating requirements of the department, local authorities, and the Iowa department of inspections, appeals, and licensing.

e. Any other criteria as required by the director.

1000.6(2) *Definitions.*

"Separate premises" means:

1. A clearly defined area bounded on all sides and connecting angles by permanent, solid walls or windows extending from the floor to the ceiling, with entrances and exits that can be closed.

2. The entrances and exits shall not adjoin or provide direct access to an establishment licensed under this chapter for the sale of alcoholic beverages for consumption on the premises.

3. This term describes how holders of other retail alcohol licenses may establish a class "E" retail alcohol licensed establishment at the same physical address as their other licensed establishment.

4. The separate premises must operate independently from other licensed premises, including but not limited to:

- Maintaining a separate inventory;
- Using a separate cash register; and
- Keeping separate books and records.

"Square footage of the licensed premises" means the total interior floor area of the establishment, measured in square feet. This includes all spaces within the establishment used or to be used for:

1. Storage of alcoholic beverages;
2. Distribution of alcoholic beverages;
3. Warehousing of alcoholic beverages;
4. Display of alcoholic beverage products;
5. Wholesale operations;
6. Retail sales area; and
7. Any other spaces used in the operation of the licensed business.

This rule is intended to implement Iowa Code sections 123.3(29), 123.4, and 123.30.

701—1000.7(123) Outdoor service. Any on-premises retail alcohol licensee with a discernible, contiguous, outdoor area on the same property may apply for an outdoor service privilege. An outdoor service privilege allows an on-premises licensee to sell or serve the type of alcoholic beverage permitted by the license in an outdoor area. The privilege is an extension of a licensed premises outlined under rule 701—1000.6(123). The department may grant an outdoor service privilege once the licensee provides:

1. A new sketch showing the discernible outdoor area, including a contiguous entrance.
2. Local authority approval of the outdoor area.
3. Insurance company acknowledgment that the outdoor area is covered by the dramshop insurance policy.
4. Any other information deemed necessary by the director.

This rule is intended to implement Iowa Code sections 123.3(29), 123.4, and 123.38.

701—1000.8(123) Transfer of license or permit to another location.

1000.8(1) *Transfer conditions.* A retail alcohol license, wine permit, or beer permit may be transferred within the jurisdiction of the local authority that approved the license or permit. A licensee or permittee is only allowed to sell or serve alcoholic beverages at the transferred license or permit location once approved by the department. Sales and service at the original location must stop during the time of the license/permit transfer. Seasonal, 14-day, and 5-day retail alcohol licenses cannot be transferred.

1000.8(2) *Transfer applications.*

a. A licensee or permittee may apply for a permanent or temporary transfer by providing:

1. A new sketch showing the premises to be licensed.
2. Proof of control by the licensee of the premises to be licensed.
3. Any other information deemed necessary by the director.

b. The application must be approved by the local authority and the department prior to the transfer.

c. The insurance company holding the dramshop policy listing the new address must endorse the application prior to the transfer, if applicable.

d. If a permanent transfer is approved, the department will issue an amended license or permit showing the new permanent address. If a temporary transfer is approved, the department will issue a letter of authorization to the local authority and licensee or permittee showing the new temporary address.

This rule is intended to implement Iowa Code sections 123.4 and 123.38.

701—1000.9(123) Age requirements. Persons 21 years of age or older may hold a retail alcohol license, wine permit, or beer permit. Persons 16 years of age and older may sell alcoholic beverages in off-premises establishments.

This rule is intended to implement Iowa Code sections 123.30 and 123.49.

701—1000.10(123) Persons under the legal age in licensed establishments. A person under 21 years of age may be in a licensed establishment if the local authority does not have a local ordinance prohibiting said persons from being in licensed establishments in its jurisdiction.

This rule is intended to implement Iowa Code sections 123.3(28) and 123.10(5).

701—1000.11(123) Use of establishment during hours alcoholic beverages cannot be consumed. A retail alcohol licensed establishment may be used as a restaurant or for any other lawful purpose during the hours in which alcoholic beverages are not allowed to be sold, dispensed, or consumed.

This rule is intended to implement Iowa Code section 123.49.

701—1000.12(123) Improper conduct.

1000.12(1) *Illegality on premises.* A retail alcohol licensee, or the licensee's agent or employee, must not engage in or knowingly allow any illegal occupation or illegal act on the licensed premises.

1000.12(2) *Cooperation with law enforcement officers.* A retail alcohol licensee, or the licensee's agent or employee, must not refuse, fail, or neglect to cooperate with any law enforcement officer in the performance of such officer's duties to enforce the provisions of the alcoholic beverage control Act.

1000.12(3) *Open containers of alcoholic liquor.* A class "C," class "D," class "E," or class "F" retail alcohol licensee, or the licensee's agent or employee, must not allow any open or unsealed containers of alcoholic liquor to be taken off the licensed premises, excluding mixed drinks or cocktails pursuant to Iowa Code section 123.49(2)*"d"*(3).

1000.12(4) *Identifying markers.* A licensee shall not keep on the licensed premises nor use for resale alcoholic liquor that does not bear identifying markers as prescribed by the director.

This rule is intended to implement Iowa Code section 123.49(2).

701—1000.13(123) Change of ownership of a licensed premises—new license or permit required.

1000.13(1) A new license or permit, a new bond, and a new dramshop policy, as applicable, need to be obtained whenever one of the following occurs:

a. When a business is sold or leased to another person.

b. When a licensee or permittee changes to another form of business, such as a sole proprietorship to a corporation, a corporation to a sole proprietorship, a sole proprietorship to a partnership, a partnership to a sole proprietorship, a partnership to a corporation, or a corporation to a partnership.

c. When a partner leaves a partnership or when a new partner is added to a partnership.

d. When a corporation name is changed due to a merger or is voluntarily changed by its owners.

e. Each time an entity obtains a seasonal or 5- or 14-day license.

f. When a receiver takes over the operation of an establishment.

1000.13(2) A new license or permit is not necessary:

a. When only the trade name of the business is changed.

b. When the stock of a corporation holding a license or permit is sold. The new owner or owners and the amount of stock held by each need to be submitted to the department electronically or in a manner prescribed by the director.

c. When a name of a licensee or permittee is changed by marriage, divorce, or other legal proceeding. Proof of the legal name change needs to be submitted to the department electronically or in a manner prescribed by the director.

This rule is intended to implement Iowa Code sections 123.4, 123.10, 123.31, and 123.49.

701—1000.14(123) Dramshop liability insurance requirements. For the purpose of providing proof of financial responsibility, as required under the provisions of Iowa Code section 123.92, a dramshop liability insurance policy must meet the following requirements:

1000.14(1) *Requirements.*

a. Proof of coverage—current certificate required. The dramshop liability certificate of insurance must be issued by a company holding a current certificate of authority from the Iowa insurance commissioner authorizing the company to issue dramshop liability insurance in Iowa. A new dramshop liability certificate of insurance must be provided in the manner designated by the director each time the department issues a license. The dramshop liability certificate of insurance must contain the following information:

(1) The name of the insurance provider.

(2) The policy number.

(3) The name and address of the insured.

(4) The policy effective dates.

(5) The license number of the insured, if applicable.

b. Dates of coverage.

(1) If dramshop liability insurance coverage is required as a condition of the license under Iowa Code section 123.92, the applicant or licensee must have and maintain dramshop liability insurance that covers the entire license term.

(2) If an applicant or licensee has proof of a dramshop liability insurance policy that does not cover the entire license term, the applicant or licensee will be required to provide, prior to the policy's expiration date, proof that the policy has been renewed and coverage will continue or proof that a new policy meeting the necessary requirements has been obtained.

c. Electronic attestation. The applicant or licensee must agree as a condition of license issuance that the applicant has read and will abide by all of the dramshop liability insurance requirements set forth in Iowa Code chapter 123 and this rule. The applicant or licensee understands that failure to adhere to these rules means the applicant no longer possesses the statutory requirement for licensure and the applicant's license may be suspended or canceled. The burden is upon the applicant or licensee to ensure that the department has on file valid proof of dramshop liability insurance.

d. Electronic verification/endorsement by an authorized insurance representative. An authorized representative of the insurance carrier providing dramshop liability insurance for the applicant or licensee must electronically register with the department. The insurer must electronically provide verification of coverage and notice of cancellation or expiration in accordance with the Iowa Code and this rule. Upon request, an insurance company or an insured applicant or licensee must provide a duplicate original of the policy and all pertinent endorsements.

1000.14(2) *Minimum coverage required.* The dramshop liability insurance policy must provide the following minimum liability coverage, exclusive in interests and cost of action, per occurrence:

a. Fifty thousand dollars for bodily injury to or death of one person in each claim or occurrence.

b. One hundred thousand dollars for bodily injury to or death of two or more persons in each occurrence.

c. Twenty-five thousand dollars for loss of means of support of any one person in each occurrence.

d. Fifty thousand dollars for loss of means of support of two or more persons in each occurrence.

1000.14(3) *Permitted policies.* All dramshop liability insurance policies issued under this rule must be occurrence-based policies, not claims-made-based policies.

a. Claims-made-based policies. Claims-made-based policies provide liability coverage only if a written claim is made during the policy period, or any applicable extended reporting period.

b. Occurrence-based policies. Occurrence-based policies provide liability coverage only for injuries or damages that occur during the policy period regardless of the number of written claims made.

1000.14(4) *Civil tort liability.* Subject to the ordinary or customary exclusions usually found in a policy of dramshop liability insurance, the policy must contain coverage to insure against civil tort liability of the insured, created under Iowa Code sections 123.92, 123.93, and 123.94.

1000.14(5) *Assault and battery policy requirement.* Any dramshop liability insurance policy issued under this rule must not contain an exclusionary clause for assault and battery or intentional force with regard to:

a. Employees, agents, or any person acting as an agent of the establishment.

b. All patrons or visitors to the establishment.

1000.14(6) *Single insurance policies for multiple establishments.* Any licensee that holds multiple licenses throughout the state may purchase a single dramshop liability insurance policy for all locations provided that:

a. The single dramshop liability insurance policy provides at least the minimum level of coverage required under this rule for each and every location covered by the policy.

b. All other provisions of this rule are met by the single dramshop liability insurance policy.

1000.14(7) *Change of coverage by licensee.* A licensee may change its dramshop liability insurer at any time, but the duty is upon the licensee to provide proof of its new insurer as set out in this rule. Additionally, the licensee must maintain dramshop liability insurance coverage with no gaps in its coverage.

1000.14(8) *Cancellation of coverage by insurer.*

a. An insurance company may cancel a dramshop liability insurance policy by giving a minimum of 30 days' prior notice in writing or electronically to the department of the party's intent to cancel the policy. The 30-day period will begin on the date that the notice of cancellation is received by the department. The dramshop insurance company must also mail a copy of the notice of cancellation to its insured licensee.

b. The insurance company's notice of cancellation must contain the following information:

(1) The name of the party to whom the copy of the notice of cancellation was mailed and, if different, the name of the affected licensee;

(2) The address to which the copy of the notice of cancellation was sent and, if different, the address of the affected licensee;

(3) The date on which the notice of cancellation was mailed;

(4) The date the dramshop liability insurance policy is being canceled;

(5) The dramshop liability insurance policy number;

(6) The affected licensee's retail alcohol license number; and

(7) The reason for canceling the dramshop liability insurance policy.

1000.14(9) *Violations.* Failure to comply with this rule may subject the applicant or licensee to the penalty provisions provided in Iowa Code chapter 123, including but not limited to denial, suspension, or revocation.

This rule is intended to implement Iowa Code sections 123.92, 123.93, and 123.94.

701—1000.15(123) Timely filed status.

1000.15(1) In addition to the requirements that may be imposed by a local authority upon the holder of a retail alcohol license to obtain timely filed status of a renewal application, the department may grant timely filed status if the applicant complies with the following conditions:

a. The applicant submits a completed application with the local authority or the department as required by applicable law.

b. The applicant submits a current dramshop liability certificate by the license expiration date if proof of dramshop liability is required as a condition precedent to the issuance of the license.

c. The applicant pays the appropriate license fee in full as required by applicable law.

d. A bond has been certified by the carrier if a bond is required as a condition precedent to the issuance of the license under applicable law.

1000.15(2) Timely filed status allows the holder of the license or permit to continue to operate under a license after its expiration and until the local authority and the department have finally determined whether the license should be issued. If the application for the license is denied, timely filed status continues until the last day for seeking judicial review of the department's action.

This rule is intended to implement Iowa Code sections 123.3, 123.32, 123.35, and 17A.18.

701—1000.16(123) Surety bond requirements. Each surety bond must meet the following conditions:

1000.16(1) *Certificate of authority.* The surety bond is issued by a company holding a current certificate of authority from the commissioner of insurance authorizing the company to issue bonds in Iowa.

1000.16(2) *Forfeiture of bond.* The surety bond contains a provision for the principal and surety to consent to the forfeiture of the principal sum of the bond in the event of revocation of the license or permit by the violation of any Iowa Code provision that requires forfeiture of the bond.

1000.16(3) *Cancellation.* A surety company or a principal may cancel a bond by giving the department a 30-day written notice of intent to cancel the bond. The 30-day period begins on the date that the department receives the notice of cancellation.

a. The party seeking to cancel a bond must submit written notice of such cancellation to the department and submit a copy of the notice of cancellation to the other party.

b. The notice of cancellation must contain the following:

(1) The name of the party to whom the copy of the notice of cancellation was submitted.

(2) The date on which the notice of cancellation was submitted.

(3) The date the bond is being canceled.

(4) The surety bond number.

(5) The affected licensee's or permittee's license or permit number.

1000.16(4) *Proof of bond.* A licensee or permittee is considered to have furnished a surety bond when the licensee or permittee has:

a. Filed with the department a form prescribed by the department containing the following:

(1) The name of the bond provider,

(2) The city and state where the bond provider is located,

(3) The bond number, the names of the principal, and the city and state where the principal is located,

(4) The amount of the bond,

(5) The type of license or permit guaranteed by the bond,

(6) The effective date of the bond,

(7) Signatures of the principal and the bond provider, and

(8) Any other information the director of the department may require; or

b. Met this requirement by any other method deemed acceptable by the director of the department.

This rule is intended to implement Iowa Code sections 123.30, 123.50, 123.127, and 123.175.

701—1000.17(123) Production definitions.

"Operating still" means a still that is registered with the Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 19.75(b) in effect as of April 1, 2023, and is actively used to manufacture spirits.

"Proof gallon" means a United States gallon of proof spirits, or the alcoholic equivalent thereof, as defined by the Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 30.11 in effect as of April 1, 2023.

This rule is intended to implement Iowa Code section 123.3(35).

701—1000.18(123) Manufacture and sale of native wine. Manufacturers of native wine as defined in Iowa Code section 123.3(36) may sell, keep, offer for sale, or deliver their native wine subject to the following conditions:

1000.18(1) *Class "A" native wine permit.* A manufacturer of native wine must display the original or a copy of its class "A" native wine permit in each of its native wineries and in each of its retail establishments. A manufacturer of native wine must register its retail establishment on forms or systems provided by the department.

1000.18(2) *Monthly combined wine production and wine gallonage tax report.* A monthly report showing the amount of wine on hand at the beginning of the month, the amount produced, the amount sold, the amount of wine gallonage tax due, and any other information requested is to be filed with the department. Report forms will be furnished by the department. A manufacturer of native wine must submit a report along with any wine gallonage tax payment to the department's licensing system by the tenth of each month for the preceding month's business. Reports and wine gallonage tax payments submitted by the tenth of each month for the preceding month will be considered timely. This report must be submitted for each month even if no wine sales were made during the month.

This rule is intended to implement Iowa Code sections 123.4, 123.176, and 123.183.

701—1000.19(123) Mixed drinks or cocktails not for immediate consumption. A class "C," class "D," or class "F" retail alcohol licensee may mix, store, and allow the consumption of mixed drinks or cocktails that are not for immediate consumption for up to 72 hours, subject to Iowa Code section 123.49(2)*"d"* and this rule.

1000.19(1) *Definitions.*

"Immediate consumption," for the purposes of this rule, means the compounding and fulfillment of a mixed drink or cocktail order at the time of sale of the mixed drink or cocktail.

"Mixed drink or cocktail," for the purposes of this rule, means an alcoholic beverage as defined in Iowa Code section 123.3(32).

1000.19(2) *Mixing and storing conditions.* A mixed drink or cocktail that is not for immediate consumption is to be in a container compliant with applicable state and federal food safety statutes and regulations at all times.

a. The mixed drink or cocktail must be mixed and stored in the same container.

b. The mixed drink or cocktail may only be removed from the stored container for one of the following dispensing purposes:

(1) To compound and fulfill a mixed drink or cocktail order at the time of sale.

(2) For transfer into a pourable container. The pourable container needs to have an affixed label displaying information identical to that on the container from which the contents were poured. The transfer of product to a pourable container will not extend the expiration date and time.

c. The mixed drink or cocktail may be strained into another container when it is returned without delay to the labeled container from which it was strained.

d. The container and process need to be conducted in compliance with applicable state and federal food safety statutes and regulations.

e. The mixed drink or cocktail shall not be mixed, stored, or dispensed from a container bearing an alcoholic beverage name brand.

f. A dispensing machine that contains a mixed drink or cocktail is subject to the conditions of this rule.

1000.19(3) *Labeling conditions.*

a. When a mixed drink or cocktail is placed into a container, a label must be affixed in a conspicuous place and legibly state the following information:

(1) The month, day, year, and time the contents are placed into the container.

(2) The month, day, year, and time the contents expire.

(3) The title of the recipe used.

(4) The identity of the person who prepared the contents of the container.

(5) The size of the batch within the container.

(6) The words "CONTAINS ALCOHOL."

b. The label is subject to the following conditions:

(1) The label must be removed from the container once the entire contents have been consumed, transferred to a pourable container pursuant to subparagraph 1000.5(2)*"b"*(2), or destroyed and disposed of in accordance with applicable law.

(2) A label must not be reused or reapplied to a container.

(3) A new label must be placed on the container for each prepared batch of mixed drinks or cocktails that is not for immediate consumption.

c. A licensee may access a label template on the website of the department located at revenue.iowa.gov.

1000.19(4) *Content conditions.*

a. Contents of a mixed drink or cocktail may include alcoholic beverages, nonalcoholic ingredients, or a combination of both that are not for immediate consumption.

b. A licensee may use in the mixed drink or cocktail only alcoholic beverages allowed by the license type and obtained as specified by Iowa Code chapter 123.

c. The added flavors and other nonbeverage ingredients of the mixed drink or cocktail shall not include hallucinogenic substances; added caffeine or added stimulants, including but not limited to guarana, ginseng, and taurine; or a controlled substance as defined in Iowa Code section 124.101, including tetrahydrocannabinol.

1000.19(5) *Disposal conditions.*

a. Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of the contents being placed into the empty container is expired and must be destroyed and disposed of in accordance with applicable law.

b. An expired mixed drink or cocktail that is not for immediate consumption shall not be:

(1) Added to an empty container and relabeled; or

(2) Added to another mixed drink or cocktail that is not for immediate consumption.

1000.19(6) *Recordkeeping.* A licensee must maintain accurate and legible records for each prepared batch of mixed drinks or cocktails that is not for immediate consumption.

a. Records must contain:

(1) The month, day, year, and time the contents were placed into the empty container.

(2) The contents placed in the container, including alcoholic beverages and nonalcoholic ingredients.

(3) The recipe title and directions for preparing the contents of the container.

(4) The size of the batch.

(5) The identity of the person who prepared the contents of the container.

(6) The month, day, year, and time the contents of the container were destroyed and disposed of or entirely consumed.

(7) The method of destruction and disposal or the record that the entire contents were consumed.

(8) The identity of the person who destroyed and disposed of the contents, if the contents were not consumed.

b. A licensee may access recordkeeping forms on the website of the department located at revenue.iowa.gov.

c. Records must be maintained on the licensed premises for a period of three years and shall be open to inspection pursuant to Iowa Code sections 123.30(1) and 123.33.

1000.19(7) *Federal alcohol compliance.* A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails that are not for immediate consumption is subject to all applicable federal statutes and regulations. Prohibitions include but are not limited to processing with non-tax-paid alcoholic liquor, aging alcoholic liquor in barrels, heating alcoholic liquor, bottling alcoholic liquor, and refilling alcoholic liquor or wine bottles.

1000.19(8) *Violations.* Failure to follow this rule subjects the licensee to the penalty provisions of Iowa Code section 123.39.

This rule is intended to implement Iowa Code sections 123.49 and 123.49A.

701—1000.20(123) Filling and selling of beer in a container other than the original container. Class "B," class "C," special class "C," and class "E" retail alcohol licensees, and the licensee's employees may fill, refill, and sell beer in a container other than the original container, otherwise known as a growler, subject to Iowa Code section 123.31A and this rule.

1000.20(1) *Definitions.*

"Beer," for the purposes of this rule, means "beer" as defined in Iowa Code section 123.3(7) and "high alcoholic content beer" as defined in Iowa Code section 123.3(22).

"Growler," for the purposes of this rule, means any fillable and sealable glass, ceramic, plastic, aluminum, or stainless steel container designed to hold beer or high alcoholic content beer.

"Original container," for the purposes of this rule, means a vessel containing beer that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture. For special class "A" beer permit holders, an "original container" includes a tank used for storing and serving beer.

1000.20(2) *Filling and refilling conditions.*

a. A growler may be filled or refilled only with beer from the original container purchased from a class "A" beer permittee. However, a special class "A" beer permittee may fill or refill a growler with beer manufactured by the special class "A" beer permittee on the permittee's licensed premises.

b. A retailer may exchange a growler to be filled or refilled.

c. The filling or refilling of a growler must be conducted in compliance with applicable state and federal food safety statutes and regulations.

1000.20(3) *Sealing conditions.* A filled or refilled growler must be securely sealed at the time of the sale by the licensee or permittee or the licensee's or permittee's employees in the following manner:

a. A growler must bear a cap, lid, stopper, or plug.

b. A plastic heat shrink wrap band, strip, or sleeve must extend around the cap or lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler. A lid permanently affixed with a can seamer does not need a plastic heat shrink wrap band, strip, or sleeve.

c. The heat shrink wrap seal must be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.

1000.20(4) *Additional conditions.*

a. A growler filled pursuant to this rule cannot be delivered or direct-shipped to a consumer.

b. A growler filled pursuant to this rule cannot be sold or otherwise distributed to a retailer.

c. A licensee or permittee or a licensee's or permittee's employees are not to allow a consumer to fill or refill a growler.

d. The filling, refilling, and selling of a growler is limited to the hours in which alcoholic beverages may be legally sold.

e. A filled or refilled growler is not to be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

f. An original container may only be opened on the premises of a class "B" or class "E" retail alcohol licensee for the limited purposes of filling or refilling a growler as provided in this rule or for a tasting in accordance with rule 701—1003.6(123).

1000.20(5) *Violations.* Failure to follow this rule subjects the licensee or permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code section 123.31A.

701—1000.21(123) Filling and selling of wine and native wine in a container other than the original container. Class "B," class "C," special class "C," and class "E" retail alcohol licensees;

special class "B" and special class "C" retail native wine licensees; and a licensee's employees may fill, refill, and sell wine or native wine in a container other than the original container, otherwise known as a growler, subject to Iowa Code sections 123.30, 123.31A, and 123.31B and this rule.

1000.21(1) *Definitions.*

"Growler," for the purposes of this rule, means any fillable and sealable glass, ceramic, plastic, aluminum, or stainless steel container designed to hold wine or native wine.

"Native wine," for the purposes of this rule, means the same as defined in Iowa Code section 123.3(36).

"Original container," for the purposes of this rule, means a vessel containing wine or native wine that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture.

"Wine," for the purposes of this rule, means the same as defined in Iowa Code section 123.3(53).

1000.21(2) *Filling and refilling conditions.*

a. A growler may be filled or refilled only with wine or native wine from the original container purchased from a class "A" wine permittee.

b. Special class "B" and special class "C" retail native wine licensees may fill a growler only with native wine.

c. A retailer may exchange a growler to be filled or refilled.

d. The filling or refilling of a growler must be conducted in compliance with applicable state and federal food safety statutes and regulations at all times.

1000.21(3) *Sealing conditions.* A filled or refilled growler must be securely sealed at the time of the sale by the licensee or the licensee's employees in the following manner:

a. A growler must bear a cap, lid, stopper, or plug.

b. A plastic heat shrink wrap band, strip, or sleeve must extend around the cap or lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler. A lid permanently affixed with a can seamer does not need a plastic heat shrink wrap band, strip, or sleeve.

c. The heat shrink wrap seal must be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.

1000.21(4) *Additional conditions.*

a. A growler filled pursuant to this rule is not allowed to be delivered or direct-shipped to a consumer.

b. A growler filled pursuant to this rule is not allowed to be sold or otherwise distributed to a retailer.

c. A licensee or a licensee's employees must not allow a consumer to fill or refill a growler.

d. The filling, refilling, and selling of a growler is limited to the hours in which alcoholic beverages may be legally sold.

e. A filled or refilled growler must not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

f. An original container may only be opened on the premises of a class "B" or class "E" retail alcohol licensee for the limited purposes of filling or refilling a growler as provided in this rule, or for a tasting in accordance with rule 701—1003.6(123).

1000.21(5) *Violations.* Failure to follow this rule subjects the licensee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.30, 123.31A, and 123.31B.

701—1000.22(123) Filling and selling of mixed drinks or cocktails in a container other than the original container. Class "C" retail alcohol licensees and the licensee's employees may fill and sell mixed drinks or cocktails in a container other than the original container subject to Iowa Code section 123.49(2)*"d"*(3) and this rule.

1000.22(1) *Definitions.*

"Alcoholic liquor," for the purposes of this rule, means the same as defined in Iowa Code section 123.3(5) and includes "native distilled spirits" as defined in Iowa Code section 123.3(34).

"Mixed drink or cocktail," for the purposes of this rule, means the same as defined in Iowa Code section 123.3(32).

"Original container," for the purposes of this rule, means a vessel containing alcoholic liquor that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture.

"Sealed container," for the purposes of this rule, means the same as defined in Iowa Code section 123.49(2)*"d"*(4)*"a."*

"Tamper-evident," for the purposes of this rule, means "tamper-evident" as defined in Iowa Code section 123.49(2)*"d"*(4)*"b."*

1000.22(2) *Filling conditions.*

a. A sealed container may be filled and sold only by the licensee or the licensee's employees who are 18 years of age or older.

b. A sealed container may be filled only upon receipt of an order by a consumer of legal age.

c. A sealed container may be filled only with mixed drinks or cocktails composed in whole or in part with alcoholic liquor from an original container purchased from a class "E" retail alcohol licensee.

d. The filling of a sealed container needs to be conducted in compliance with applicable state and federal food safety statutes and regulations at all times.

1000.22(3) *Sealing conditions.* A sealed container must bear one of the following tamper-evident sealing methods:

a. A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the sealed container is opened.

b. A screw top cap or lid that breaks apart when the sealed container is opened.

c. A vacuum- or heat-sealed pouch containing the mixed drink or cocktail.

d. A lid permanently affixed to the sealed container with a can seamer.

1000.22(4) *Labeling conditions.* A sealed container must bear a label affixed to the sealed container in a conspicuous place and legibly state the following information:

a. The business name of the licensee that sold the mixed drink or cocktail.

b. The words "CONTAINS ALCOHOL."

1000.22(5) *Additional conditions.*

a. A sealed container is not allowed to be filled in advance of a sale.

b. A licensee or a licensee's employees must not allow a consumer to fill a sealed container.

c. The filling and selling of a sealed container is limited to the hours in which alcoholic beverages may be legally sold.

d. A sealed container must not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

1000.22(6) *Recordkeeping.*

a. A licensee must maintain records, in printed or electronic format, of all sales of sealed containers. The records shall state the following:

(1) The business name of the licensee that sold the mixed drink or cocktail.

(2) The date and time of the sale.

(3) A description of the product sold.

b. A licensee must keep the necessary records for a three-year period from the date the record was created.

c. Records must be open to inspection pursuant to Iowa Code section 123.30(1) and may be subject to an administrative subpoena issued by the director.

1000.22(7) *Violations.* Failure to follow this rule shall subject the licensee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.30, 123.33, and 123.49.

701—1000.23(123) Vending and self-service machines to dispense alcoholic beverages.

1000.23(1) *Vending machines.* A retail alcohol licensee is not allowed to install or permit the installation of vending machines on the licensed premises for the purpose of selling, dispensing, or serving alcoholic beverages. A vending machine is defined as a slug-, coin-, currency-, or credit card-operated mechanical device used for dispensing merchandise, including single cans of beer or other alcoholic beverages, and includes but is not limited to a mechanical device operated by remote control and used for dispensing single cans of beer or other alcoholic beverages. A vending machine is not a unit installed in individual hotel or motel rooms used for the storage of alcoholic beverages and intended for the personal use of hotel or motel guests within the privacy of the guests' rooms or a self-service machine registered and used consistent with this rule.

1000.23(2) *Self-service machines.* Retail alcohol licensees may utilize a self-service machine to dispense beer or wine as authorized under the licensee's retail alcohol license. Self-service machines are only authorized to operate on an approved retail alcohol licensed premises and shall not be operated under a catering privilege. For the purposes of this rule, *"self-service machine"* means any mechanical device capable of dispensing a preprogrammed amount of wine or beer, or both, directly to a consumer in exchange for a service card, wristband, or other token activated by the licensee and provided to the consumer.

a. A retail alcohol licensee seeking to use a self-service machine must register the machine with the department in a manner determined by the director at least 30 days prior to the date the licensee intends to begin use of the machine. The director will review the registration for compliance with the conditions of this rule and approve or disapprove the use of the self-service machine. A licensee must submit a new registration prior to implementing any change to the operational plan or capacity of the device. No self-service machine may be used without approval by the director.

b. The conditions for a retail alcohol licensee to use self-service machines to dispense beer or wine are as follows:

(1) At the time of sale, the retail alcohol licensee, or licensee's employees, must determine the consumer is of legal age and is not intoxicated or simulating intoxication.

(2) During operation, the retail alcohol licensee must adequately monitor the self-service machine so as to prevent the sale or service of beer or wine to persons who are under legal drinking age or are intoxicated or simulating intoxication.

(3) The sale of beer or wine, or both, and the corresponding activation of the service card, wristband, or other token to operate a self-service machine must be conducted in-person by the licensee directly with the consumer and cannot be automated at the machine. This condition includes reactivation of an already-issued service card, wristband, or other token for further use by a consumer.

(4) A self-service machine must not dispense a serving of more than 64 ounces of beer or 24 ounces of wine before reactivation of a service card, wristband, or other token is acquired by the licensee.

(5) A self-service machine must be programmed to automatically deactivate the service card, wristband, or other token after the programmed amount of beer or wine purchased by the consumer has been dispensed.

(6) Service cards, wristbands, or other tokens must be deactivated at the end of each business day. For purposes of this rule, a "business day" means 6 a.m. until 2 a.m. the following calendar day.

(7) A licensee, or the licensee's employees, must have the ability to deactivate a self-service machine and all associated service cards, wristbands, or other tokens remotely at all times.

This rule is intended to implement Iowa Code section 123.49.

701—1000.24(123) Delivery of alcoholic liquor. A person who does not work for the department may operate a delivery service in which the person charges class "E" retail alcohol licensees a fee for picking up the licensee's alcoholic liquor orders at the department's warehouse and delivering the orders to the licensee's licensed premises.

This rule is intended to implement Iowa Code sections 123.4 and 123.10(10).

701—1000.25(123) Prohibited storage of alcoholic beverages. Retail alcohol licensees may keep or store alcoholic beverages only on the licensed premises. However, the director may authorize the storage of alcoholic beverages on premises other than those covered by the license or permit. The director may allow class "D" retail alcohol licensees to store alcoholic beverages in a bonded warehouse to be used for consumption in Iowa.

This rule is intended to implement Iowa Code sections 123.4 and 123.10(11).

701—1000.26(123) Sale of alcoholic beverages stock when licensee sells business. When a retail alcohol licensee goes out of business, the licensee may sell the licensee's stock of alcoholic beverages to the person who is going to operate a licensed establishment in the same location.

This rule is intended to implement Iowa Code section 123.10.

701—1000.27(123) Execution and levy on alcoholic beverages. Judgments or orders requiring the payment of money or the delivery of the possession of property may be enforced against retail alcohol licensees, beer permittees, and wine permittees by execution pursuant to the provisions of Iowa Code chapter 626.

1000.27(1) *Definitions.*

"Debtor," for the purposes of this rule, means the same as defined in Iowa Code section 554.9102(1)*"ad."*

"Secured party," for the purposes of this rule, means the same as defined in Iowa Code section 554.9102(1)*"by."*

1000.27(2) A secured party may take possession of and dispose of a retail alcohol licensee's or permittee's alcoholic beverages inventory in which the secured party has a security interest in such collateral pursuant to the provisions of Iowa Code chapter 554. The secured party may operate under the retail alcohol license or permit of its debtor for the purpose of disposing of the alcoholic beverages inventory. However, if the debtor is a class "E" retail alcohol licensee, the secured party cannot purchase alcoholic liquor from the department to continue to operate its debtor's business. A secured party operating under the retail alcohol license or permit of its debtor shall dispose of the alcoholic beverages inventory by sale only to persons authorized under Iowa Code chapter 123 to purchase alcoholic beverages inventory from the debtor. When a secured party takes possession of a retail alcohol licensee's or permittee's alcoholic beverages inventory, the secured party must notify the department in writing of such action. A secured party must further inform the department of the manner in which it intends to dispose of the alcoholic beverages inventory and shall state the reasonable length of time in which it intends to operate under the retail alcohol license or permit of its debtor. The secured party must notify the department in writing when the disposition of its collateral has been completed, and the secured party must cease operating under the retail alcohol license or permit of its debtor.

1000.27(3) A sheriff or other officer acting pursuant to Iowa Code chapter 626 may take possession of a retail alcohol licensee's or permittee's alcoholic beverages inventory and may dispose of such inventory according to the provisions of Iowa Code chapter 626; however, the sheriff or other officer must sell the alcoholic beverages inventory only to those persons authorized by Iowa Code chapter 123 to purchase alcoholic beverages inventory from the retail alcohol licensee or permittee whose inventory is subject to the execution and levy. The sheriff or other officer must notify the department in writing at the time the sheriff or officer takes possession of a retail alcohol licensee's or permittee's alcoholic beverages inventory and must further notify the department of the time and place of the sale of such property.

This rule is intended to implement Iowa Code sections 123.4, 123.10, and 123.38.

701—1000.28(123) Dishonored payment for alcoholic liquor.

1000.28(1) If a class "E" retail alcohol licensee tenders payment for alcoholic liquor that is subsequently dishonored, the licensee will enter a certified funds status for a duration determined by

the director. During the certified funds status period, the licensee will tender a bank draft in exact payment in advance of the licensee's alcoholic liquor delivery.

1000.28(2) The department may collect from the licensee a $25 fee for each dishonored payment for the purchase of alcoholic liquor.

1000.28(3) Any class "E" retail alcohol licensee that is enrolled in automatic license renewal and tenders payment for alcoholic liquor that is subsequently dishonored will be unenrolled from automatic license renewal.

This rule is intended to implement Iowa Code sections 123.4, 123.24, and 123.35.

701—1000.29(123) Violation by agent or employee. Any violation of the alcoholic beverage control Act or the rules of the department by any employee or agent of a licensee is considered to be the act of the licensee and subjects the licensee to civil penalty, suspension, or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49(2).

701—1000.30(123) Suspension of license or permit.

1000.30(1) *Suspensions by a local authority or the department.* At the time of a license or permit suspension, a placard furnished by the department must be placed in a conspicuous place in the front door or window of the licensed or permitted establishment. The placard must state that the license or permit is suspended, the suspension duration, and the reason for the suspension. No licensee or permittee may remove, alter, obscure, or destroy a suspension placard prior to an ordered suspension's expiration without the express written approval of the department.

1000.30(2) *Effect of suspension.* Alcoholic beverages must not be sold, served, or consumed on a licensed premises during a suspension period. A licensed premises may be open during a suspension period to conduct other lawful business during the suspension period. A retail alcohol licensee must not purchase alcoholic beverages from a wholesaler or the department during the suspension period.

This rule is intended to implement Iowa Code sections 123.4 and 123.39.

701—1000.31(123) Revocation or suspension. When the local authority revokes or suspends a retail alcohol license, the local authority must notify the department in writing stating the reasons for the revocation or suspension and, in the case of a suspension, the length of time of the suspension.

This rule is intended to implement Iowa Code sections 123.4, 123.32, and 123.39.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapter 1001
"Alcohol Product Management and Warehousing"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 123.10

State or federal law(s) implemented by the rulemaking: Iowa Code sections 123.9, 123.10, 123.22 and 123.24

Public Hearing

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

December 3, 2024	Via videoconference:
8 to 9 a.m.	meet.google.com/equ-jfyu-fxp

Public Comment

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

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

Purpose and Summary

This proposed chapter is designed for alcoholic liquor suppliers to better understand the requirements surrounding listing, delisting, and maintaining alcoholic liquor product inventory in the state of Iowa. Because this content is currently under the Alcoholic Beverage Division's rules as 185—Chapter 8, that chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 185—Chapter 8 is proposed to be rescinded. This rulemaking proposes to readopt the content of that chapter under the Department as 701—Chapter 1001. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language. The Department's bailment fee is also proposed to be adopted in this chapter to comply with Iowa Code section 17A.6C.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Suppliers that send products to the Department's warehouse that do not meet required compliance standards bear possible cost recovery fees in order to bring their product back into compliance and be sold in Iowa.

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

Suppliers will benefit from the proposed rulemaking by better understanding the requirements surrounding listing, delisting, and maintaining alcoholic liquor inventory levels for their product to be sold in the state, in addition to any possible cost recovery fees for product noncompliance.

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:**

For the majority of the repromulgated rules, there is minimal expected economic impact; however, new rule 701—1001.10(123), proposed to comply with Iowa Code section 17A.6C, has potential economic impact from the collection of fees. Iowa Code section 123.22(1) states that the Department must operate on a bailment system. To comply with this statute, the Department has created a bailment agreement signed by all suppliers that sell alcoholic liquor in the state and also charges a $1 per case fee pursuant to that agreement. In FY 2024, the Department collected $2,905,013 in bailment fees that was reverted back to the General Fund.

- **Qualitative description of impact:**

Suppliers will benefit from having rules dedicated to listing, delisting, and managing inventory levels, in addition to knowing any possible fees attributed to shipping in product not compliant with the Department's warehousing standards. Failing to have these rules would lead to confusion, additional questions to the Department, and a possible increase in product shipment noncompliance.

3. **Costs to the State:**

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

There are no costs to the agency as a result of implementing these rules beyond those that would otherwise be required to administer the statutes.

- **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 cost of inaction would be failing to update the chapter to remove obsolete and outdated language. The benefit of the rules is reducing confusion and helping suppliers to understand requirements for product listing, product delisting, and managing inventory, in addition to adding the ability for the Department to assess a cost recovery fee for the growing cost of destruction.

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

The proposed rulemaking is not costly or intrusive. By maintaining product shipment requirements in this chapter, this rulemaking is becoming less intrusive by providing compliance requirement standards in a public and coherent manner.

6. **Alternative methods considered by the agency:**

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

The Department considered the possibility of not providing the rules in this chapter but determined that the chapter provides useful guidance to suppliers beyond what is provided by the statutes.

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

The absence of these rules would lead to confusion regarding requirements for product listing, product delisting, and managing inventory levels, in addition to possible fees for product noncompliance.

Small Business Impact

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

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

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

The rulemaking does not have a substantial impact on small business. The proposed rulemaking does not show any deference for business size.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1001:

CHAPTER 1001
ALCOHOL PRODUCT MANAGEMENT AND WAREHOUSING

701—1001.1(123) Definitions.

"Category" means the classification of an alcoholic liquor product, such as rum, vodka, or whiskey.

"Delist" means the removal of products from the department's product inventory.

"Department" means the department of revenue.

"Director" means the director of the department of revenue or the director's designee.

"Product" means stock keeping units of alcoholic liquor or native distilled spirits as defined in Iowa Code chapter 123.

"Supplier" means a manufacturer, distiller, or importer of alcoholic liquors or native distilled spirits shipping, selling, or having such alcoholic beverages brought into this state for resale by the department.

701—1001.2(123) Listing classifications. Each product available for sale by the department will be assigned to one of the following listing classifications. Suppliers may indicate their preferred listing classification; however, final determination will be made by the director.

1001.2(1) *Permanent.* Products with a permanent listing will be available for sale by the department on an ongoing basis, unless otherwise delisted or temporarily out of stock.

1001.2(2) *Temporary.* Temporary listings will have a duration determined by the director and may be extended at the discretion of the director.

1001.2(3) *Size extension.* A supplier must submit a product quote for each additional size of a product that is currently listed for sale. All listed sizes of the product should meet sales criteria established by the director in order for a size extension product quote to be approved as a permanent listing.

1001.2(4) *Special order.* Products that are not currently listed for sale by the department may be purchased through a special order placed with the supplier of the product.

a. A request for a special order will be placed with the department by a class "E" retail alcohol licensee. Special order requests may be submitted electronically or in a manner prescribed by the director. The director may reject a special order request if it is determined that the requested product is in violation of the requirements set out in paragraph 1001.3(3)*"a."*

b. If the department accepts a special order request, the request will be forwarded on to the supplier of the product. The supplier may approve or deny the special order request.

c. Special order products may only be sold and distributed by the department to class "E" retail alcohol licensees by the case.

d. Special order products are not eligible for return to the department by a class "E" retail alcohol licensee without approval from the director.

1001.2(5) *Special order on hand.* Products that are frequently sold as special orders may be listed as special order on hand.

a. To be eligible for classification as a special order on-hand listing, a product must have been previously sold as a special order and meet sales criteria established by the director.

b. Products that have been delisted are not eligible to be moved from permanent listing to special order on-hand listing.

1001.2(6) *Highly allocated.* Highly allocated products are products of a limited supply as determined by the supplier.

a. Highly allocated products may be sold via a lottery system as deemed necessary by the director.

b. Highly allocated products are not available for sale as special orders.

1001.2(7) *Quantity limitations.* Quantities of listed products available for purchase by class "E" retail alcohol licensees may be limited at the director's discretion.

701—1001.3(123) Product quote listing requests. The supplier of a product to be sold by the department must submit a product quote for consideration by the director.

1001.3(1) *Submitting a product quote.* Product quotes must be submitted electronically or in a manner prescribed by the director.

1001.3(2) *Product quote requirements.*

a. A complete product quote contains the following information:

(1) A control state code number for the product issued by the National Alcohol Beverage Control Association.

(2) The supplier's freight on board (FOB) cost per case. The case price needs to be evenly divisible by the number of bottles in the case. The supplier determines the number of bottles that form a case for the product.

(3) The product's case quantity size and standard of fill.

(4) An image of the product.

(5) A brief description of the product.

(6) The weights and dimensions of the product container, case, and pallet.

(7) The product's 14-digit shipping container code.

(8) The product's universal product code.

(9) Any other information deemed necessary by the director.

b. The director may require a supplier to conduct a listing presentation for products to become listed.

1001.3(3) *Decisions.*

a. The criteria used to determine whether a product quote may be approved or denied will include but not be limited to the following:

(1) Whether the product violates the code of responsible practices established by the Distilled Spirits Council of the United States.

(2) The reasonable potential of the product to unduly jeopardize the welfare, health, peace, morals, or safety of the people of the state.

b. The director shall approve or deny a product quote not more than 20 business days from the date the product quote was submitted or the listing presentation was held, as applicable. Suppliers will be notified of the decision in writing delivered electronically or in a manner prescribed by the director.

1001.3(4) *Appeal to the director.*

a. A supplier may appeal the denial of a product quote to the director. A notice of appeal needs to be filed within 30 calendar days of the date of denial.

b. A notice of appeal must be in writing and must specify the findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

c. A notice of appeal will be considered filed at the time it is received by the director.

d. The director shall affirm, reverse, or modify the denial of the product quote and shall notify the supplier of the decision in writing.

e. The director's decision constitutes final agency action for the purposes of Iowa Code chapter 17A.

1001.3(5) *Resubmission of a product quote.* If a product quote is denied, the supplier may submit a new request three months after the original request denial date.

1001.3(6) *Moratorium.* The director may implement a moratorium on new permanent listing product quotes and determine the duration period. The director may allow a supplier to trade out a permanently listed product for a new product during a moratorium period.

701—1001.4(123) Shipment of product to the department. Shipments of product intended for sale by the department may only be made in accordance with this rule.

1001.4(1) *Product shipments into the state.* Product shipments may only be made into the state of Iowa by suppliers.

1001.4(2) *Product shipment locations.* Product shipments may only be made to a state warehouse or to receiving points designated by the director.

1001.4(3) *Pallet requirements.*

a. The department will only accept products shipped on securely stretch-wrapped pallets that are in good repair.

b. The department will not accept any products shipped on slip sheets. Suppliers will be notified by the department to make arrangements to pick up product shipped on slip sheets.

c. The department will not accept pallets that contain multiple product stock keeping units not separated by a pallet layer.

d. The director may establish additional requirements as deemed necessary.

1001.4(4) *Case labeling requirements.*

a. Each case of product shipped to the department must include a case code label placed on an end panel of the case.

b. The case code label needs to contain the following information:

(1) The control state code number issued by the National Alcohol Beverage Control Association for the product.

(2) The product's universal product code and corresponding barcode.

(3) The 14-digit shipping container code and corresponding barcode. The shipping container code and barcode needs to meet the minimum requirements established by the American National Standards Institute and the International Organization for Standardization.

(4) Any other information deemed necessary by the director.

1001.4(5) *Bottle deposit requirements.*

a. All products intended for resale by the department must meet the requirements of Iowa Code section 455C.5 and rule 567—107.3(455C). Products that do not meet the requirements will not be made available for sale until the requirements are met.

b. Suppliers may purchase bottle deposit refund stickers from the department. The cost of the stickers to suppliers cannot exceed the department's cost of producing and distributing the stickers.

1001.4(6) *Product shipment special handling charges.* Product shipments that do not meet the requirements of subrule 1001.4(3), 1001.4(4), or 1001.4(5) will result in the assessment of special handling charges against the supplier. The amount of charges will not exceed the department's actual cost to bring the shipments into compliance. The department's actual cost is determined using the negotiated hourly rate of the third party the department has contracted with for warehousing services.

701—1001.5(123) Importation of product into the state for manufacturing purposes. Shipments of product intended for manufacturing purposes may only be made in accordance with this rule.

1001.5(1) *Product shipments into the state.* Product shipments may only be made into the state of Iowa by suppliers with an appropriate certificate of compliance to manufacturers who have obtained prior approval from the director.

1001.5(2) *Product shipment locations.* Product shipments may only be made to a state warehouse or to receiving points designated by the director.

1001.5(3) *Recordkeeping.* All records related to the importation of product into the state will be maintained on the licensed premises for a period of three years and must be open to inspection pursuant to Iowa Code section 123.33. In accordance with Iowa Code sections 123.98 and 123.101, records will include all product received for each supplier, date received, and an accounting of disposition of all product received.

701—1001.6(123) Inventory levels. The director will establish maximum and minimum inventory levels for each listed product. The director may adjust the maximum and minimum inventory levels.

1001.6(1) *Purchase orders.* Suppliers shall submit purchase orders to the department to maintain proper inventory levels. Purchase orders will be submitted electronically or in a manner prescribed by the director.

1001.6(2) *Maximum inventory levels.* The department will contact suppliers with product exceeding maximum inventory levels to have the supplier pick up the excess inventory.

1001.6(3) *Maximum inventory level exception.* A supplier may request from the department an exception to the established maximum inventory level for a product. Requests for a maximum inventory level exception will be submitted to the department electronically or in a manner prescribed by the director. The director will approve or deny the request and notify the supplier of the decision electronically or in a manner prescribed by the director.

701—1001.7(123) Pricing.

1001.7(1) *Permanent price changes.* Suppliers may make permanent price changes to the case cost of products in any listing classification.

a. The frequency at which permanent price changes may be made will be determined by the director.

b. Permanent price changes shall be submitted electronically, or in a manner prescribed by the director, at least 20 business days prior to the effective date.

1001.7(2) *Temporary price reductions.* Suppliers may make temporary price reductions to the case cost of products with a permanent or temporary listing classification.

a. Products with a listing classification of special order, special order on hand, or highly allocated are not eligible for temporary price reductions.

b. Temporary price reductions will become effective as determined by the director.

c. Temporary price reductions will be submitted electronically, or in a manner prescribed by the director, at least 20 business days prior to the effective date.

1001.7(3) *Price lists.* The department shall publish a price list electronically on a monthly basis showing the price to be paid by class "E" retail alcohol licensees for each brand, variety, and category of product available for sale by the department. The price list will be published on the department's website at shop.iowaabd.com and may be distributed to class "E" retail alcohol licensees as deemed necessary by the director.

701—1001.8(123) Delisting. Listed products that do not meet sales guidelines established by the director may be delisted. The frequency of delisting is determined by the director.

1001.8(1) *Notification.* The director must notify suppliers of the decision to delist a product. The suppliers will be notified of the decision in writing electronically or in a manner prescribed by the director.

1001.8(2) *Appeal to the director.*

a. A supplier may appeal the delisting of a product to the director. A notice of appeal needs to be filed within 30 calendar days of the date of delisting notification.

b. A notice of appeal shall specify the findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

c. A notice of appeal shall be considered filed at the time it is received by the director.

d. The director shall affirm, reverse, or modify the delisting and shall notify the supplier of the decision in writing.

e. The director's decision constitutes final agency action for the purposes of Iowa Code chapter 17A.

1001.8(3) *Removal of delisted products.*

a. Delisted products shall be removed from the department's warehouse by the supplier or by the supplier's agent within a time frame established by the director.

b. A supplier may authorize the department to destroy a delisted product in lieu of removal of the product by the supplier from the department's warehouse.

c. New product quotes submitted by a supplier will not be considered by the department until all of the supplier's delisted product has been removed from the department's warehouse.

1001.8(4) *Resubmission of a delisted product for listing.* If a product in a permanent listing classification is delisted, a new product quote for the product may be submitted not less than six months after the date the product was removed from the warehouse.

701—1001.9(123) Barrel programs. A supplier may offer a barrel program, allowing a class "E" retail alcohol licensee to purchase the bottled contents of a barrel-aged product along with the aging barrel.

1001.9(1) Barrel programs must be uniformly offered to all class "E" retail alcohol licensees.

1001.9(2) Suppliers may sample barrel-aged products pursuant to rule 701—1003.7(123).

1001.9(3) Barrel program products shall be classified as special orders.

1001.9(4) Products purchased as part of a barrel program must be sold and delivered to the class "E" retail alcohol licensee that placed the special order. Barrel program products must not be split between two or more class "E" retail alcohol licensees.

1001.9(5) Aging barrels sold in conjunction with a barrel program must bear conspicuous and substantial advertising matter.

1001.9(6) Bottles from a barrel program may bear customized labels.

701—1001.10(123) Bailment system. Suppliers are paid for their product once it is sold by the department to class "E" retail alcohol licensees.

1001.10(1) *Bailment agreement.* A supplier shall consent to the department's bailment system by signing a bailment agreement prior to listing a product for sale in Iowa.

1001.10(2) *Bailment fee.* The department shall charge suppliers a bailment fee in the amount of $1 per case of product sold or in a corresponding rate for the portion of a case sold.

These rules are intended to implement Iowa Code sections 123.10(2), 123.10(3), 123.10(6), 123.10(10), and 123.22.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapter 1002
"Personal Importation of Alcoholic Beverages"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 123.10(13)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 123.10, 123.22, 123.59, 123.122 and 123.171

Public Hearing

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

December 3, 2024 9 to 10 a.m.	Via videoconference: meet.google.com/cec-wnfw-kxv

Public Comment

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

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

Purpose and Summary

This proposed chapter describes the requirements surrounding the procedures for the issuance of a waiver for an individual of legal age desiring to import alcoholic beverages in excess of the amount provided in Iowa Code sections 123.22, 123.122, and 123.171. Because this content is currently under the Alcoholic Beverage Division's rules as 185—Chapter 9, that existing chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 185—Chapter 9 is proposed to be rescinded. This rulemaking proposes to readopt the content of that chapter under the Department as 701—Chapter 1002. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

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

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

The public will benefit from understanding how to legally request importation of alcoholic beverages in excess of quantities allowed by statute.

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

- **Quantitative description of impact:**

There is no economic impact as a result of the proposed rules. No fee exists for submitting and processing this statutory waiver.

- **Qualitative description of impact:**

The proposed rules reduce uncertainty and help the public understand how to legally request the importation of alcoholic beverages in excess of quantities allowed by statute. Failing to have these rules would lead to confusion and additional questions to the Department.

3. **Costs to the State:**

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

There are no costs to the agency resulting from implementing the rules beyond those that would otherwise be required to administer the statutes.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues. There is a tax liability resulting from the personal importation of alcoholic beverages; however, the requester has the sole responsibility to ensure that all tax obligations to the Department are met.

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

There are no costs associated with the proposed rules. The benefit of the rules is reducing confusion regarding how to legally request the importation of alcoholic beverages in excess of quantities allowed by statute.

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

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on how to legally request the importation of alcoholic beverages in excess of quantities allowed by statute.

6. **Alternative methods considered by the agency:**

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

The Department considered the option of not implementing the rules but determined that the rules provide helpful guidance and useful clarification to the public on how to legally request importation of alcoholic beverages in excess of quantities allowed by statute.

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

The Department determined that proceeding without these rules would lead to confusion about how to legally request importation of alcoholic beverages in excess of quantities allowed by statute.

Small Business Impact

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

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

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

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

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1002:

CHAPTER 1002
PERSONAL IMPORTATION OF ALCOHOLIC BEVERAGES

701—1002.1(123) Tax liability. The requester has the sole responsibility to ensure that all tax obligations to the department are met. Tax worksheet 32-007 found at revenue.iowa.gov/forms must be accurately completed and sent to the department as instructed.

701—1002.2(123) Personal importation in excess of the amounts provided—waiver. Persons seeking a waiver to import alcohol pursuant to Iowa Code section 123.10(13) must submit a completed and accurate personal importation form provided at revenue.iowa.gov/forms.

1002.2(1) *Domicile.* Domicile, for the purposes of establishing when an individual is "domiciled outside the state," shall be determined in accordance with rule 701—300.17(422).

1002.2(2) *Additional information.* Prior to granting or denying a request for a waiver, the department may request additional information from the requester relative to the request and surrounding circumstances and may conduct an investigation as the director deems necessary to verify the accuracy of the information.

1002.2(3) *Ruling.* A letter granting or denying a request for a waiver to import alcoholic beverages in excess of the amount provided in Iowa Code section 123.22, 123.122, or 123.171 shall be in writing and contain a description of the precise scope and duration of the waiver if one is issued.

1002.2(4) *Duration of waiver.* A waiver issued pursuant to this rule shall allow only for the importation of the inventory of alcoholic beverages detailed on the request for import authorization form. If a waiver is granted, there is no automatic right to renewal.

1002.2(5) *Public availability.* The department shall maintain a record of all waivers granted or denied under this rule. Waiver forms and rulings shall be open to the public; information that the department is authorized or required to keep confidential shall be edited prior to public inspection.

1002.2(6) *Cancellation.* A waiver issued by the department pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the department finds any of the following:

a. The requester withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The recipient of the waiver failed to comply with any of the conditions contained in the waiver.

1002.2(7) *Violations.* Violation of a condition in a waiver is equivalent to a violation of Iowa Code section 123.10, 123.22, 123.122, or 123.171, as applicable. The recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the applicable Iowa Code section.

1002.2(8) *Defense.* After the department grants a waiver under this rule, the waiver is a defense within its terms and the specific facts indicated therein for the recipient of the waiver in any proceedings in which the waiver in question is sought to be invoked.

1002.2(9) *Appeals.* Granting or denying a request for a waiver is final agency action under Iowa Code chapter 17A.

These rules are intended to implement Iowa Code sections 123.10, 123.22, 123.59, 123.122, and 123.171.

Regulatory Analysis

Notice of Intended Action to be published: 701—Chapter 1003
"Trade Practices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 123.10 and 123.186

State or federal law(s) implemented by the rulemaking: Iowa Code sections 123.10, 123.45 and 123.186

Public Hearing

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

December 3, 2024	Via videoconference:
8 to 9 a.m.	meet.google.com/equ-jfyu-fxp

Public Comment

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

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Department of Revenue
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1305 Walnut Street
Des Moines, Iowa 50306
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Purpose and Summary

This proposed chapter describes the regulations that govern allowable and prohibited trade practice activity among alcohol manufacturers, wholesalers, and retailers in the areas of tied house, exclusive outlets, commercial bribery, and consignment sales. This chapter was recently amended in **ARC 7028C**, IAB 5/31/23; therefore, very few changes have been made in this proposed rulemaking. However, since this content is currently under the Alcoholic Beverages Division's rules as 185—Chapter 16, that existing chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 185—Chapter 16 is proposed to be rescinded. This rulemaking proposes to readopt the content of that chapter under the Department as 701—Chapter 1003.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

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

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

The proposed rulemaking aligns with the current federal regulations unless otherwise preempted by Iowa law. These regulations govern allowable and prohibited trade practice activity among alcohol manufacturers, wholesalers, and retailers in the areas of tied house, exclusive outlets, commercial bribery, and consignment sales. The Department believes this will make the regulatory requirements clearer and make it easier for manufacturers, wholesalers, and retailers to do business in Iowa.

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

- **Quantitative description of impact:**

There is no economic impact associated with the rules beyond what is contained in statute.

- **Qualitative description of impact:**

These rules reduce uncertainty regarding the allowable and prohibited trade practice activity for industry members in the areas of tied house, exclusive outlets, commercial bribery, and consignment sales. Failing to have these rules would lead to confusion, additional questions to the Department, and potential trade practice violations in the alcoholic beverage marketplace.

3. **Costs to the State:**

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

There are no costs to the agency as a result of implementing the rules beyond those that would otherwise be required to administer the statutes. The Department must have processes in place to enforce compliance regulations in the alcoholic beverage marketplace.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

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

There are no costs associated with the proposed rules. The benefit of the rules is reducing confusion about allowable and prohibited trade practice activity in the alcoholic beverage marketplace.

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

The proposed rulemaking is not costly or intrusive. The Department considered the option of rescinding the chapter and creating agency guidance directing industry members to review the applicable Iowa Code sections and the federal regulations found in 27 CFR Parts 6, 8, 10, and 11 prescribed by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury, but determined that the rules provide useful guidance to alcohol manufacturers, wholesalers, and retailers.

6. **Alternative methods considered by the agency:**

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

The Department considered the possibility of not providing the rules in this chapter but determined that the chapter provides useful guidance to the public beyond what is provided by the applicable statutes and federal regulations.

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

The Department determined that proceeding without these rules would lead to confusion about allowable and prohibited trade practice activities.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

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

This chapter does not have a substantial impact on small business. It does not make any special distinctions for small businesses, since the trade practice regulations apply to businesses of all sizes.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 1003:

CHAPTER 1003
TRADE PRACTICES

The rules in this chapter, adopted pursuant to Iowa Code section 123.186, apply to transactions between industry members, trade buyers and retailers. The rules specify practices considered to be fair and allowable as well as practices deemed to be unfair or inducements. This chapter does not exempt any industry member, trade buyer or retailer from the requirements of any federal law or regulation.

PART I

As used in this chapter, the words, terms and phrases defined in this part shall apply, unless a different meaning is clearly indicated by the context.

701—1003.1(123) Definitions.

"Alcoholic liquor" means the same as defined in Iowa Code section 123.3(4). For the purposes of this chapter, "alcoholic liquor" includes "native distilled spirits" as defined in Iowa Code section 123.3(34).

"Beer" means the same as defined in Iowa Code section 123.3(6). For the purposes of this chapter, "beer" includes "canned cocktail" as defined in Iowa Code section 123.3(10) and "high alcoholic content beer" as defined in Iowa Code section 123.3(22).

"Brand" means each alcoholic liquor, wine, or beer packaged and sold under a separate name, class, type, or kind designation (wine appellation of origin, wine vintage date, alcoholic liquor age, percentage of alcohol, etc.).

"Department" means the department of revenue.

"Equipment" includes but is not limited to mechanized and nonmechanized refrigeration units and devices used in the storage, dispensing, and cooling of alcoholic liquor, wine and beer, tap boxes, party wagons, dispensing systems, and shelving. Equipment does not include tapping accessories (including faucets, rods, vents, taps, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves, and picnic pumps) that are used in dispensing wine or beer from kegs or bulk packaging.

"Exclusion," in whole or in part, means a practice by an industry member, whether direct, indirect, or through an affiliate, that places (or has the potential to place) retailer independence at risk by means of a tie or link between the industry member and retailer or by any other means of industry member control over the retailer, and such practice results in the retailer's purchasing less than it would have of a competing industry member's product. The following criteria are indications that a particular practice places retailer independence at risk. A practice need not meet all of the criteria specified below in order to place retailer independence at risk.

1. The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

2. The industry member obligates the retailer to participate in a promotion to obtain the industry member's product.

3. The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

4. The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

5. The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

6. The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

"Fixtures" includes but is not limited to bar sinks, bars, light fixtures, and indoor or outdoor signs used to identify the retail establishment.

"Furnishings" includes but is not limited to money, services, chairs, tables, lamps, pictures, remodeling costs, bar sinks, carpeting, bar stools, display cabinets and curios, linens, linen services, china and silver or stainless steel eating and other utensils, decorations, and sound systems used by a retailer. (Durable and disposable glassware is addressed in rule 701—1003.4(123).)

"Furnishings, fixtures and equipment" does not include the items identified in rule 701—1003.2(123), subrules 1003.3(1) and 1003.3(2), rule 701—1003.4(123), rule 701—1003.5(123), rule 701—1003.6(123), or paragraph 1003.12(2)*"a."*

"Industry member" means an alcoholic beverages manufacturer, including a distiller, vintner or brewer, bottler, importer, wholesaler, representative, broker, agent, officer, director, shareholder not considered an institutional investor as defined in Iowa Code section 123.3(27), partner or employee of each of the above.

"Product" means alcoholic liquor, wine, or beer as defined in Iowa Code chapter 123.

"Retailer" means the holder of an alcoholic beverages license, agents, officers, directors, shareholders not considered institutional investors as defined in Iowa Code section 123.3(27), partners, and employees who sell alcoholic liquor, wine or beer to consumers for consumption on or off the premises of the licensee.

"Sampling" means the practice of industry members giving product to a retailer for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

"Tasting" means the presentation and serving of a product by industry members or retailers to consumers for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

"Trade buyer" means a person who is a wholesaler or retailer of alcoholic liquor, wine, or beer.

"Trade spending" means the practice of industry members promoting their brand by purchasing alcoholic beverages for consumers where alcoholic beverages are sold and served for on-premises consumption.

"Wine" means the same as defined in Iowa Code section 123.3(53). For the purposes of this chapter, "wine" includes "native wine" as defined in Iowa Code section 123.3(36).

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

PART II

The rules in this part specify industry member practices that are allowed, under the conditions and within the limitations prescribed. The rules apply to transactions between industry members and retailers.

701—1003.2(123) Product displays.

1003.2(1) Except as otherwise provided in this rule, an industry member is prohibited, directly or indirectly, from inducing a retailer to purchase any products from the industry member to the exclusion, in whole or in part, of products sold or offered for sale by other industry members by any of the following means:

a. Renting, leasing, or buying display space from a retailer.

b. Paying a retailer to set up a display.

c. Giving a special price on the products featured in the display or other products sold by the industry member.

d. Providing free merchandise to a retailer in return for a display.

1003.2(2) An industry member may give, furnish, sell, rent or loan product displays such as wine racks, bins, barrels, casks and portable, disposable shelving from which alcoholic beverages are displayed and sold, provided that the product display bears conspicuous and substantial advertising matter on the product or the industry member that is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product display. A product display is prohibited if it has secondary value to the retailer, for other than advertising purposes. An industry member is prohibited from requiring a retailer to purchase a specific quantity of alcoholic liquor, wine or beer in order to receive a product display.

1003.2(3) The total value of all product displays may not exceed $300 per brand at any one time in any one retail establishment. The value of the product display is the industry member's original cost of the item.

1003.2(4) Industry members may not pool or combine their dollar limitations in order to provide a retailer with a product display that exceeds $300. Industry members are prohibited from pooling or combining several brands to provide a retailer with a product display that exceeds $300.

1003.2(5) An industry member shall keep and maintain records in accordance with rule 701—1003.16(123).

This rule is intended to implement Iowa Code section 123.186.

701—1003.3(123) Retailer advertising utensils, consumer advertising specialties, and retailer wearing apparel.

1003.3(1) *Retailer advertising utensils.*

a. An industry member may supply, give, or sell retailer advertising utensils that are primarily valuable as point-of-sale advertising intended for use on the premises of the retail establishment. Such materials include but are not limited to posters, placards, designs, inside signs (electric, mechanical or otherwise), billboards, window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

b. All retailer advertising utensils must bear conspicuous and substantial advertising matter about the product or the industry member that is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point-of-sale advertising materials.

c. An industry member shall not pay or credit a retailer, directly or indirectly, for using retailer advertising utensils or for any expense incidental to their use.

1003.3(2) *Consumer advertising specialties.*

a. An industry member may furnish, give, or sell consumer advertising specialties to a retailer for unconditional distribution by the retailer to consumers. Consumer advertising specialties may include such items as nonalcoholic mixers, bottle or can openers, corkscrews, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards, pens or pencils, shirts, caps, and visors.

b. Consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member that is permanently inscribed or securely affixed.

c. An industry member shall not pay or credit a retailer, directly or indirectly, for distributing consumer advertising specialties or for any expense incidental to their use. There is no dollar limitation on consumer souvenirs.

d. In the event a consumer advertising specialty also advertises a local event not sponsored by the retailer, the consumer advertising specialty need only be offered by the industry member to the retailers within the local community where the event is held.

1003.3(3) *Retailer wearing apparel.* An industry member may sell wearing apparel, including sweatshirts, T-shirts, pants, shorts, hats, caps, polo-type shirts, jackets, jerseys and other similar clothing, that bears substantial permanently affixed advertising identifying the industry member's name or products to a retailer for use by the retailer and the retailer's employees at not less than the industry member's laid-in cost of the items. There is no dollar limitation on wearing apparel that may be sold by an industry member to a retailer.

1003.3(4) *Recordkeeping.* An industry member shall keep and maintain records in accordance with rule 701—1003.16(123).

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

701—1003.4(123) Glassware.

1003.4(1) *Disposable beer or wine glassware.*

a. An industry member engaged in the manufacturing or wholesaling of beer or wine may sell disposable glassware (including foam, paper and one-use plastic cups) to a retailer.

b. An industry member engaged in the manufacturing or wholesaling of beer or wine is prohibited from selling disposable glassware to a retailer at less than the industry member's laid-in cost of the disposable glassware.

1003.4(2) *Commemorative beer or wine glassware.*

a. An industry member engaged in the manufacturing or wholesaling of beer or wine may sell commemorative glassware that bears substantial advertising matter identifying the industry member or the industry member's product to off-premises retailers for resale to consumers.

b. An industry member engaged in the manufacturing or wholesaling of beer or wine is prohibited from selling commemorative glassware to off-premises retailers at less than the industry member's laid-in cost.

1003.4(3) *Durable or disposable alcoholic liquor glassware.*

a. An industry member engaged in the manufacturing or wholesaling of alcoholic liquor may sell durable or disposable (including foam, paper or one-use plastic cups) glassware to a retailer. The glassware must bear advertising matter that identifies the industry member or the industry member's product.

b. An industry member engaged in manufacturing or wholesaling alcoholic liquor is prohibited from selling durable or disposable glassware to a retailer at less than the industry member's laid-in cost of the disposable or durable glassware.

1003.4(4) *Recordkeeping.* An industry member shall keep and maintain records in accordance with rule 701—1003.16(123).

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

701—1003.5(123) Tapping accessories and coil cleaning service.

1003.5(1) *Tapping accessories.*

a. An industry member may sell tapping accessories, identified in rule 701—1003.1(123), and carbon dioxide to a retailer at not less than the industry member's laid-in cost.

b. An industry member may install tapping accessories at a retail establishment provided the retailer bears the cost of initial installation.

1003.5(2) *Coil cleaning service.* An industry member may sell, furnish or give wine and beer coil cleaning services, including carbon dioxide filters and other necessary accessories to properly clean the coil and affix carbon dioxide filters, to a retailer. The manufacturer shall be responsible for paying for the costs if carbon dioxide filters are provided.

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

701—1003.6(123) Tasting.

1003.6(1) *Restrictions.*

a. The amount of product served per person during a tasting shall be limited to the following:

(1) No more than two one-half-of-one-fluid-ounce tastes of any brand of alcoholic liquor.

(2) No more than two one-fluid-ounce tastes of any brand of wine.

(3) No more than two two-fluid-ounce tastes of any brand of beer.

(4) No more than two two-fluid-ounce tastes of a mixed drink or cocktail as defined in Iowa Code section 123.3.

b. Product shall not be served to, or allowed to be consumed by, any consumer who is under legal age, intoxicated, or simulating intoxication.

c. Product served during a tasting shall not be served by persons under 18 years of age.

d. Product served by an industry member shall be limited to the brands the industry member represents.

1003.6(2) *Tastings conducted by an industry member.* An industry member may conduct a tasting on licensed and unlicensed premises, subject to the requirements and restrictions provided in this rule.

a. Licensed premises.

(1) A tasting may be conducted on licensed premises where alcoholic beverages are sold or served.

(2) A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

(3) A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

(4) An industry member may provide snack foods or hors d'oeuvres for the participants at the tasting.

(5) Product or food served during a tasting shall either be provided by the industry member or purchased at no more than the ordinary retail price from the license or permit holder on whose premises the tasting is being held.

(6) Any product or food remaining at the end of a tasting shall be removed from the licensed premises by the industry member.

b. Unlicensed premises.

(1) A tasting of wine or beer may be conducted in an unlicensed public place unless prohibited by Iowa Code section 123.46(2) or an applicable ordinance or regulation of the local authority.

(2) A tasting of alcoholic liquor, wine, or beer may be conducted in an unlicensed private place as defined in Iowa Code section 123.3.

(3) A tasting of alcoholic liquor is prohibited in an unlicensed public place.

(4) Wine and beer served during a tasting shall be obtained from the respective wholesaler.

(5) An industry member may provide snack foods or hors d'oeuvres for the participants at the tasting.

(6) Any product or food remaining at the end of a tasting shall be removed from the premises by the industry member.

1003.6(3) *Tastings conducted by a retailer.* A retailer licensed or permitted for on- or off-premises consumption may conduct a tasting, subject to the requirements and restrictions provided in this rule.

a. Product served during a tasting shall be served by a retailer, the retailer's employees or agents, or an industry member who has the explicit consent of the retailer.

b. A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

c. A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

d. Product served during a tasting shall be legally obtained by the retailer as prescribed by Iowa Code chapter 123.

e. An off-premises license holder may conduct a tasting when there is no charge for product or access.

f. Food may be provided by the retailer for the participants of a tasting.

1003.6(4) *Recordkeeping.* An industry member shall keep and maintain records in accordance with rule 701—1003.16(123).

This rule is intended to implement Iowa Code section 123.186.

701—1003.7(123) Sampling.

1003.7(1) *Conditions.* An industry member may give product to a retailer who has not purchased the brand from that industry member within the preceding 12 months.

1003.7(2) *Quantity.* Product given to a retailer shall not exceed the following amounts within a calendar year.

a. Three liters of any brand of alcoholic liquor.

b. Three liters of any brand of wine.

c. Three gallons of any brand of beer.

1003.7(3) *Procurement.* An industry member shall obtain alcoholic liquor, wine, or beer used for sampling from the respective wholesaler. If a particular product is not available in a size within the quantity limitations of this section, an industry member may provide to a retailer the next larger size.

1003.7(4) *Identification.* Each container of product used for sampling shall be clearly marked with the word "SAMPLE". The marking shall not obscure the label of the container.

1003.7(5) *Recordkeeping.* An industry member shall keep and maintain records in accordance with rule 701—1003.16(123).

This rule is intended to implement Iowa Code section 123.186.

701—1003.8(123) Trade spending. An industry member may engage in the practice of trade spending.

1003.8(1) *Advertising.* Trade spending shall be unannounced and unpublicized.

1003.8(2) *Quantity.* The industry member shall be limited to purchasing one round of alcoholic beverages or nonalcoholic beverages for patrons of an on-premises retailer.

1003.8(3) *Payment.* The industry member shall pay the retailer no more than the ordinary retail price for the alcoholic beverage or nonalcoholic beverage.

1003.8(4) *Recordkeeping.* An industry member shall keep and maintain records in accordance with rule 701—1003.16(123).

This rule is intended to implement Iowa Code section 123.186.

701—1003.9(123) Discounts. An industry member is prohibited from refusing to give a retailer a discount that is offered to other retailers in the market area even though the retailer declines to reduce the price to the consumer during the discount period, or to advertise the industry member's product during the promotion period.

This rule is intended to implement Iowa Code sections 123.135(4) and 123.180(4).

701—1003.10(123) Combination packaging. An industry member may package and distribute alcoholic liquor, wine, or beer in combination with other nonalcoholic items or products.

1003.10(1) Combination packages shall not have secondary value to the retailer other than having the potential of attracting purchasers and promoting sales.

1003.10(2) Combination packages shall be designed to be delivered intact to the consumer.

1003.10(3) Industry members who sell alcoholic liquor to the department must comply with the department's policies regarding combination packaging.

This rule is intended to implement Iowa Code section 123.186.

701—1003.11(123) Consumer promotions.

1003.11(1) *Coupons.* The act by an industry member of furnishing to consumers coupons that are redeemable at a retail establishment does not constitute a means to induce provided the following conditions are met:

a. All retailers within the market where the coupon offer is made may redeem such coupons.

b. An industry member may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee for the redemption of coupons.

1003.11(2) *Direct offerings.* Contest prizes, premium offers, refunds, and like items may be offered by industry members directly to consumers. Officers, employees, and representatives of wholesalers or retailers are excluded from participation.

This rule is intended to implement Iowa Code section 123.186.

701—1003.12(123) Advertising, display or distribution service.

1003.12(1) *Prohibition.* The act of an industry member paying or crediting a retailer, directly or indirectly, for any advertising, display, or distribution service is prohibited if the act results in exclusion. Such acts include but are not limited to the following:

a. Making payments or credits to retailers that are merely reimbursements, in full or in part, for such services purchased by a retailer from a third party.

b. Directly or indirectly sharing the cost of an advertisement with a retailer.

c. Purchasing advertising from a retailer on such things as but not limited to signs, scoreboards, programs, scorecards, and tote boards in ballparks, stadiums, auditoriums, racetracks, arenas, bowling alleys and all other retail establishments.

d. Purchasing advertising in a retailer publication for distribution to consumers or the general public.

e. Providing reimbursements to retailers for setting up product or other displays.

f. Paying the retailer via a promotion where the industry member rents display space at a retail establishment.

1003.12(2) *Exceptions.*

a. Newspaper cuts, mats, or engraved blocks for use in retailers' advertisements may be given or sold by an industry member to a retailer selling the industry member's products.

b. An industry member may list the names and addresses of two or more unaffiliated retailers selling the products of an industry member in an advertisement of that industry member provided all of the following conditions are met:

(1) The advertisement does not also contain the retail price of the product.

(2) The listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole.

(3) The advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer.

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

701—1003.13(123) Stocking and product rotation.

1003.13(1) *Allowable activities.*

a. An industry member may stock, rotate, and reset alcoholic liquor, wine or beer sold by the industry member.

b. An industry member may affix prices to alcoholic liquor, wine or beer sold by the industry member at the time of delivery, provided that the retailer independently determines the price of the alcoholic liquor, wine and beer.

c. An industry member may build product displays either at the time of delivery or at other times.

d. An industry member may provide a retailer with a recommended shelf plan or shelf schematic for alcoholic liquor, wine, and beer.

1003.13(2) *Prohibited activities.*

a. An industry member may not reset or rearrange another industry member's products without the explicit consent of the retailer.

b. An industry member is prohibited from removing another industry member's point-of-sale advertising matter.

This rule is intended to implement Iowa Code section 123.186.

701—1003.14(123) Sponsorships and special events.

1003.14(1) An industry member may contribute to charitable, civic, religious, fraternal, educational and community entities.

1003.14(2) If such entity is conducting a special event as a retailer or in conjunction with a retailer, an industry member's contribution shall not induce the retailer, directly or indirectly, to purchase any products from the industry member to the exclusion, in whole or in part, of products sold or offered for sale by other industry members at the special event.

1003.14(3) An industry member shall keep and maintain records in accordance with rule 701—1003.16(123).

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

701—1003.15(123) Participation in educational seminars and retail association activities.

1003.15(1) *Educational seminars.* An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment regarding such topics as use of a retailer's equipment, training seminars for employees of retailers, and tours of alcoholic beverages manufacturing facilities; however, an industry member is prohibited from paying a retailer's expenses or compensating a retailer for attending such seminars and tours.

1003.15(2) *Retail association activities.* An industry member may participate in retail association activities in the following manner:

a. Display its products at a trade show or convention.

b. Rent display booth space provided that the rental fee is not excessive and is the same paid by all exhibitors.

c. Provide hospitality for the persons attending the trade show or convention. The hospitality provided by the industry member shall be independent from association-sponsored activities.

d. Purchase tickets, attend functions, and pay registration fees, provided that such payments are not excessive and are the same paid by all exhibitors.

e. Pay for advertising in programs or brochures issued by retail associations at a convention or trade show, provided that the total payments made by an industry member do not exceed $300 per calendar year to any one retail association.

This rule is intended to implement Iowa Code section 123.186.

701—1003.16(123) Recordkeeping.

1003.16(1) Industry members are required to keep and maintain accurate records for a three-year period regarding each of the items that may be provided to retailers in the following rules:

a. 701—1003.2(123) (product displays).

b. 701—1003.3(123) (retailer advertising utensils, consumer advertising specialties, and retailer wearing apparel).

c. 701—1003.4(123) (glassware).

d. 701—1003.6(123) (tasting).

e. 701—1003.7(123) (sampling).

f. 701—1003.8(123) (trade spending).

g. 701—1003.14(123) (sponsorships and special events).

h. 701—1003.15(123) (participation in educational seminars and retail association activities).

1003.16(2) Records shall state the following:

a. The name and address of the retailer receiving the item.

b. The date the item was furnished, sold, given, loaned, leased, or rented.

c. The item furnished.

d. The industry member's laid-in cost of the item furnished.

e. The charges to the retailer for the item.

1003.16(3) Commercial records or invoices may be used to satisfy the requirements of this rule provided all of the required information appears on the record or invoice.

1003.16(4) Records shall be open to representatives of the department during normal business hours of the industry member and may be subject to administrative subpoena issued by the department.

This rule is intended to implement Iowa Code sections 123.33 and 123.186.

PART III

The rules in this part specify industry member practices that are a means to induce a retailer and that are prohibited. The rules apply to transactions between industry members and retailers.

701—1003.17(123) Equipment, furnishings, fixtures.

1003.17(1) An industry member is prohibited from directly or indirectly giving, selling, renting, or lending equipment, furnishings or fixtures to a retailer for use by the retailer or in the retail establishment.

1003.17(2) A prohibited indirect inducement includes but is not limited to obtaining equipment, furnishings, or fixtures for a retailer through a third-party arrangement where the resulting benefits flow to an individual retailer.

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

701—1003.18(123) Free warehousing prohibited. An industry member is prohibited, directly or indirectly, from providing free warehousing of products for a retailer by delaying delivery of alcoholic liquor, wine, or beer beyond the time that payment for the product is received or, if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended.

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

701—1003.19(123) Extension of credit and prepaid accounts.

1003.19(1) *Extension of credit.* An industry member is prohibited from extending credit on the sale of alcoholic liquor or beer to a retailer. An industry member may extend credit to a retailer on the sale of wine for not more than 30 days from the date of the sale.

1003.19(2) *Prepaid accounts.*

a. An industry member may establish prepaid accounts in which retailers deposit a sum of money to pay for future purchases of alcoholic beverages products.

b. An industry member may not hold the money deposited in a prepaid account for future payment of a debt.

c. An industry member shall transfer the amount of the invoice from the retailer's prepaid account each time that the industry member makes a sale and a delivery to the retail establishment.

d. An industry member is not required to establish separate escrow accounts for prepaid accounts.

e. An industry member is responsible for accurately and honestly accounting for the funds held in a prepaid account.

f. A retailer may withdraw the money placed in a prepaid account at any time.

g. An industry member is prohibited from utilizing prepaid accounts to require a retailer to purchase any quota of alcoholic liquor, wine, or beer.

This rule is intended to implement Iowa Code sections 123.45 and 123.181(2).

701—1003.20(123) Quota sales. An industry member is prohibited from requiring a retailer to purchase and sell any quota of alcoholic liquor, wine or beer.

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

701—1003.21(123) Tie-in sales. An industry member is prohibited from requiring a retailer to purchase one product in order to purchase another. This prohibition includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not prohibited from selling at a special combination price, two or more kinds or brands of products to a retailer, provided that the retailer has the option of purchasing either product at the usual price, and the retailer is not required to purchase any product not wanted by the retailer.

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

PART IV

The rule in this part specifies that exclusive outlet arrangements with retailers are prohibited. The rule applies to transactions between industry members and retailers.

701—1003.22(123) Contracts to purchase alcoholic liquor, wine, or beer.

1003.22(1) *Implied or express contracts.*

a. Any contract or agreement, written or unwritten, that has the effect of requiring the retailer to purchase alcoholic liquor, wine, or beer from the industry member beyond a single sales transaction is prohibited, except as provided in paragraph 1003.22(1)*"b."* Examples of such contracts are:

(1) An advertising contract between an industry member and a retailer with the express or implied requirement of the purchase of the advertiser's products.

(2) A sales contract awarded on a competitive bid basis that has the effect of prohibiting the retailer from purchasing from other industry members by requiring that, for the period of the agreement, the retailer purchase a product or line of products exclusively from the industry member or requiring that the retailer purchase a specific or minimum quantity during the period of the agreement.

b. An industry member and a retailer may enter into a supply contract for one year or less under which the industry member agrees to sell alcoholic liquor, wine, or beer to the retailer on an "as needed" basis provided that the retailer is not required to purchase any minimum quantity of such product.

1003.22(2) *Third-party arrangements.*

a. Industry member requirements, by agreement or otherwise, with nonretailers that result in a retailer's being required to purchase the industry member's products are prohibited, regardless of whether the agreement or other arrangement originates with the industry member or the third party.

EXAMPLE: A supplier enters into a contractual agreement or other arrangement with a third party. This agreement or arrangement contains an industry member requirement as described above. The third party—a ballclub or municipal or private corporation not acting as retailer—leases the concession rights and is able to control the purchasing decisions of the retailer. The third party, as a result of the requirement, by agreement or otherwise, with the industry member, requires the retailer to purchase the industry member's products to the exclusion, in whole or in part, of products sold or offered for sale by other industry members.

b. Prohibited business arrangements between an industry member and a third party may consist of such things as sponsoring radio or television broadcasting, paying for advertising, or providing other services or things of value.

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

PART V

The rule in this part specifies industry member practices that are a means to induce a retailer and that are prohibited. The rule applies to transactions between industry members and employees, officers, or representatives of retailers.

701—1003.23(123) Commercial bribery. An industry member is prohibited from offering or giving a retailer free trips, bonuses or prizes based on sales of the industry member's alcoholic beverages products.

This rule is intended to implement Iowa Code section 123.186.

PART VI

The rules in this part specify sales arrangements that are prohibited. The rules apply to transactions between industry members and trade buyers.

701—1003.24(123) Consignment sales. An industry member is prohibited from selling alcoholic liquor, wine, or beer to a retailer on consignment. Consignment means a sale under which the retailer is not obligated to pay for the alcoholic liquor, wine, or beer, until the product is sold by the retailer.

This rule is intended to implement Iowa Code section 123.186.

701—1003.25(123) Return of alcoholic liquor, wine, and beer. An industry member may accept the return of alcoholic liquor, wine, and beer for ordinary and usual commercial reasons but is not obligated to do so.

1003.25(1) *Ordinary and usual commercial reasons for exchanges and returns.*

a. Defective products.

(1) Products that are unmarketable because of product deterioration, leaking containers, damaged labels, or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness.

(2) Freshness dating. An industry member may accept a return of beer for cash or credit against outstanding indebtedness or exchange the beer for freshness reasons provided all of the following conditions are met:

1. The manufacturer of the beer has policies and procedures in place that specify the date the retailer must pull the product.

2. The industry member's freshness return/exchange policies and procedures are readily verifiable and consistently followed by the industry member.

3. The beer container has identifying markings that correspond with the pull date.

4. The beer product pulled by the trade buyer may not reenter the retail marketplace.

b. Error in products delivered. Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those that were ordered, or by a return for cash or credit against outstanding indebtedness.

c. Products that may no longer be lawfully sold. Products that may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has no control, a particular size or brand is no longer permitted to be sold.

d. Termination of business. Products on hand at the time a trade buyer terminates operations via cancellation of the trade buyer's license or permit may be returned for cash or credit against outstanding indebtedness. This does not include the temporary seasonal shutdown of a trade buyer holding a 12-month license or permit.

e. Termination of franchise. When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

f. Change in product. Except as provided in paragraph 1003.25(2)*"b,"* a trade buyer's inventory of a product that has been changed in formula, proof, label, or container may be exchanged for equal quantities of the new version of that product.

g. Discontinued products. When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

h. Seasonal dealers. Industry members may accept the return of products from retailers holding an eight-month seasonal license or permit upon cancellation of the license or permit. These returns shall be for cash or for credit against outstanding indebtedness.

1003.25(2) *Reasons not considered ordinary and usual.* The following are not considered ordinary and usual commercial reasons for exchanges and returns. Exchanges and returns for these reasons are prohibited.

a. Overstocked or slow-moving products.

b. Products for which there is only a limited or seasonal demand.

This rule is intended to implement Iowa Code section 123.186.

PART VII

The rule in this part governs violations of rules within this chapter.

701—1003.26(123) Contested case—burden. In any contested case alleging a violation of this chapter, the burden of demonstrating compliance with the lawful requirements for retention of the license or permit or certificate of compliance shall be placed on the licensee, permittee, or certificate of compliance holder.

This rule is intended to implement Iowa Code sections 17A.18(3) and 123.39.

ARC 8356C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Proposing rulemaking related to pesticides and providing an opportunity for public comment

The Agriculture and Land Stewardship Department hereby proposes to rescind Chapter 45, "Pesticides," 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 206.4 and 206.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 206.

Purpose and Summary

The proposed rulemaking updates Chapter 45 to comply with federal requirements issued by the Environmental Protection Agency. Specifically, the rulemaking does the following:

1. Incorporates civil penalties for private applicators that were already applied to commercial applicators.
2. Requires that a commercial, private or noncertified applicator be at least 18 years of age to apply a restricted use pesticide.
3. Prohibits the use of oral examinations for applicator certification.
4. Requires direct supervision of noncertified applicators using restricted used pesticides by a certified applicator and requires additional training for noncertified applicators.
5. Requires commercial applicators to maintain records documenting noncertified applicator qualifications as well as the names and certification numbers of the applicators who supervised a noncertified applicator.
6. Revises the descriptions for the types of certification categories.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 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 21—Chapter 8.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on . Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

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

CHAPTER 45
PESTICIDES

DIVISION I

21—45.1(206) Definitions and standards.

45.1(1) The following definitions are hereby adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Applying a pesticide for agricultural or horticultural purposes only at any dosage, concentration or frequency less than that specified on the labeling.

2. Applying a pesticide for agricultural or horticultural purposes only against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling.

3. Employing any method of application not prohibited by the labeling for agricultural or horticultural purposes only.

4. Mixing pesticides or mixing pesticide with a fertilizer when such mixture is not prohibited by the labeling for agricultural or horticultural purposes only.

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

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

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

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

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

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

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

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

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

b. The pesticide product is formulated or comprised of naturally occurring substances, including but not limited to plant or animal derivatives or microorganisms, and has an oral LD50 toxicity of 5,000 milligrams per kilogram or greater.

c. Pesticides are registered under the authority of Section 18 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), as revised January 27, 2006, as revised January 27, 2006, for emergency, crisis or public health quarantine situations, when the secretary of agriculture initiates the application.

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

45.3(3) *Penalty for nonregistered pesticides.*

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

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

45.3(4) *Discontinued pesticides.* Discontinued pesticide product registrations shall be renewed for a minimum of two years after the product is discontinued; and the pesticide product registration renewal

application shall identify discontinued products. Any registrant that discontinues registration of a pesticide product shall accept the return of any product in its original unbroken container that remains in the channels of trade after the registration expires. This subrule shall not apply to registered custom blended pesticide products.

45.3(5) *Registration renewal grace period.* The registration period shall be January 1 through December 31 of each year. However, a registrant shall be granted a grace period of three months ending on the last day of March of each year for registration renewal. A registrant shall be assessed a late fee equaling 25 percent of the registration fees due by the registrant for a registration renewal received on or after the first day of April of each year. Application for registration renewal shall be made on forms prescribed by the secretary and certified by the registrant.

This rule is intended to implement Iowa Code section 206.12.

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

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

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

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

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

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

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

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

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

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

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

h. If an insecticide, nematocide, antibiotic, bactericide, fungicide or herbicide is found to be injurious to humans or other useful vertebrate animals or to vegetation (except weeds), to which it is applied or to the person applying such pesticide when used as directed or in accordance with commonly recognized safe practice; or if a plant regulator, defoliant or desiccant when used as directed is found to be injurious to humans or other vertebrate animals or vegetation to which it is applied, or to the person applying such pesticide; provided, however, that physical or physiological effect on plants or parts

thereof shall not be deemed to be injurious, when this is the purpose for which the plant regulator, defoliant or desiccant was applied in accordance with label claims and recommendations;

i. If the pesticide is misbranded; or

j. If the registrant has been guilty of fraudulent and deceptive practices in the evasion or attempted evasion of the Iowa pesticide Act or any rules promulgated thereunder; provided, however, that no registration shall be revoked until the registrant shall have been given an opportunity for a hearing by the secretary.

45.6(2) Special local need registrations and permits.

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

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

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

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

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

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

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

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

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

21—45.9(206) Directions for use—when necessary. Directions for use are required whenever they are necessary for the protection of the public. The public includes not only users of pesticides but also those

who handle them or may be affected by their use, handling, or storage. Directions for use are considered necessary in the case of most small retail containers that go into the hands of users, and in the case of larger containers with the following exception: directions may be omitted if the pesticide is to be used by manufacturers in their regular manufacturing processes, provided the label clearly shows that the product is intended for use only in manufacturing processes and bears an ingredient statement giving the name and percentage of each of the active ingredients.

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

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

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

21—45.13(206) Ingredient statement.

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

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

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

45.13(4) *Designation of ingredients.*

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

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

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

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

of specific gravity or density of liquid preparations, or expression of composition in terms of pounds per gallon shall be made on the basis of 68°F (20°C) except when other basis has been established through trade custom.

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

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

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

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

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

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

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

This rule is intended to implement Iowa Code section 206.11.

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

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

21—45.17(206) Guarantee of pesticide.

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

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

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

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

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

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

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

21—45.19(206) Enforcement.

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

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

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

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

45.19(5) The secretary may suspend an applicator's license, permit or certification pending inquiry and, after opportunity for a hearing, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under the Act, upon receipt of information from the environmental protection agency that the applicator has been convicted under the criminal provision of Section 14(b) of FIFRA or has been assessed a civil penalty under Section 14(a) of FIFRA, as revised March 3, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

a. Initial certification. To be initially certified as a commercial, noncommercial or public applicator, a person shall demonstrate a fundamental knowledge of the minimum state and federal standards of competency for commercial applicators by passing an examination administered by the department. The examination must cover subjects relating to the safe handling, application and storage of pesticides; the correct calibration of equipment used for the application of pesticides; the effects of pesticides upon groundwater; and subjects related to the minimum standards of competency for commercial applicators outlined in 40 CFR 171.101 and 171.103 as revised March 3, 2017.

b. A person who employs noncommercial applicators shall apply for a noncommercial applicator's license; and all noncommercial applicators shall be certified by successfully completing the appropriate

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

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

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

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

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

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

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

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

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

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

(2) Forest pest control. Includes persons using or supervising the use of pesticides in forests, forest nurseries, and forest seed production areas. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(2) as revised March 3, 2017.

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

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

2. Turf pest control. Includes persons using or supervising the use of pesticides to control pests only in the maintenance and production of turf grasses, including in and around structures (except greenhouses or other enclosed, climate-controlled environments), plant nurseries, golf courses, athletic fields, public or private grounds, turf farms, or similar areas.

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

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

(4) Seed treatment. Includes persons using or supervising the use of pesticides to seeds. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(4) as revised March 3, 2017.

(5) Aquatic pest control. Includes persons using or supervising the use of pesticides to standing or running water to control aquatic pests, excluding applicators engaged in public health-related activities. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(5) as revised March 3, 2017.

(6) Right-of-way pest control. Includes persons using or supervising the use of pesticides in the maintenance of public roads, electric power lines, pipelines, railroad rights-of-way, industrial site weed control, fence lines, structural perimeters, or other similar areas to control unwanted vegetation. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(6) as revised March 3, 2017.

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

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

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

3. Non-soil fumigation. Includes persons using or supervising use of pesticides in a gaseous form that are classified as fumigants to control pests in anything other than soil. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(14) as revised March 3, 2017.

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

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

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

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

(9) Regulatory pest control. Includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of pests as part of official regulatory responsibilities. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(9) as revised March 3, 2017.

(10) Demonstration and research pest control. Includes persons who demonstrate to the public the proper use and techniques of application or persons who research the use of pesticides and in doing so use or supervise the use of pesticides. Individuals certified in demonstration and research pest control are also required to be certified in another category that is specific to the particular type of pesticide being employed for the particular project. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(10) as revised March 3, 2017.

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

(12) Soil fumigation. Includes persons using or supervising the use of gaseous pesticides in soil. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.103(d)(13) as revised March 3, 2017.

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

45.22(3) *Certification of private applicators.*

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

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

c. A private applicator who purchases or applies a soil or non-soil fumigant that is classified as a restricted use pesticide shall pass an examination prescribed by the department for initial certification in the private fumigation category in addition to the examination required for initial private certification. To be certified in this category, a person shall demonstrate practical knowledge and competency as outlined in 40 CFR 171.105(d) and 40 CFR 171.105(e) as revised March 3, 2017. Upon successfully completing the required private fumigation examination, the private applicator's certification credentials shall be so designated. The fumigation category designation shall remain valid until the private applicator's certification expires. To renew the fumigation category certification, a private applicator may elect to complete an instructional course consisting of either an examination or instructional course as prescribed by the department in addition to the examination or instruction required for private certification.

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

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

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

b. Each commercial, noncommercial and public applicator's certification shall expire December 31 of the third year of the three-year certification and shall be renewed by the department upon receipt of evidence that the applicator has paid the required certification fee and has completed an instructional course consisting of either an examination or continuing instructional courses as prescribed by the department. A commercial, noncommercial or public applicator shall pass an examination each third year following initial certification or may elect to attend two hours of approved continuing instructional

courses each year during the renewal period. A commercial, noncommercial or public applicator seeking recertification by attending continuing instructional courses shall attend courses approved for each certification category in which the person is seeking recertification. A two-hour continuing instructional course may be approved for more than one certification category. A commercial, noncommercial or public applicator failing to complete the required two hours of approved instruction for each year during the renewal period shall be required to pass an examination prior to recertification.

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

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

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

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

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

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

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

45.22(6) *Report of licensee.*

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

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

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

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

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

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

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

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

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

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

f. The noncertified applicator must meet qualification requirements under 40 CFR 171.201(c) as revised March 3, 2017.

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

45.22(8) *Certified handler.*

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

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

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

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

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

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

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

a. Temporary exemption for certification for agricultural applicators. A commercial applicator who applies pesticides to agricultural land may elect to be exempt from the certification requirements for a commercial applicator for a period of 21 days from the date of initial employment if the applicator meets the requirements of a private applicator. A private applicator who applies restricted use pesticides to agricultural land and elects to take advantage of the exemption as provided for in Iowa Code section

206.5 shall work under the direct supervision of a certified commercial applicator and meet the requirements for direct supervision of noncertified applicators in subrule 45.22(7).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Responsibility. The aerial applicator is responsible for applying pesticides in compliance with label directions and Iowa's pesticide rules. The aerial applicator consultant supplying a pesticide for

application by the aerial applicator is responsible for handling and mixing the pesticides according to label directions and Iowa's pesticide rules.

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

45.22(15) *Recordkeeping requirements for supervisions of noncertified applicators by certified commercial applicators.* Commercial applicators shall maintain records of noncertified applicator qualifications in accordance with 45.26(3) for two years from the date of the restricted use pesticide application and shall furnish copies to the secretary upon request in writing. Records of each transaction shall include the following information:

a. Name of the noncertified applicator and signature.

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

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

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

21—45.24(206) Warning, caution and antidote statements. In order to promote uniformity among the requirements of the Iowa pesticide Act and requirements of the several states and the federal government, Iowa Code section 206.21 of the Iowa pesticide Act provides for the adoption of rules and regulations in conformity with those prescribed by the United States department of agriculture. Warning, caution and antidote statements required to appear on labels of pesticides under the Iowa pesticide Act shall conform to the warning, caution and antidote statements required under 40 CFR 156 as revised December 14, 2001, and any associated regulations are hereby incorporated into this rule by reference and make a part hereof for the enforcement of FIFRA.

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

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

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

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

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

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

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

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

e. The date of the transaction.

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

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

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

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

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

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

f. The date of the transaction.

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

a. The name and license number of the licensee.

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

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

d. Date of pesticide application.

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

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

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

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

i. Time pesticide application begins and ends.

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

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

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

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

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

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

Emergency Single Purchase of Restricted Use Pesticide—Affidavit.

The Label which I have read, indicates:

Brand name of pesticide: _____

Federal Registration Number: _____

Name of Active Ingredient(s): _____

Percentage of Active Ingredient(s): _____

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

_____

Application rate per acre: _____

Name pest to be controlled: _____

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

_____

State degree of hazard (signal word): _____

Describe safety equipment required: _____

What is the recommended antidote for this product: _____

List environmental precaution shown on label: _____

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

Preharvest interval days required: _____

Describe method of container disposal: _____

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

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

_____

(name of private applicator)

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

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

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

This rule is intended to implement Iowa Code section 206.20.

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

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

45.31(2) Between 8 a.m. and 6 p.m., a commercial applicator shall not apply to blooming crops pesticides labeled as toxic to bees when the commercial applicator is located within one mile of a

registered apiary. A commercial applicator shall be responsible for maintaining the one-mile distance from apiaries that are registered and listed on the sensitive crop registry on the first day of each month.

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

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

21—45.33(206) Use of inorganic arsenic.

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

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

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

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

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

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

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

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

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

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

a. Location of incident.
b. Time and date of incident.
c. Number and type of livestock affected.
d. Poison agent, known or suspected.
e. Location of source of poisoning.
f. Type and degree of poisoning.
g. Name, mailing address and telephone number of livestock owner.
h. Whether release of poisoning agent is continuing.

i. Whether poisoning agent is on land or in water.

j. Any other information that may assist in evaluation of the incident.

k. Name and address of reporting veterinarian.

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

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

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

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

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

a. Common name or scientific name of pest or pests to be controlled with the formulation,

b. Crops that the pest or pests endanger,

c. Chemical name of inorganic arsenic formulation for which approval is requested,

d. Why there are no acceptable alternative methods of controlling the pests available,

e. Rate of application needed for control,

f. Number of applications needed annually for control,

g. Name, address and telephone number of the applicant.

45.37(3) *Hearings, when held.*

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

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

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

a. In its approval, the committee shall specify:

(1) The inorganic arsenic formulation to be used.

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

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

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

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

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

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

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

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

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

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

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

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

21—45.38 to **45.44** Reserved.

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

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

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

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

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

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

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

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

21—45.47(206) Reporting of pesticide sales. Commercial pesticide applicators, pesticide dealers, pesticide manufacturers and pesticide distributors with the exception of manufacturers or distributors that distribute pesticides for resale purposes only shall submit annual reports to the Iowa department of agriculture and land stewardship by October 1 of each year on forms approved by the secretary of agriculture except that pesticide manufacturers or pesticide distributors that distribute pesticides only for resale purposes shall not be required to submit a report. The reports shall include information related to the gross dollar amount for all pesticides sold at retail for use in this state. The reports shall also list the individual label name, EPA registration number and the gross dollar amount of each pesticide sold at retail for which gross retail sales are $3,000 or more.

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

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

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

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

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

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

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

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

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

45.50(1) *Residential lawns.*

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

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

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

45.50(2) *Golf courses.* Signs including posters or placards shall be posted in a conspicuous manner near the first tee of each nine-hole course. The sign shall be constructed of a weather-resistant material and be a minimum size of 8½ inches by 11 inches. The lettering shall not be less than ½ inch. The sign shall read "Pesticides are periodically applied to the golf course. If desired, you may contact your golf course superintendent or person in charge for further information." The sign shall be displayed prior to the application of any pesticide on the golf course and left in place for at least 24 hours following any pesticide application. Where pesticide labeling requires specific notification or reentry restrictions, the applicator shall comply with the label instructions.

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

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

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

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

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

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

45.50(5) *Public pest control programs.* Pesticides applied for or by any municipality for the control or abatement of pests related to public health programs, such as mosquitoes or other pest control programs, shall be exempt from posting requirements provided that the intended dates, time and locations are announced to the public in a conspicuous manner at least 24 hours prior to the application.

The announcement shall be made on a major radio station, TV station, newspaper or any other means of mass communication that would normally reach the residents of that city or developed residential area.

45.50(6) *Notification signs.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Name and address of occupant.

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

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

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

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

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

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

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

(1) Name and address of occupant.

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

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

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

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

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

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

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

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

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

45.51(4) Atrazine use limitations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. An approved continuing instruction course for pesticide applicator recertification shall include, at a minimum, information on safe handling, application and storage of pesticides; the correct calibration of equipment used for the application of pesticides; effects of pesticides upon groundwater; and the federal standards for pesticide applicator certification outlined in 40 CFR 171.105 as revised March 6, 2017, for private applicators or 40 CFR 171.101 and 40 CFR 171.103 revised as of March 6, 2017, for commercial applicators.

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

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

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

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

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

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

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

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

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

(3) Names and qualifications of instructors.

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

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

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

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

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

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

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

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

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

45.52(3) *Course approval.*

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

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

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

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

(3) Course title.

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

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

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

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

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

(9) Names of instructors.

(10) Number of credit hours requested.

(11) Signature of the contact person.

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

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

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

45.52(4) *Certificate of completion.*

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

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

45.52(5) *Provider's responsibility.*

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

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

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

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

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

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

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

45.52(6) *Enforcement—providers.*

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any other disciplinary action permitted by statute.

This rule is intended to implement Iowa Code section 206.5.

DIVISION II

21—45.53 to **45.99** Reserved.

DIVISION III
CIVIL PENALTIES

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

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

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

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

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

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

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

a. Willfulness or recklessness of the violation.

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

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

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

e. Remedial action taken by the pesticide applicator.

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

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

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

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

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

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

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

the applicator may attend an informal settlement conference and reach an agreement about the assessment of a civil penalty or other disciplinary action against the applicator.

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

ARC 8345C

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

Proposing rulemaking related to organization and operation, agency procedure for rule making, declaratory orders, contested cases, public records and fair information practices, and waivers from rules and providing an opportunity for public comment

The Alcoholic Beverages Division hereby proposes to rescind Chapter 1, "Organization and Operation," Chapter 2, "Agency Procedure for Rule Making," Chapter 3, "Declaratory Orders," Chapter 10, "Contested Cases," Chapter 18, "Public Records and Fair Information Practices," and Chapter 19, "Waivers from Rules," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 514.

Purpose and Summary

The purpose of this proposed rulemaking is to implement the state government realignment provisions of 2023 Iowa Acts, Senate File 514. This rulemaking eliminates rules on agency procedure that are redundant, unnecessary, and outdated. A separate Notice of Intended Action is being proposed to establish a single set of agency procedure rules for the newly organized Department of Revenue. The Department's proposed new agency procedure rules will make applicable practices across subject matters as uniform as possible and reduce confusion with current existing rules.

A Regulatory Analysis, including the proposed text, was published on September 18, 2024. A public hearing was held on October 8, 2024. No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been made since publication of the Regulatory Analysis. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, Iowa 50021
Email: cutler@iowaabd.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 9 to 10 a.m.	Virtual: meet.google.com/kwj-qvcn-gia Room 430 Hoover State Office Building
December 4, 2024 12:30 to 1:30 p.m.	Virtual: meet.google.com/bay-qwzt-ksq Room 430 Hoover State Office Building

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 **185—Chapter 1**.

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

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

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

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

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

ARC 8342C

LOTTERY AUTHORITY, IOWA[531]

Notice of Intended Action

Proposing rulemaking related to general operation of the lottery, purchasing, prizes, licensing, licensed retailers, monitor vending machines, instant ticket general rules, pull-tab general rules, computerized games—general rules, and drawings and contests and providing an opportunity for public comment

The Lottery Authority, Iowa hereby proposes to rescind Chapter 1, "General Operation of the Lottery," Chapter 2, "Purchasing," Chapter 11, "Prizes," Chapter 12, "Licensing," Chapter 13, "Licensed Retailers," Chapter 14, "Monitor Vending Machines," Chapter 18, "Instant Ticket General Rules," Chapter 19, "Pull-Tab General Rules," Chapter 20, "Computerized Games—General Rules," and Chapter 21, "Drawings and Contests," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 99G.9.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99G.9, 99G.21, 99G.25, 99G.30, 99G.31 and 99G.35.

Purpose and Summary

Chapters 1, 2, 11, 12, 13, 14, 18, 19, 20, and 21 are all chapters dedicated to the operation of the Iowa Lottery. As a part of the government reorganization pursuant to 2023 Iowa Acts, Senate File 514, the Department proposes to rescind the existing chapters under agency [531] and adopt them as new chapters under 701—Chapters 1100 through 1107 in separate proposed rulemakings.

Additionally, Chapter 14 is proposed to be rescinded in its entirety. The statutes that the chapter implemented have been rescinded and the chapter contains obsolete and unnecessary language.

A Regulatory Analysis, including the proposed text, was published on September 18, 2024. A public hearing was held on October 8, 2024. No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been proposed to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 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.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 10 to 11 a.m.	Room 430 Hoover State Office Building Virtual: meet.google.com/nrd-konm-xjy
December 4, 2024 1:30 to 2:30 p.m.	Room 430 Hoover State Office Building Virtual: meet.google.com/jpc-tisr-erp

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 **531—Chapter 1**.

ITEM 2. Rescind and reserve **531—Chapter 2**.

ITEM 3. Rescind and reserve **531—Chapter 11**.

ITEM 4. Rescind and reserve **531—Chapter 12**.

ITEM 5. Rescind and reserve **531—Chapter 13**.

ITEM 6. Rescind and reserve **531—Chapter 14**.

ITEM 7. Rescind and reserve **531—Chapter 18**.

ITEM 8. Rescind and reserve **531—Chapter 19**.

ITEM 9. Rescind and reserve **531—Chapter 20**.

ITEM 10. Rescind and reserve **531—Chapter 21**.

ARC 8343C

LOTTERY AUTHORITY, IOWA[531]

Notice of Intended Action

Proposing rulemaking related to procedure for rule making, waiver rules, contested cases, and declaratory orders and providing an opportunity for public comment

The Lottery Authority, Iowa hereby proposes to rescind Chapter 3, "Procedure for Rule Making," Chapter 4, "Waiver Rules," Chapter 5, "Contested Cases," and Chapter 6, "Declaratory Orders," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 514.

Purpose and Summary

The purpose of this proposed rulemaking is to implement the state government realignment provisions of 2023 Iowa Acts, Senate File 514. This rulemaking eliminates rules on agency procedure that are redundant, unnecessary, and outdated. A separate Notice of Intended Action is being proposed to establish a single set of agency procedure rules for the newly organized Department of Revenue. The Department's proposed new agency procedure rules will make applicable practices across subject matters as uniform as possible and reduce confusion with current existing rules.

A Regulatory Analysis, including the proposed text, was published on September 18, 2024. A public hearing was held on October 8, 2024. No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been proposed after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 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.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 9 to 10 a.m.	Room 430 Hoover State Office Building Virtual: meet.google.com/kwj-qvcn-gia
December 4, 2024 12:30 to 1:30 p.m.	Room 430 Hoover State Office Building Virtual: meet.google.com/bay-qwzt-ksq

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 **531—Chapter 3**.

ITEM 2. Rescind and reserve **531—Chapter 4**.

ITEM 3. Rescind and reserve **531—Chapter 5**.

ITEM 4. Rescind and reserve **531—Chapter 6**.

REVENUE DEPARTMENT

Order 2024-01, Certifying Iowa Corporate Income Tax Rates for 2025 under Iowa Code section 422.33(1)"b"

I. Certification of Iowa Corporate Income Tax Rates for Tax Years Beginning On or After January 1, 2025.

Iowa Code section 422.33(1)“b” provides for a possible reduction in corporate income tax rates if a certain threshold is met. If the Department of Management determines that net corporate income tax receipts exceeded $700 million for the immediately preceding fiscal year, the Department of Revenue will calculate what corporate income tax rates would have generated $700 million in net corporate income tax receipts in that fiscal year. Those rates will then apply to tax years beginning on or after the next January 1. This process will continue until the corporate income tax rate is 5.5% for all corporate taxable income. All rates as determined by the Department of Revenue must be rounded down to the nearest 1/10th of l percent.

On September 27, 2024, the Department of Management determined that the net corporate income tax receipts for fiscal year 2024 were $661,085,765.72. The statutory threshold for recalculating the corporate income tax rates has not been met. The Iowa corporate income tax rates for tax years beginning in 2025 will remain the same as for tax years beginning in 2024. The Iowa corporate income tax rates for tax years beginning on or after January 1, 2025, are as follows:

Bracket	**Tax Rate**
$0-$25,000	5.5%
$25,001-$100,000	5.5%
$100,001-$250,000	7.1%
> $250,000	7.1%

The Director hereby certifies that the rates described above are correctly computed as required by Iowa Code section 422.33(1)“b” and shall apply for tax years beginning on or after January 1, 2024, including tax years beginning in 2025.

REVENUE DEPARTMENT

Interest Rates

Starting January 1, 2025, the interest rate for taxpayers with overdue payments will be:

- 10.0% annually
- 0.8% monthly
- 0.027397% daily

Iowa Code Section 421.7 specifies the procedures for calculating the Department’s annual and monthly interest rates. The annual rate is based on the average monthly prime rate during the preceding 12-month period (October through September). Iowa law requires that this average be rounded to the nearest whole percent and two percentage points to be added to it. The prime rate averaged 8.48 percent over the past 12 months. Rounded to the nearest whole percent, this average is 8.0 percent. Adding two percentage points results in the annual Department rate of 10.0 percent. The monthly rate is the annual rate divided by 12, rounded to the nearest one-tenth of a percentage point. The daily rate for 2025 is the annual rate divided by 365. (The average monthly bank prime rate is published by the United States Federal Reserve at www.federalreserve.gov/datadownload/Choose.aspx?rel=H15.)

ARC 8355C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to rules on agency procedure and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 1, "Conversion Chart," and to adopt a new Chapter 1, "Renumbering Conversion Table"; to adopt a new Chapter 2, "Organization," Chapter 3, "Rulemaking and Rule Waiver Procedures," and Chapter 4, "Declaratory Orders"; to rescind Chapter 5 "Public Records and Fair Information Practices," and to adopt a new chapter with the same title; to rescind Chapter 6, "Organization," and to adopt a new Chapter 6, "Contested Cases Related to Alcohol and Lottery Proceedings"; to rescind Chapter 7, "Appeals, Taxpayer Representation, and Other Administrative Procedures," and to adopt a new Chapter 7, "Tax Appeals, Taxpayer Representation, and Other Administrative Procedures"; and to amend Chapter 201, "Sales and Use Tax Permits," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99G.9, 123.10 and 421.17.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

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

185—Chapters 1, 2, 3, 10, 18, and 19

531—Chapters 1, 3, 4, 5, and 6

701—Chapters 5, 6, and 7

The Department is proposing to rescind all existing agency procedure rules under the Lottery Authority, Alcoholic Beverages Division, and the Department and replace them with a new set of rules under agency number [701]. This consolidation will reduce the number of chapters and rules overall and make applicable practices across subject matters as uniform as possible. Additionally, appeal language is being proposed in subrules 201.10(3) and 201.11(3) that includes beneficial cross-references. Lastly, proposed subrule 7.18(10) has minimal changes due to ongoing litigation and will be more closely reviewed in a later rulemaking.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. Three changes were made after publication of the Regulatory Analysis, including: an updated website link listed in Chapter 1 and an updated Iowa Code reference found in proposed rule 701—6.30(99G,123,17A). Additionally, numbered paragraph 3.7(8)"b"(2)"11" is proposed to reflect updated requirements for a rule waiver petitioner or a petitioner's representative, including the required submission of a valid Department power of attorney form or representative certification form, as

applicable. This language is being proposed to align with similar requirements for other petitions. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 9 to 10 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 12:30 to 1:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 1 and adopt the following **new** chapter in lieu thereof:

TITLE I
ADMINISTRATION

CHAPTER 1
RENUMBERING CONVERSION TABLE

Since 2022, the Iowa department of revenue (department) has made significant changes to the organization of its chapters. Some of these changes were made to generally improve the organization of the rules; others were made to implement Executive Order 10 and 2023 Iowa Acts, Senate File 514. A table with a comprehensive list of all current and updated chapters is available at the department website: revenue.iowa.gov/resources/law-policy-information/administrative-rules-renumbering-conversion-table.

ITEM 2. Adopt the following **new** 701—Chapter 2:

CHAPTER 2
ORGANIZATION

701—2.1(17A) Establishment of the department. Iowa Code sections 7E.5(1)*"c"* and 421.2 establish a department of revenue to be administered by a director of revenue with primary responsibility for revenue collection and revenue law compliance, as well as administration of the Iowa lottery and alcoholic beverage control.

701—2.2(17A) Mission. The mission of the department is to serve Iowans through the responsible collection and generation of revenue to support the public good.

701—2.3(17A) Offices. The department headquarters is maintained at the seat of state government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50319. Office hours of the department are 8 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays, Sundays, and official state holidays designated in accordance with state laws.

2.3(1) *Regional office of alcohol operations.* The office of alcohol operations is located at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; telephone 515.281.7400 or 1.866.469.2223.

2.3(2) *Offices of lottery operations.* The main office of the Iowa lottery division is located at 13001 University Avenue, Clive, Iowa 50325-8225. The lottery division has regional offices in Cedar Rapids, Mason City, and Storm Lake, which offer some of the services available at the lottery division's main office, and a central warehouse in Ankeny. The Iowa lottery commission may be contacted through the lottery division's main office. Prize-redemption hours at lottery division offices are 8 a.m. to 4 p.m., Monday through Friday, with lottery offices closed on weekends and official state holidays.

701—2.4(17A) Department Internet websites.

2.4(1) *Main website of the department.* The department's main Internet home page is revenue.iowa.gov.

2.4(2) *Website of lottery division.* The lottery division's Internet home page is www.ialottery.com. Information regarding the lottery's main and regional offices can be obtained on the lottery website, on point-of-sale game-play publications, and by contacting the main office of the lottery.

701—2.5(17A) Organization of the department. The department consists of the director, the lottery division, and other such divisions as the director may from time to time establish, abolish, or consolidate.

2.5(1) *The office of the director.* The essential functions of the office of the director include but are not limited to:

a. Overall management of the agency.
b. Review of appeals.
c. Strategic planning and coordination of the future operations and goals of the department.
d. Provision of financial checks and balances within the department.
e. Facilitation of a working relationship between the public sector and the private sector.

2.5(2) *Divisions.* For ease of administration, the director has organized the department into divisions and, in some instances, has organized those divisions into bureaus, sections, subsections, and units. Except for the lottery division, the director may from time to time establish, abolish, or consolidate the department's administrative divisions as the director deems necessary in order to more efficiently and effectively carry out the department's responsibilities. Such divisions may include but are not limited to:

a. Alcohol and tax compliance.
b. Alcohol and tax operations.
c. Financial services.
d. Internal services.
e. Legal services and appeals.
f. Local government services.
g. Lottery.
h. Research and policy.

2.5(3) *Designee.* Unless otherwise delegated in statute, in rule, or otherwise in writing by the director, only the director, deputy director, or chief legal officer may enter into contracts or agreements on behalf of the department.

2.5(4) *Organization of the alcoholic beverages commission.* The alcoholic beverages commission consists of five commission members appointed by the governor and confirmed by the senate.

2.5(5) *Organization of the lottery commission.* The lottery commission consists of five members appointed by the governor and confirmed by the senate.

These rules are intended to implement Iowa Code sections 17A.3, 99G.5, 99G.8, 123.5, 123.6, 123.9, 123.10, 421.2, 421.9, 421.14, 421.17, 422.1 and 422.72.

ITEM 3. Adopt the following **new** 701—Chapter 3:

CHAPTER 3
RULEMAKING AND RULE WAIVER PROCEDURES

701—3.1(99G,123,421,17A) Applicability and scope of rules. These rules implement the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the laws of this state and other activities of the department. These rules govern the practice, procedure, and conduct of the rulemaking and requests for waiver of rules and certain other administrative procedures within the department's jurisdiction. 701—Chapters 6 and 7 contain rules on contested cases for all matters within the department's jurisdiction. 701—Chapter 4 contains rules on declaratory orders for all matters within the department's jurisdiction.

701—3.2(99G,123,421,17A) Definitions. Terms not defined below have the same meaning as defined in Iowa Code chapter 17A. These definitions apply to this chapter unless the text states otherwise:

"Department" means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"GovConnectIowa" means the e-services portal of the department.

701—3.3(99G,123,421,17A) Department procedure for rulemaking.

3.3(1) *Advice on possible rules before notice of proposed rule adoption.* In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rulemaking by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

The department may send notices of proposed rulemaking and a request for comments to any agency, organization, or association known to the department to have a direct interest or expertise pertaining to the substance of the proposed rule.

3.3(2) *Public rulemaking docket.* The department utilizes the public rulemaking docket available to all agencies on the Iowa legislature's website.

3.3(3) *Notice of proposed rulemaking.*

a. Contents. Except for rules filed through emergency rulemaking, at least 35 days before the adoption of a rule, the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

(1) A brief explanation of the purpose of the proposed rule.

(2) The specific legal authority for the proposed rule.

(3) Except to the extent impracticable, the text of the proposed rule.

(4) Where, when, and how persons may present their views on the proposed rules.

(5) Where, when, and how persons may demand an oral proceeding on the proposed rule if the Notice does not already provide for one.

Where the inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the Notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

b. Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements in subrule 3.3(1) applicable to the incorporation by reference of other materials in an adopted rule.

c. Registration for Notices of Intended Action. Any person may register on the department's website to receive announcements related to rules from the department. Persons registered to receive announcements from the department will be notified of the publication of the department's Notices of Intended Action and Adopted and Filed rules. Persons who desire to request a paper copy of any rule filing need to make a request to the department's administrative rules coordinator, in writing or by email. The request must specify the rules requested and specify the number of copies. The requester will reimburse the department for the actual costs incurred in providing copies.

3.3(4) *Public participation.*

a. Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit arguments, proposed alternatives, data, and views, in writing or via email, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the person designated on the Notice of Intended Action, or to the attention of the department's administrative rules coordinator, at the address provided in 701—paragraph 7.3(1)*"c"* or by email to the address provided in 701—paragraph 7.3(1)*"b."*

b. Oral proceedings. The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must contain the following information:

(1) A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

(2) A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

(3) A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing the request.

c. Conduct of oral proceedings.

(1) Applicability. This subrule applies only to those oral rulemaking proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* or this chapter.

(2) Scheduling and notice. An oral proceeding on a proposed rule may be held in person, virtually, or both, as decided by the department. The proceeding shall not be held earlier than 20 days after the related Notice of Intended Action is published in the Iowa Administrative Bulletin.

(3) Presiding officer. An employee of the department shall preside at the oral proceeding on a proposed rule.

(4) Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include arguments, proposed alternatives, data, and views concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

1. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of both themselves and other individuals.

2. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.

3. To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

4. The presiding officer has the authority to take any reasonable action necessary for the orderly conduct of the meeting.

5. Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the department.

6. The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

7. Participants in an oral proceeding do not need to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rulemaking proceeding, including any prior written submissions made by those participants in that proceeding. No participant is required to answer any question.

8. The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

d. Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

e. Accessibility. The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person listed on the Notice of Intended Action or the department's administrative rules coordinator in advance to arrange access or other needed services.

3.3(5) *Regulatory analysis.*

a. Submission. The department shall issue a regulatory analysis of a proposed rule prior to submitting a notice of intended action to the governor's administrative rules coordinator and the administrative code editor pursuant to Iowa Code section 17A.4(1).

b. Contents. An issued regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)*"a."*

c. Public participation. For at least 20 days after publication of the regulatory analysis, persons may submit arguments, proposed alternatives, data, and views, on the regulatory analysis. The regulatory analysis shall state the time when, the place where, and the manner in which interested persons may do provide written comment or oral presentation.

3.3(6) *Fiscal impact statement.* A rule that mandates additional combined expenditures exceeding $100,000 or combined expenditures of at least $500,000 within five years, by all affected political subdivisions, or by agencies and entities which contract with political subdivisions to provide services, must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

3.3(7) *Time and manner of rule adoption.*

a. Time of adoption. The department may only adopt a rule once the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings, the department shall adopt a rule pursuant to the rulemaking proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

b. Consideration of public comment. Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rulemaking proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rulemaking proceeding.

c. Reliance on department expertise. Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

3.3(8) *Variance between adopted rule and published notice of proposed rule adoption.*

a. Allowable variances. The department may only adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based if:

(1) The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that Notice; and

(2) The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and

(3) The Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.

b. Fair warning. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question, the department shall consider the following factors:

(1) The extent to which persons who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interests.

(2) The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.

(3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

c. Petition for rulemaking. The department shall commence a rulemaking proceeding within 60 days of its receipt of a petition for rulemaking seeking the amendment or rescission of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rulemaking proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the governor's administrative rules coordinator, and the administrative rules review committee within three days of its issuance.

d. Concurrent rulemaking proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rulemaking proceedings on the same subject with several different published Notices of Intended Action.

3.3(9) *Exemptions from public rulemaking procedures, emergency rulemaking.*

a. Omission of notice and comment. To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of

adopting a particular rule, and with the prior approval of the administrative rules review committee and governor's administrative rules coordinator, or if a statute so provides, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. Public proceedings on rules adopted without them. The department may, at any time, commence a standard rulemaking proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon paragraph 3.3(9)*"a."* After a standard rulemaking proceeding commenced pursuant to this subrule, the department may take any other lawful action, including the amendment or rescission of the rule in question, with whatever further proceedings are appropriate.

3.3(10) *Concise statement of reasons.*

a. General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered by mail to the address listed in paragraph 7.3(1)*"c"* or by email to the person listed on the adopted rule filing or to the department's administrative rules coordinator at the address provided in paragraph 7.3(1)*"b."* The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received in accordance with rule 701—7.4(17A).

b. Contents. The concise statement of reasons shall contain:

(1) The reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change;

(3) The principal reasons urged in the rulemaking proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

c. Time of issuance. After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

3.3(11) *Contents, style, and form of rule.*

a. Contents. Each rule adopted by the department shall contain the text of the rule and, in addition:

(1) The date the department adopted the rule;

(2) A brief explanation of the principal reasons for the rulemaking action if the reasons are required by Iowa Code section 17A.4(2) or the department in its discretion decides to include the reasons;

(3) A reference to all rules rescinded, amended, or suspended by the rule;

(4) A reference to the specific statutory or other authority authorizing adoption of the rule;

(5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

(6) A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons; and

(7) The effective date of the rule.

b. Incorporation by reference. The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, as applicable. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department. If the department adopts standards by reference to another publication, it shall post the publication containing the standards on the department's website.

c. References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department shall post the full text available for review on the department's website. At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

3.3(12) *Filing of rules.* The department shall file each rule it adopts in the office of the governor's administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have included with it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative code editor.

3.3(13) *Effectiveness of rules prior to publication, emergency rulemaking.*

a. Grounds. The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. Special notice. When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b,"* the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"* shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of paragraph 3.3(13)*"b."*

3.3(14) *Review of rules by department.* Over each five-year period of time, the department shall perform a retrospective analysis pursuant to Iowa Code section 17A.7(2) that includes a comprehensive evaluation and rigorous cost-benefit analysis of each existing chapter of rules to determine whether the benefits the rules are intended to achieve are being realized, whether those benefits justify the costs imposed by the rules, and whether there are less restrictive alternatives to accomplish those benefits. When the department's five-year review of its rules is completed, the department shall summarize the results and provide the written summary to the governor's administrative rules coordinator and the administrative rules review committee.

This rule is intended to implement Iowa Code chapter 17A and sections 123.10 and 421.14.

701—3.4(99G,123,421,17A) Docket. All review requests, public inquiries, petitions, and waivers coming within the purview of this chapter are assigned a docket number that is the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding.

701—3.5(99G,123,421,17A) Public inquiries on rulemaking and the rulemaking records. The department maintains records in accordance with the State Records Manual and agency retention schedule described in rule 671—2.2(305).

This rule is intended to implement Iowa Code section 17A.3.

701—3.6(99G,123,421,17A) Petition for rulemaking.

3.6(1) *Filing, form, and contents of petition.*

a. Filing. Any person or agency may file a petition for rulemaking using one of the methods described in subrule 7.3(1).

b. Department forms. A petition may be filed using the form available on GovConnectIowa. Alternatively, a petition may be filed using the form or the GovConnectIowa petition link found on the department's website, revenue.iowa.gov.

c. Manually created petitions.

(1) Persons who do not use the filing methods outlined in paragraph 3.6(1)*"b"* shall use the following format to submit a petition for rulemaking:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for the (adoption, amendment, or	*	RULEMAKING
rescission) of rules relating to (state	*	
subject matter).	*	

(2) The petition must provide the following information:

1. A statement of the specific rulemaking action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or rescind a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or rescinded.
2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.
3. A brief summary of the petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed rulemaking, including audits, notices of assessment, refund claims, appeals, contested case hearings, or investigative reports relating to the activity within the last five years.
6. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by or interested in the proposed action that is the subject of the petition.
7. Any request by the petitioner for a meeting.
8. Any other matters deemed relevant that are not covered by the above requirements.

d. File-stamped copy. The department will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose.

3.6(2) *Form signed and dated.* The petition must be signed and dated by the petitioner or the petitioner's representative. It must also include the name, mailing address, telephone number, and email address of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

3.6(3) *Denial by department.* The department may deny a petition because it does not substantially conform to the required form or because all the required information has not been provided.

3.6(4) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

3.6(5) *Status of petition.* Inquiries concerning the status of a petition for rulemaking may be made to the department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1)*"c"* or by email to the address provided in paragraph 7.3(1)*"b."*

3.6(6) *Informal meeting.* If requested in the petition by the petitioner, the department may schedule an informal meeting between the petitioner and the department, or a member of the staff of the department, to discuss the petition. The department may request that the petitioner submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

3.6(7) *Action required.* Within 60 days after the filing of the petition, or within an extended period as agreed to by the petitioner, the department must, in writing, either (a) deny the petition and notify the petitioner of the department's action and the specific grounds for the denial or (b) grant the petition and notify the petitioner that the department has instituted rulemaking proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial of the petition or the granting of the petition on the date that the department mails or delivers the required notification to the petitioner. All orders granting or denying a petition shall be submitted to the administrative rules review committee.

3.6(8) *New petition.* Denial of a petition because the petition does not substantially conform to the required form does not preclude the filing of a new petition on the same subject when the new petition contains the required information that was the basis for the original denial.

This rule is intended to implement Iowa Code chapter 17A.

701—3.7(99G,123,421,17A) Waiver of certain department rules. All discretionary rules or discretionary provisions in a rule over which the department has jurisdiction, in whole or in part, may be subject to waiver.

3.7(1) *Definitions.* The following terms apply to the interpretation and application of this rule:

"Discretionary rule" or *"discretionary provisions in a rule"* means rules or provisions in rules resulting from a delegation by the legislature to the department to create a binding rule to govern a given issue or area. The department is not interpreting any statutory provision of the law promulgated by the legislature in a discretionary rule. Instead, a discretionary rule is authorized by the legislature when the legislature has delegated the creation of binding rules to the department and the contents of such rules are at the discretion of the department. A rule that contains both discretionary and interpretive provisions is deemed to be a discretionary rule to the extent of the discretionary provisions in the rule.

"Interpretive rules" or *"interpretive provisions in a rule"* means rules or provisions in rules that define the meaning of a statute or other provision of law or precedent where the department does not possess the delegated authority to bind the courts to any extent with its definition.

"Waiver" means a department action that suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

3.7(2) *Scope of rule.*

a. This rule creates generally applicable standards and a generally applicable process for granting individual waivers from the discretionary rules or discretionary provisions in rules adopted by the department in situations where no other specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this rule with respect to any waiver from that rule.

b. The waiver provisions set forth in this rule do not apply to rules over which the department does not have jurisdiction or when issuance of the waiver would be inconsistent with any applicable statute, constitutional provision, or other provision of law.

3.7(3) *Applicability of this rule.*

a. This rule applies only to waiver of those rules that are within the exclusive rulemaking authority of the department. This rule shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver rule applies to discretionary rules and discretionary provisions in rules and not to interpretive rules.

b. The application of this rule is strictly limited to petitions for waiver filed outside of a contested case proceeding. Petitions for waiver from a discretionary rule or discretionary provisions in a rule filed after the commencement of a contested case as provided in rule 701—7.15(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

3.7(4) *Authority to grant a waiver.* The director may not issue a waiver under this rule unless:

a. The legislature has delegated authority sufficient to justify the action; and

b. The waiver is consistent with statutes and other provisions of law. No waiver from any mandatory requirement imposed by statute may be granted under this rule.

3.7(5) *Criteria for waiver.* In response to a petition, the director may, in the director's sole discretion, issue an order granting a waiver from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the director finds that the waiver is consistent with subrules 3.7(3) and 3.7(4) and if all of the following criteria are also met:

a. The waiver would not prejudice the substantial legal rights of any person;

b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;

c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver is requested.

3.7(6) *Director's discretion.* The final decision to grant or deny a waiver shall be vested in the director. This decision shall be made at the sole discretion of the director based upon consideration of relevant facts.

3.7(7) *Burden of persuasion.* The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant the petitioner a waiver based upon the criteria contained in subrule 3.7(5).

3.7(8) *Form and contents of petition.*

a. Department forms. A petition for waiver may be filed using the form available on GovConnectIowa. Alternatively, a petition for waiver may be filed using the form or the GovConnectIowa petition link found on the department's website, revenue.iowa.gov.

b. Manually created petitions.

(1) Persons who do not use the filing methods outlined in paragraph 3.7(8)*"a"* shall use the following format to submit a petition for waiver:

DEPARTMENT OF REVENUE

Name of Petitioner	*	PETITION FOR
Address of Petitioner	*	WAIVER
	*	Docket No. _____
	*	

(2) A manually created petition for waiver must contain all of the following, where applicable and known to the petitioner:

1. The name, address, email address, telephone number, and case number or state identification number of the entity or person for whom a waiver is being requested;

2. A description and citation of the specific rule or rule provisions from which a waiver is being requested;

3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend;

4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition and a statement of reasons that the petitioner believes will justify a waiver;

5. A complete history of any prior contacts between the petitioner and the department relating to the activity or license affected by the proposed waiver, including audits, notices of assessment, refund claims, appeals, a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years;

6. Any information known to the petitioner relating to the department's treatment of similar cases;

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

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver;

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

10. Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver; and

11. The signature of the petitioner or the petitioner's representative and date of signature. It must also include the name, mailing address, and telephone number of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed. Petitions submitted by a representative must have a valid IDR +power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department.

3.7(9) *Filing of petition.* A petition for waiver must be filed using one of the methods described in subrule 7.3(1).

3.7(10) *Additional information.* Prior to issuing an order granting or denying a waiver, the director may request additional information from the petitioner relating to the petition and surrounding circumstances. The director may, on the director's own motion, or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner or the petitioner's representative, or both, and the director to discuss the petition and surrounding circumstances.

3.7(11) *Notice of petition for waiver.* If notice to others is required by law, the petitioner shall provide, within 30 days of filing the petition for waiver, a notice consisting of a concise summary of the contents of the petition for waiver and stating that the petition is pending. Such notice shall be mailed by the petitioner to all persons entitled to such notice. Such persons to whom notice must be mailed include, but are not limited to, the director and all parties to the petition for waiver, or the parties' representatives. The petitioner must then file written notice to the department's legal services section by mail to the address listed in paragraph 7.3(1)*"c"* or by email to the address provided in paragraph 7.3(1)*"b,"* attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

3.7(12) *Ruling on a petition for waiver.* An order granting or denying a waiver must conform to the following:

a. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or rule provision to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the narrow and precise scope and operative time period of a waiver, if one is issued.

b. Conditions. The director may condition the grant of a waiver on any conditions that the director deems to be reasonable and appropriate in order to protect the public health, safety, and welfare.

3.7(13) *Time period for waiver; extension.* Unless otherwise provided, an order granting a petition for waiver will be effective for 12 months from the date the order granting the waiver is issued. Renewal of a granted waiver is not automatic. To renew the waiver beyond the 12-month period, the petitioner

must file a new petition requesting a waiver. The renewal petition will be governed by the provisions in this rule and must be filed prior to the expiration date of the previously issued waiver or extension of waiver. Even if the order granting the waiver was issued in a contested case proceeding, any request for an extension shall be filed with and acted upon by the director. However, renewal petitions must request an extension of a previously issued waiver. Granting the extension of the waiver is at the director's sole discretion and must be based upon whether the factors set out in subrules 3.7(4) and 3.7(5) remain valid.

3.7(14) *Time for ruling.* The director shall grant or deny a petition for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees in writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

3.7(15) *When deemed denied.* Failure of the director to grant or deny a waiver within the 120-day period or the extended time period shall be deemed a denial of that petition.

3.7(16) *Service of orders.* Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

3.7(17) *Recordkeeping.* The department is required to maintain a record of all petitions for waiver and rulings granting or denying petitions for waiver.

a. Petitions for waiver. The department shall maintain a record of all petitions for waiver available for public inspection. Such records will be indexed and filed and made available for public inspection.

b. Report of orders granting or denying a waiver. All orders granting or denying a waiver shall be submitted on the Internet site as prescribed in Iowa Code section 17A.9A.

3.7(18) *Cancellation of waiver.* A waiver issued pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the director issues an order finding any of the following:

a. The person who obtained the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient, and no other means exist to protect the substantial legal rights of any person; or

c. The person who obtained the waiver has failed to comply with all of the conditions in the waiver order.

3.7(19) *Violations.* A violation of a condition in a waiver order shall be treated as a violation of the particular rule or rule provision for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule or rule provision at issue.

3.7(20) *Defense.* After an order granting a waiver is issued, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked unless subrules 3.7(18) and 3.7(19) are applicable.

3.7(21) *Hearing and appeals.*

a. Appeals from a decision granting or denying a waiver in a contested case proceeding shall be in accordance with the rules governing hearings and appeals from decisions in contested cases. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (more information is contained in rule 701—7.26(17A)).

b. The provisions of Iowa Code sections 17A.10 through 17A.18A and rule 701—7.18(17A) regarding contested case proceedings shall apply to any petition for waiver of a rule or provisions in a rule filed within a contested case proceeding. A petition for waiver of a provision in a rule outside of a contested case proceeding will not be considered under the statutes or rule 701—7.18(17A). Instead, the director's decision on the petition for waiver is considered to be "other agency action."

This rule is intended to implement Iowa Code section 17A.9A.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 4. Adopt the following **new** 701—Chapter 4:

CHAPTER 4
DECLARATORY ORDERS

701—4.1(99G,123,421,17A) Applicability and scope of rules. These rules implement the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the tax laws of this state and other activities of the department. These rules govern declaratory orders involving all areas within the department's jurisdiction. The rules in this chapter apply to all declaratory orders pending or commenced on or after their effective date. 701—Chapters 6 and 7 contain rules on contested cases within the department's jurisdiction. 701—Chapter 3 contains rules on rulemaking and rule waivers for all matters within the department's jurisdiction.

This rule is intended to implement Iowa Code chapter 17A.

701—4.2(99G,123,421,17A) Definitions. These definitions and the definitions provided in Iowa Code chapter 17A apply to this chapter unless the text states otherwise:

"Declaratory order" means an order issued pursuant to Iowa Code section 17A.9 and these rules.

"Department" or *"IDR"* means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"Entity" means any person other than an individual or sole proprietorship.

"GovConnectIowa" means the e-services portal of the department.

"Intervene" means to file with the department a petition requesting that the petitioner be allowed to intervene in the proceedings for a declaratory order currently under the department's consideration.

"Issuance" means the date specified in the decision or order, the date of mailing of a decision, or order or date of delivery of the decision or order if service is by other means.

"Person" means the same as defined in Iowa Code section 17A.2. "Public or private organization of any character or any other person covered by the Iowa administrative procedure Act other than an agency" as used in that definition includes estates, trusts, or fiduciaries.

"Petition" means an application for declaratory order or request to intervene in a declaratory order under consideration.

This rule is intended to implement Iowa Code chapter 17A.

701—4.3(99G,123,421,17A) How to submit declaratory orders or related documents; service. A person shall submit declaratory orders and related documents in accordance with 701—7.3(17A).

This rule is intended to implement Iowa Code chapter 17A.

701—4.4(99G,123,421,17A) Time requirements for filings. Time filing procedures are set forth in rule 701—7.4(17A).

This rule is intended to implement Iowa Code chapter 17A.

701—4.5(99G,123,421,17A) Form and style of documents. Requirements for filings are set forth in rule 701—7.5(17A).

This rule is intended to implement Iowa Code chapters 17A and 554D and sections 421.17 and 421.27A.

701—4.6(99G,123,421,17A) Docket. Every matter coming within the purview of this chapter is assigned a docket number that is the official identification number of the matter. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding.

This rule is intended to implement Iowa Code chapter 17A.

701—4.7(99G,123,421,17A) Declaratory order—in general. Any oral or written advice or opinion rendered to members of the public by department personnel not pursuant to a petition for declaratory order is not binding upon the department.

4.7(1) *Filing a petition for declaratory order.*

a. When a petition is considered filed. A petition is deemed filed when it is received by the department as described in rule 701—7.4(17A). The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department with an extra copy for this purpose.

b. Department forms. A petition for declaratory order may be filed using the form available on GovConnectIowa. Alternatively, a petition for declaratory order may be filed using the form or the GovConnectIowa petition link found on the department's website, revenue.iowa.gov.

c. Manually created petitions.

(1) Persons who do not use the filing methods outlined in paragraph 4.7(1)*"b"* shall use the following format to submit a petition for declaratory order:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for a Declaratory Order on (Cite	*	DECLARATORY ORDER
provisions of law involved).	*	Docket No. _____
	*	

(2) The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested;
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, the applicability of which is questioned, and any other relevant law;
3. The questions the petitioner wants answered, stated clearly and concisely;
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers;
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome;
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity;
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition;
8. Any request by the petitioner for a meeting provided for by this rule;
9. Whether the petitioner is presently under audit or investigation by the department; and
10. The signature of the petitioner or the petitioner's representative and date of signature. It must also include the name, mailing address, and telephone number of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed. Petitions submitted by a representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—8.8(17A), on file with the department.

d. Standing. The petitioner must be potentially aggrieved or adversely affected by the department action or failure to act.

e. Associations. An association or a representative group is not considered to be an entity qualifying for filing a petition requesting a declaratory order on behalf of all of the association or group members. Each member of an association may not be similarly situated or represented by the factual scenario set forth in such a petition.

4.7(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The department may also give notice to any other persons.

4.7(3) *Intervention.*

a. Nondiscretionary intervention. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. Discretionary intervention. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

c. Filing and form of petition for intervention. A petition for intervention shall be filed in accordance with 701—paragraph 7.3(1)*"b," "c,"* or *"d."* Such a petition is deemed filed when it is received in accordance with rule 701—7.4(17A). The department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following format:

DEPARTMENT OF REVENUE

Petition by (Name of Original	*	PETITION FOR
Petitioner) for a Declaratory Order	*	INTERVENTION
on (Cite provisions of law cited in	*	Docket No. _____
original Petition).	*	

d. Contents. The petition for intervention must provide the following information:

(1) Facts supporting the intervenor's standing and qualifications for intervention;

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers;

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome;

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity;

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented;

(6) Whether the intervenor is presently under audit or investigation by the department;

(7) A statement that the intervenor understands that if the department allows the intervention, the intervenor will be bound by the declaratory order; and

(8) The signature of the intervenor or the intervenor's representative and date of signature. It must also include the name, mailing address, and telephone number of the intervenor and of the intervenor's representative and a statement indicating the person to whom communications should be directed. Petitions for intervention submitted by a representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—8.8(17A), on file with the department.

e. Standing. For a petition for intervention to be allowed, the petitioner must have consented to be bound by the declaratory order and the petitioner must have standing regarding the issues raised in the petition for declaratory order. Facts described in the petition for intervention must be those supporting intervention, not related to the substantive issues in the petition. The petition for intervention must not correct facts that are in the petition for declaratory order or raise any additional facts. To have standing, the intervenor must show that the intervenor is potentially aggrieved or adversely affected by the department action or failure to act on the interest at stake in the petition for declaratory order.

f. Factually distinct matters. If a party seeks to have an issue determined by intervening in a declaratory order proceeding, but the facts are different from those in a petition for declaratory order that is currently under consideration by the director, the interested party should not petition as an intervenor in the petition for declaratory order currently under the director's consideration. Instead, the party should file a separate petition for declaratory order, and the petition should include all of the relevant facts. The director may deny a petition for intervention without denying the underlying petition for declaratory order that is involved.

4.7(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

4.7(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the Legal Services and Appeals Division, Iowa Department of Revenue, P.O. Box 14457, Des Moines, Iowa 50306-3457; or by email to the address provided in 701—paragraph 7.3(1)*"b."*

4.7(6) *Service and filing of petitions and other papers.*

a. When service is required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed in the same manner described in rule 701—7.3(17A). All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided in rules 701—7.3(17A) and 701—7.4(17A).

4.7(7) *Department consideration.*

a. Informal meetings. Upon request by the petitioner in the petition, the department may schedule a brief and informal meeting between the original petitioner; all intervenors; and the department, a member of the department, or a member of the staff of the department to discuss the questions raised.

b. Requests for additional information. The department may solicit additional information from the petitioner and establish a time frame for response. The department may also solicit comments or information from any other person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.

4.7(8) *Withdrawal of the petition.* The petitioner may voluntarily withdraw its petition by notifying the department in writing at any time before the order is issued. The petitioner may not withdraw the petition after the order is issued.

4.7(9) *Action on petition.*

a. Within 30 days after receipt of a petition for a declaratory order, the director shall take action on the petition. That action may include issuing an order, issuing a refusal, scheduling the issuance of a decision for a later date, or any other action described in Iowa Code section 17A.9(5).

b. The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means.

4.7(10) *Refusal to issue order.*

a. Reasons for refusal to issue order. The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for any of the following reasons:

(1) The petition does not substantially comply with the required form;

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;

(3) The department does not have jurisdiction over the questions presented in the petition;

(4) Questions or issues presented by the petition are also presented in a current audit or investigation, rulemaking, contested case, litigation, or other department or judicial proceeding that may definitively resolve them;

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

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

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances;

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made;

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

(10) The petitioner requests the department to determine whether a statute is unconstitutional on its face.

b. Action on refusal. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

c. Filing of new petition. Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

4.7(11) *Contents of declaratory order, refusal; effective date.*

a. In addition to the ruling itself, a declaratory order or refusal must contain the date of its issuance, the name of the petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

b. A declaratory order is effective on the date of issuance.

4.7(12) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be delivered promptly to the original petitioner and all intervenors or otherwise served in accordance with rule 701—7.3(17A).

4.7(13) *Effect of a declaratory order.* A declaratory order is binding on the department, the petitioner, and any intervenors. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition. A declaratory order, once issued, will not be rescinded by the department and cannot be withdrawn by the petitioner.

This rule is intended to implement Iowa Code section 17A.9.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 5. Rescind 701—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

701—5.1(17A,22,99G,123,421-454) Definitions. As used in this chapter:

"Confidential record" means a record that is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include but are not limited to records or information contained in records that the department is prohibited by law from making available for examination by members of the public; records or information contained in records that are specified as confidential by Iowa Code section 22.7, 99G.34, or 123.38A, or other provision of law but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record; and confidential state tax information and federal tax information. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Confidential state tax information" means information that is protected from disclosure by Iowa Code sections 422.20, 422.72, 437A.14, 437B.10, 453B.10, 450.68, and 452A.63. Confidential state tax information includes but is not limited to state tax returns and return information. Confidential state tax information does not include federal tax information (FTI). If confidential state tax information is contained in a record, that record may also be considered a confidential record protected by Iowa Code chapter 22.

"Custodian" means the department, the director of revenue, the department's public information officer, or a person lawfully delegated authority by the department to act for the department in implementing Iowa Code chapter 22.

"Department" means the Iowa department of revenue.

"Federal tax information" or *"FTI"* means return or return information received directly from the IRS or obtained through an authorized secondary source acting on behalf of the IRS pursuant to an IRC §6103(p)(2)(B) agreement. Copies of tax returns or return information provided to the department directly by a taxpayer or the taxpayer's representative, including but not limited to tax returns or return information provided to the department through electronic filing as defined in 701—subrule 8.5(1), or obtained from public information files (e.g., federal tax liens on file with the county clerk, Offers in Compromise available for public inspection, and court records) are not considered FTI.

"GovConnectIowa" means the e-services portal of the department.

"IRC" means the Internal Revenue Code.

"IRS" means the Internal Revenue Service.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record that identifies the individual and that is contained in a record system. The term "personally identifiable information" includes "personal information" as defined in Iowa Code section 715C.1.

"Record" means the whole or a part of a "public record" as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department. Records include confidential records.

"Record system" means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual. A record system is a "system," as defined below.

"Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose that is compatible with the purpose for which the record was collected. "Routine use" includes disclosures required by statute other than the public records laws codified at Iowa Code chapter 22.

"System" means any of the following:

1. Computer hardware or software;
2. Computerized processes and procedures;
3. Noncomputerized processes and procedures.

"Tax administration" means the administration, management, conduct, direction, and supervision of the execution and application of the state tax laws; means the development and formulation of state tax policy; and includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.2(17A,22,99G,123,421-454) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and to facilitate sound department determinations with respect to the handling of confidential records and the implementation of Iowa Code section 22.11.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.3(17A,22,99G,123,421-454) Requests for public records.

5.3(1) *Availability of records.* Department records are open for public inspection and copying unless they are confidential or otherwise not subject to public inspection by rule or law. The department is not obligated to create a record if a requested record does not exist.

5.3(2) *Methods for submitting a records request.* Record requests shall be submitted using one of the following methods:

a. Mail. Requests by mail should be addressed to: Public Information Officer, Iowa Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306.

b. Electronic submission. Instructions for submitting requests electronically can be found on the department's website: revenue.iowa.gov.

c. Hand delivery. Requests should be hand-delivered to the department of revenue office on the first floor of the Hoover State Office Building, 1305 East Walnut St., Des Moines, Iowa.

d. Telephone. Instructions for submitting requests by telephone can be found on the department's websites: revenue.iowa.gov or ialottery.com.

5.3(3) *Content of a records request.*

a. Requests shall identify the particular records sought by name or description and include the name, address, email, and telephone number of the person requesting the records.

b. No reason need be given for requesting an open record. Department staff may request additional information from the requester for the purposes of clarification or identification of responsive records.

5.3(4) *Response to requests.* Records will be provided as soon as feasible. The custodian will promptly give notice to the requester of the reason for any delay in providing an open record and an estimate of the length of that delay and, upon request, will promptly provide that notice to the requester in writing. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 701—5.4(17A,22,99G,123,421-454) and other applicable provisions of law.

5.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records will be supervised by the custodian or a designee of the custodian. Records will be protected from damage and disorganization.

5.3(6) *Fees.*

a. When charged. The department may charge fees in connection with the search, retrieval, examination, and copying of requested records.

b. Copying and postage fees. Price schedules for published materials and for photocopies of records supplied by the department will be posted on the department's website. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Search, retrieval, and examination fee. An hourly fee may be charged for actual department expenses associated with the search, retrieval, and examination of requested records. The fee is based upon the pay scale of the employee involved and other actual costs incurred. The department provides the first two hours of search, retrieval, and examination of responsive records free of charge.

d. Estimated fee. Within a reasonable time after a request is made, the department will provide to the requester an estimated fee of the actual costs expected to be incurred by the department in fulfilling the request.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

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

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.4(17A,22,99G,123,421-454) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons.

5.4(1) *Procedure.* In requesting the custodian to permit the examination and copying of such confidential records, the following procedures apply and are in addition to those specified for requests for access to records in rule 701—5.3(17A,22,99G,123,421-454).

a. Form of request. A person requesting access to confidential records shall submit the request in writing. The department may require the requester to provide additional documentation, including but not limited to proof of identity and authority to secure access to the record. The department may also

require the requester to sign a certified statement or affidavit listing the specific reasons justifying access to the record and provide any proof necessary to establish relevant facts.

b. Response to request. The department will notify the requester of approval or denial of the request for access. The notice will include:

(1) The name and title or position of the person responding on behalf of the department; and

(2) If the request for access is denied, a brief statement of the grounds for denial including a citation to the applicable statute or other provision of law.

c. Request granted. When the department grants a request for access to a confidential record to a particular person, the department will notify that person and indicate any lawful restrictions imposed by the department on that person's inspection and copying of the record.

d. Reconsideration of denial. A requester whose request is denied by the department may apply to the director for reconsideration of the request.

5.4(2) *Notice to subject of record and opportunity to obtain an injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, or whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8 and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

5.4(3) *Requesting a copy of a return.* A taxpayer requesting a copy of the taxpayer's own tax return must do so via GovConnectIowa. There will be a $5 charge for each return requested. Payment will be received prior to release of the return.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.5(17A,22,99G,123,421-454) Requests for treatment of a record as a confidential record and its withholding from examination. The department may treat a record as confidential and withhold it from examination only as authorized by Iowa Code sections 22.7, 99G.34, 123.38A, 422.20, and 422.72; other applicable provisions of law; or an order.

5.5(1) *Requests related to records submitted as part of an appeal or contested case.* Any person who seeks to request confidential treatment for any document submitted as part of an appeal or contested case filed under 701—Chapters 6 and 7 must file a motion for redaction as described in rule 701—7.8(17A).

5.5(2) *Requests for confidential treatment of any other record.* Any person who seeks to request confidential treatment of any record that has not been submitted as part of an appeal or contested case filed under 701—Chapters 6 and 7 must follow the following procedure:

a. Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

b. Request. A request that a record be treated as a confidential record and be withheld from public inspection shall:

(1) Be in writing;

(2) Be filed with the department using the one of the methods in subrule 5.3(2), excluding submission by telephone;

(3) Set forth the legal and factual basis justifying such confidential record treatment for that record;

(4) Include the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request;

(5) Include a signed certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts;

(6) Specify the precise period of time for which that treatment is requested;

(7) If possible, include a copy of the record for which confidential record treatment is being sought with the request.

c. Failure to request. Failure to request confidential treatment for a record does not preclude the custodian from treating it as a confidential record unless otherwise provided by law. However, absent a request as outlined in this rule, the custodian of records may proceed as if there is no objection to the record's disclosure.

d. Timing of decision. The custodian may decide whether to disclose a record or a portion of a record to members of the public when a request for confidential record treatment is filed or when the custodian receives a request for access to the record by a member of the public.

e. Request granted or deferred. If a request for confidential record treatment is granted, or if action on a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record.

f. Request denied and opportunity to seek an injunction. If a request for confidential record treatment is denied, the custodian will notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8 or other applicable provision of law. However, such a record will not be withheld from public inspection for any period of time if the custodian determines that the requester has no reasonable grounds to justify the treatment of that record as a confidential record. The custodian will notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.6(17A,22,99G,123,421-454) Consensual disclosure of confidential records.

5.6(1) *Consent to disclosure by a subject.* To the extent permitted by law, the subject may consent in writing to department disclosure of confidential records as provided in rules 701—5.7(17A,22,421,422) and 701—7.6(17A,22,421,422).

5.6(2) *Complaints to public officials not an authorization—separate authorization required.* A letter from the subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the department is not, to the extent permitted by law, treated as an authorization to release sufficient information about the subject to the official to resolve the matter. The subject of a confidential record filing a complaint needs to submit a disclosure authorization as provided in rules 701—5.7(17A,22,421,422) and 701—8.8(17A,22,421,422).

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.7(17A,22,99G,123,421-454) Tax information disclosure designation.

5.7(1) *Powers authorized.* A taxpayer may designate an individual to receive, inspect, and discuss the taxpayer's confidential state tax information from the department. Such designation does not authorize the designee to act or authorize any action on the taxpayer's behalf in any way other than to receive information and communicate with the department. Information about transfers of decision-making authority is contained in Iowa Code section 421.59 and rule 701—8.8(17A,22,421,422).

5.7(2) *Contents of the tax information disclosure designation form.* A taxpayer must use the department's tax information disclosure designation form, or other designated method authorized by the department, to designate an individual to receive, inspect, and discuss confidential state tax information. A tax information disclosure designation form must contain the following information to be valid:

a. Legal name and address of the taxpayer;

b. Identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or any federal- or Iowa-issued tax identification number);

c. The designee's name, mailing address, and identification number (i.e., preparer's tax identification number (PTIN), FEIN, SSN, individual taxpayer identification number (ITIN), or Iowa department of revenue-issued account number (IAN)). In lieu of a designee's identification number, a taxpayer may indicate that an IAN is being requested for the designee;

d. Description of the matter(s) for which disclosure is authorized, which may include:

(1) The type of tax(es) involved or an indication that all tax types are within the scope of disclosure;

(2) The specific year(s) or period(s) involved or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date); and

(3) Business tax permit number or an indication that all tax types are within the scope of authority;

e. A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 5.7(1);

f. An authorized signature of an individual listed in subrule 5.7(4) meeting the requirements of rule 701—8.2(17A,421);

g. Any other information required by the department.

5.7(3) *Authorization period for a tax information disclosure designation.*

a. A tax information disclosure designation may not be used to authorize disclosure for tax periods that end more than three years after the date on which the tax information disclosure designation is signed by the taxpayer. A tax information disclosure designation may concern an unlimited number of tax periods that have ended prior to the date on which the tax information disclosure designation is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax periods section is left blank, all tax periods, including those ending up to three years in the future, are included.

b. A tax information disclosure designation continues to be effective for tax periods as defined in paragraph 5.7(3)*"a"* until revocation by the taxpayer; incapacity of the taxpayer; death of the taxpayer; or withdrawal, death, or incapacity of the tax information disclosure designee.

5.7(4) *Individuals who may execute a tax information disclosure designation.* The individual(s) who may execute a tax information disclosure designation depends on the type of taxpayer involved:

a. Individual. In matters involving an individual taxpayer, a tax information disclosure designation must be signed by the individual.

b. Joint or combined returns. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return, each taxpayer must complete and submit a tax information disclosure designation form for the joint return.

c. Third parties. The tax information disclosure designation form may be signed by an individual who has been authorized to act on behalf of the taxpayer under Iowa Code section 421.59.

5.7(5) *Revocation and withdrawal.*

a. Revocation by the taxpayer.

(1) By written statement. By filing a statement of revocation with the department, a taxpayer may revoke a tax information disclosure designation without authorizing a new representative. The statement of revocation must include the following:

1. Name, address, and identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number);

2. Name, address, and identification number (i.e., PTIN, FEIN, SSN, ITIN, or IAN) of the designee whose designation is to be revoked;

3. A clear statement to revoke the designee's disclosure designation; and

4. Signature of an authorized signatory as described in subrule 5.7(4).

(2) Does not automatically revoke. A new tax information disclosure designation for a particular tax type(s) and tax period(s) does not revoke a prior tax information disclosure designation for any tax type(s) and tax period(s) unless the taxpayer has indicated in a written submission to the department that a prior tax information disclosure designation is to be revoked.

b. Withdrawal by the designee. By filing a statement with the department, a designee may withdraw from the designation in a matter in which a tax information disclosure designation has been filed. The statement must include the following:

(1) Name, address, and identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number);

(2) Name, address, and tax identification number (i.e., PTIN, FEIN, SSN, ITIN, or IAN) of the designee whose designation is to be withdrawn;

(3) A clear statement that the designee wishes to withdraw;

(4) Signature of withdrawing designee and signature date.

5.7(6) *Submitting a form.*

a. Submit separately. A tax information disclosure designation form may not be submitted as an attachment to a tax return except as provided by these rules. A tax information disclosure designation must be submitted separately to the department in accordance with the submission instructions on the form. However, the department may, at its discretion, provide a method for authorizing disclosure on the face of a tax return as defined in Iowa Code section 421.6.

b. Original or electronic forms accepted. The department will accept either the original, a copy, or an electronically scanned and transmitted form. A copy received by facsimile transmission (fax) or email will be accepted. All forms, whether original copy, received via fax, or electronically scanned and transmitted forms must include a valid signature meeting the requirements of rule 701—8.2(17A,421) of the taxpayer to be represented.

c. Timely submission. If the form is not submitted within six months of the date it is signed, it will be considered invalid.

d. Evaluation of documentation provided. The department will evaluate the tax information disclosure designation form and any additional documentation to confirm authorization. Authorization to receive, inspect, and discuss confidential state tax information from the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authorization to receive, inspect, and discuss confidential state tax information from the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authorization.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.8(17A,22,99G,123,421-454) Disclosures without the consent of the subject. Open records and certain confidential records may be disclosed by the department without the consent of the subject.

5.8(1) *Disclosure of nonconfidential records.* All nonconfidential records may be disclosed without the consent of the subject.

5.8(2) *Disclosure of confidential records that do not contain confidential state tax information.* Certain confidential records that do not contain confidential state tax information may be disclosed without the consent of the subject. The following disclosures will generally occur without notice to the subject:

a. For routine use. The following nonexclusive list of uses are considered routine:

(1) Disclosure to those officers, employees, and agents of the department who have a legitimate need for the record in the performance of their duties. The custodian of the record may, upon the request of any officer or employee, or upon the custodian's own initiative, determine what constitutes a legitimate need;

(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory action;

(3) Information released to federal and state entities for audit purposes for purposes of determining whether the department is operating lawfully;

(4) Any disclosure specifically authorized by statute.

b. To a recipient who has provided the department with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request pursuant to rule 701—5.4(17A,22,99G,123,421-454) to the department specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual. Confidential information will be disclosed pursuant to this paragraph only after notice is sent by the department to the last-known address of the subject of the confidential information.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a lawful court order or subpoena.

5.8(3) *Disclosure of confidential state tax information.*

a. Permitted disclosures. Confidential state tax information may be disclosed without the consent of the subject only to the extent that it is expressly permitted by law. The following is a nonexclusive list of permitted disclosures:

(1) Disclosures to other agencies, employees, or officials of this state to the extent necessary for the performance of their official duties and responsibilities pursuant to Iowa Code section 422.72(1)*"b."* Such information will only be disclosed upon the express written approval of the director of revenue or the director's designee. Written approval will be granted in only those situations where the information obtained is used for a tax administrative purpose and will cover the conditions and procedures under which specific information will be released.

(2) Disclosures permitted by statute for purposes other than tax administration. Such disclosures may be made without a tax administrative purpose unless the authorizing statute provides otherwise.

(3) Disclosures to the federal government and agencies of other states so long as the disclosures are made for a tax administrative purpose and are made only to officers of those jurisdictions which by agreement limit the disclosure of the information as strictly as the laws of Iowa protecting the confidentiality of returns and return information.

(4) Disclosure pursuant to subpoena as outlined in Iowa Code section 422.72(7).

(5) Disclosure pursuant to Iowa Code section 421.19 regardless of whether such disclosure is made for a tax administration purpose.

b. Penalties for unlawful disclosure of confidential state tax information. Any officer, employee, agent, former officer, former employee, or former agent of the state of Iowa who engages in any of the following activities commits a serious misdemeanor:

(1) Knowingly files a false affidavit with the department to secure confidential state tax information;

(2) Willfully or recklessly divulges, prints, publishes, inspects or permits unauthorized examination of confidential state tax information in violation of Iowa Code sections 422.20 and 422.72 or divulges information received under this rule in any manner prohibited by this rule.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.9(17A,22,99G,123,421-454) Release to subject or owner of record.

5.9(1) The subject of a record may request to review the subject's own records by following the procedures in rules 701—5.3(17A,22,99G,123,421-454) and 701—5.4(17A,22,99G,123,421-454). However, the department need not release the following records to the subject:

a. Communications to the department that are protected from disclosure under Iowa Code section 22.7(18). Such protected communications include responses to questionnaires solicited by the department that relate to tax administration.

b. Records that are a work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports, except when disclosure is required by law.

d. Any other records that may be withheld by law.

5.9(2) Where a requested record contains information on multiple subjects, the department may take reasonable steps to protect confidential information relating to the subject or subjects that did not make the request when releasing the record to the requesting subject.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.10(17A,22,99G,123,421-454) Personally identifiable information collected and stored by the department. The department collects and maintains both open records and confidential records that contain personally identifiable information. This rule describes the nature, extent, retrieval, storage, and processing of personally identifiable information within the department's record systems.

5.10(1) *Nature and extent.* All record systems maintained by the department may contain personally identifiable information concerning matters such as income, property holdings, exchanges, financial transactions, licensing, contested case matters, waivers of rule and declaratory rulings, procurement and leases, bailment shipments, lottery prize claims, lottery sales commission payments, audit and examination, litigation, personnel, and demographic information such as address and number of dependents.

5.10(2) *Retrieval.* Personal identifiers are used to retrieve information from any of the record systems that the department maintains that contain personally identifiable information.

5.10(3) *Means of storage.* Paper, microform, and various electronic means of storage are used to store records containing personally identifiable information.

5.10(4) *Comparison.* Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

5.10(5) *Comparison with data from outside the department.* Personally identifiable information in systems of records maintained by the department may be compared with information from outside the department when specified by law. Permitted comparisons include but are not limited to comparisons for the purpose of setoffs.

5.10(6) *Records containing personally identifiable information.*

a. Personally identifiable information is collected from documents, returns, and any other record filed with the department, as well as from outside sources, including state and federal agencies. Authority to collect this information is found throughout Iowa Code chapters 8A, 17A, 99G, and 123, as well as Title X of the Iowa Code. The chart below describes department records that contain personally identifiable information and identifies which records are open records, confidential records, partially open or partially confidential. A single record may contain information from several categories in the chart. This information is compiled for the purposes of Iowa Code section 22.11.

Code……Meaning

O…….The records are open for public inspection.

C…….The records are confidential and are not open to public inspection.

O/C…….The record is partly open and partly confidential.

Description of Record	Type of Record	Legal Authority for Confidentiality
State tax returns, return information, permit records, tax liability and penalty records, tax policy, tax research records, and all related records	O/C	Iowa Code Title X, including Iowa Code sections 422.20 and 422.72
Nontax collection records	O/C	Iowa Code Title X, including Iowa Code sections 422.20 and 422.72, and contractual authority
Federal tax returns and return information	C	26 U.S.C. Section 6103
Department personnel records, communication records, budget records, and payroll records	O/C	Iowa Code sections 22.7 and 99G.34(2)
Minutes of closed meetings of a government body	C	Iowa Code section 21.5(4)
Records that constitute attorney work product or attorney-client communications or are otherwise privileged	C	Iowa Code section 22.7(4), Iowa Rule of Civil Procedure 1.503, Federal Rule of Civil Procedure 26(b)(3), and case law

Sealed bids	O/C	Iowa Code section 72.3
Final orders, decisions, and opinions	O/C	Iowa Code section 17A.3(1)*"d"*
License and permit records	O/C	Iowa Code section 99G.24, chapter 123, and Title X
Investigation, audit, and examination records	O/C	Iowa Code sections 99G.34(4), 99G.35, 123.38A, 422.20, and 422.72
Lottery player and winner lists	O/C	Iowa Code sections 99G.34(2), 99G.34(5), and 99G.41(3)
Lottery retailer compensation payments	O/C	Iowa Code sections 99G.24(2), 99G.34(2), and 99G.41(5)

b. The procedure for public records request may be found in rule 701—5.3(17A,22,99G,123,421-454).

c. The procedure for allowing a person to have additions, dissents, or objections entered in the record will be determined on a case-by-case basis.

d. The subject of the confidential record may either request the record independently and give it to the named third party or authorize the third party to request the subject's confidential information under Iowa Code section 421.59, 422.20(7), or 422.72(9).

e. The department will utilize information, including confidential information, in executing its duties under the Iowa Code. Subjects of the information will not be notified when the information is used. Persons outside of the department receiving confidential information are held to the same confidentiality standard as departmental employees. Whether information is required or optional will be indicated along with the request for information. Failing to provide required information may result in penalties or interest being charged.

f. The department utilizes more than one data processing system, and information is matched between systems.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.11(17A,22,99G,123,421-454) Retention of submitted documents. When the subject or owner of a record has submitted a document to the department, the department will store the document in the same manner that it stores other records of a similar nature. Documents submitted to the department may be destroyed by the department at the conclusion of the applicable time period detailed in the department's record retention schedules unless destruction is otherwise prohibited by law. The department discourages submitting original documents in situations where an original is not required. If an original document must be submitted, the person submitting the document shall indicate conspicuously that the document is an original and shall also indicate whether that person requests that the original be returned at the conclusion of its use by the department.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

701—5.12(17A,22,99G,123,421-454) Limited applicability. This chapter does not:

1. Mandate that the department index or retrieve records that contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records that would otherwise not be available under Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in possession of the department that are governed by regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs unless otherwise provided by law or agreement.
5. Make available records compiled by the department in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings are be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the department.

This rule is intended to implement Iowa Code chapters 17A, 22, 99G, 123, and 421 through 454.

ITEM 6. Rescind 701—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
CONTESTED CASES RELATED TO ALCOHOL AND LOTTERY PROCEEDINGS

701—6.1(99G,123,17A) Scope and applicability. This chapter applies to contested case proceedings conducted pursuant to the department's authority under Iowa Code chapter 99G or 123.

701—6.2(99G,123,17A) Definitions. Except where otherwise specifically defined by law:

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

"Department" means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"Hearing complaint" means a statement in writing filed by, or on behalf of, the department; a local authority having jurisdiction; or the department of public safety that sets forth the acts or omissions with which the respondent is charged, including the statute(s) and rule(s) that are alleged to have been violated under Iowa Code chapter 123. The hearing complaint shall be in sufficient detail to enable the preparation of the respondent's defense.

"Issuance" means the date of mailing or otherwise electronically providing a copy of a decision or order, or the date of delivery if service is by other means, unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Pleadings" means appeal, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

"Presiding officer" means the director, the director's designee, or an administrative law judge from the department of inspections, appeals, and licensing.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the director did not preside.

701—6.3(99G,123,17A) Time requirements. Time requirements for the department are provided in rule 701—7.4(17A).

701—6.4(99G,123,17A) Requests for a contested case proceeding.

6.4(1) Any person claiming an entitlement to a contested case proceeding shall file a written request within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

6.4(2) The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action that is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

701—6.5(99G,123,17A) Notice of hearing.

6.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. Publication, as provided in the Iowa Rules of Civil Procedure.

d. In accordance with rules provide by the department of inspections, appeals, and licensing, as provided for by Iowa Code section 10A.802(4).

6.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the department or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding.

701—6.6(99G,123,17A) Presiding officer.

6.6(1) *Administrative law judge.* The director may appoint an administrative law judge as presiding officer in all contested case hearings pursuant to Iowa Code chapter 99G or 123.

6.6(2) *Appeal.* Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the director. A party must seek any available intra-agency appeal to exhaust adequate administrative remedies.

6.6(3) *Director's review.* Unless otherwise provided by law, the director, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of, and shall comply with the provisions of, this chapter that apply to presiding officers.

701—6.7(99G,123,17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the department in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

701—6.8(99G,123,17A) Telephone or video proceedings. The presiding officer may resolve preliminary procedural motions by telephone or videoconference in which all parties have an opportunity to participate. Other telephone or video proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or video hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

701—6.9(99G,123,17A) Consolidation—severance. Consolidation and severance procedures for the department are provided in 701—subrule 7.18(12).

701—6.10(99G,123,17A) Pleadings.

6.10(1) *Pleadings.* Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.10(2) *Alcohol-related hearing complaint.*

a. The department, a local authority having jurisdiction, or the department of public safety may give written notice of the cause for action in the form of a hearing complaint and an opportunity for a hearing to a licensee, permittee, or holder of a certificate of compliance for any of the following:

(1) A violation of Iowa Code chapter 123.

(2) A violation of the department's administrative rules.

(3) Failure to comply with an order issued by the department.

(4) Failure to fully cooperate during an investigation, audit, or inspection of the licensee; permittee; or certificate holder, including failure to respond to an inquiry within ten business days of the date of mailing by certified mail, return receipt requested, of a written request for information or records directed to the licensee's, permittee's, or certificate holder's last address on file with the agency.

b. A hearing complaint shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the hearing complaint is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address, and telephone number of the petitioner and the petitioner's attorney, if any.

c. A hearing complaint alleging a violation of Iowa Code chapter 123 must be filed with the department or the local authority within three years from the date of the alleged violation or the date of conviction for the violation, whichever is later.

6.10(3) *Answer.*

a. An answer shall be filed within 20 days of service of the hearing complaint unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

b. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

c. An answer shall state the name, address, and telephone number of the person filing the answer; the person or entity on whose behalf it is filed; and the attorney representing that person, if any.

d. Any allegation in the hearing complaint not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

6.10(4) *Amendment.* Any notice of hearing, hearing complaint, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

701—6.11(99G,123,17A) Service and filing of pleadings and other papers.

6.11(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.11(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address or by electronic service as permitted by the presiding officer and the Iowa Rules of Civil Procedure. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order, so long as there is proof of mailing.

6.11(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the presiding officer.

6.11(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the presiding officer, delivered to an established courier service for immediate delivery to the presiding officer, or mailed by first-class mail or state interoffice mail to the presiding officer, so long as there is proof of mailing. Parties may file documents by electronic transmission. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the presiding officer.

6.11(5) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (department or presiding officer and address), and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

701—6.12(99G,123,17A) Discovery.

6.12(1) *Discovery procedures.* Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

6.12(2) *Discovery motions.* Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Discovery motions shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in this chapter. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

6.12(3) *Evidence.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

701—6.13(99G,123,17A) Subpoenas.

6.13(1) *Issuance.*

a. Department subpoenas. A department subpoena shall be issued to a party on request. Subpoenas may compel the attendance of witnesses at deposition or hearing and the production of books, papers, records, and other real evidence unless they are otherwise expressly exempt from disclosure by law. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the presiding officer upon a written request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Service of subpoenas. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

6.13(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

701—6.14(99G,123,17A) Motions.

6.14(1) *Prehearing motions.* No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.14(2) *Written responses.* Any party may file a written response to a motion within ten days after the motion is served unless the time period is extended or shortened by applicable administrative rules or by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.14(3) *Oral argument.* The presiding officer may schedule oral argument on any motion.

6.14(4) *Service.* Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by an applicable rule of the department or an order of the presiding officer.

6.14(5) *Motions for summary judgment.*

a. Motions for summary judgment are subject to Iowa Rules of Civil Procedure 1.981, 1.982, and 1.983 but only to the extent consistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

b. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date or other time period determined by the presiding officer. Any party resisting the motion may file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission will be at least 20 days after the filing of the motion unless the presiding officer orders a shorter time.

c. A summary judgment order rendered on all issues in a contested case is subject to rehearing and appeal in accordance with this chapter.

701—6.15(99G,123,17A) Prehearing conference. Prehearing conference requirements are set forth in 701—7.17(17A).

701—6.16(99G,123,17A) Continuances. Unless otherwise provided, applications for continuances are made to the presiding officer.

6.16(1) *Application for continuance.* A written application for a continuance should:

a. Be made at the earliest possible time and no less than three days before the hearing, except for a good cause showing;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless the presiding officer waives that requirement. No application for continuance may be made or granted without notice to all parties except in an emergency where notice is not feasible. The department may waive notice of such requests for a particular case or an entire class of cases.

6.16(2) *Issuing of continuance.* In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance. Notwithstanding the foregoing, each party is entitled to one continuance without the need of a good cause showing unless a continuance would cause the contested case proceeding to exceed a time limit set forth in another applicable statute or rule.

701—6.17(99G,123,17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing.

701—6.18(99G,123,17A) Intervention.

6.18(1) *Motion.* A motion for leave to intervene in a contested case proceeding states the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.18(2) *When filed.* Motion for leave to intervene should be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor is bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the proceeding will ordinarily be denied.

6.18(3) *Grounds for intervention.* The movant should demonstrate that:

a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

b. The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and

c. The interests of the movant are not adequately represented by existing parties.

6.18(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

701—6.19(99G,123,17A) Hearing procedures.

6.19(1) *Role of presiding officer.* The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

6.19(2) *Objections.* All objections shall be timely made and stated on the record.

6.19(3) *Representative of parties.* Parties have the right to participate or to be represented in all hearings related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

6.19(4) *Role of parties.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.19(5) *Decorum of hearing.* The presiding officer maintains the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

6.19(6) *Sequestering of witnesses.* Witnesses may be sequestered during the hearing.

6.19(7) *Conduct of hearing.* The presiding officer conducts the hearing in the following manner:

a. The presiding officer gives an opening statement briefly describing the nature of the proceedings;

b. The parties are given an opportunity to present opening statements;

c. Parties present their cases in the sequence determined by the presiding officer;

d. Each witness is sworn or affirmed by the presiding officer or the court reporter and is subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

701—6.20(99G,123,17A) Evidence.

6.20(1) *Admissibility.* The presiding officer rules on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

6.20(2) *Stipulation of facts.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.20(3) *Scope of evidence.* Evidence in the proceeding should be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

6.20(4) *Admission and examination.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility.

Copies of documents should be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

6.20(5) *Objection.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.20(6) *Offer of service.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

701—6.21(99G,123,17A) Default. Default procedures for the department are set forth in 701—subrule 7.18(7).

701—6.22(99G,123,17A) Ex parte communication and disqualification. Ex parte communication and disqualification matters requirements are set forth in rule 701—7.22(17A).

701—6.23(99G,123,17A) Recording costs. Recording cost requirements are provided in rule 701—7.20(17A).

701—6.24(99G,123,17A) Interlocutory appeals. Interlocutory appeal procedures for the department are set forth in 701—subrule 7.18(11).

701—6.25(99G,123,17A) Final decision.

6.25(1) *Director's final decision.* When the director presides over the reception of evidence at the hearing, the director's decision is a final decision.

6.25(2) *Proposed decision.* When the director does not preside at the reception of evidence, the presiding officer makes a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the director within the time provided in rule 701—6.26(99G,123,17A).

701—6.26(99G,123,17A) Appeals and review.

6.26(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the director within 30 days after issuance of the proposed decision.

6.26(2) *Review.* The director may initiate review of a proposed decision on the director's own motion at any time within 30 days following the issuance of such a decision.

6.26(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

6.26(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The director may remand a case

to the presiding officer for further hearing or the director may preside at the taking of additional evidence.

6.26(5) *Scheduling.* The director shall issue a schedule for consideration of the appeal.

6.26(6) *Briefs and arguments.* Unless otherwise ordered, within 30 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 30 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The director may resolve the appeal on the briefs or provide an opportunity for oral argument. The director may shorten or extend the briefing period as appropriate.

701—6.27(99G,123,17A) Applications for rehearing. Procedures to apply for rehearing for the department are set forth in rule 701—7.21(17A).

701—6.28(99G,123,17A) Stays of agency actions.

6.28(1) *When available.*

a. Department appeal. Any party to a contested case proceeding may petition the department for a stay of an order issued in that proceeding or for other temporary remedies, pending review. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The director may rule on the stay or authorize the presiding officer to do so.

b. Stay or temporary remedy. Any party to a contested case proceeding may petition the department for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

6.28(2) *When granted.* In determining whether to grant a stay, the director shall consider the following factors:

a. The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

b. The extent to which the applicant will suffer irreparable injury if relief is not granted.

c. The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

d. The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

6.28(3) *Vacation.* A stay may be vacated by the issuing authority upon application of any party.

701—6.29(99G,123,17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity of an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions found under subrule 6.14(5).

701—6.30(99G,123,17A) Emergency adjudicative proceedings.

6.30(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order the department shall consider factors, including but not limited to the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances that pose immediate danger to the public health, safety, or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated is necessary to avoid the immediate danger.

6.30(2) *Issuance of order.*

a. Contents. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

b. Service. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery; or

(2) Certified mail, return receipt requested, to the last address on file with the agency.

c. Delivery. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.30(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.30(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger. After issuance of an emergency adjudicative order, continuance of further agency proceedings will be granted only in compelling circumstances upon application in writing.

701—6.31(99G,123,17A) Informal settlement. A party to a controversy that may culminate or has culminated in contested case proceedings may attempt informal settlement by complying with the procedures set forth in this rule. No party is required to settle the controversy or contested case by submitting to informal settlement procedures.

6.31(1) Parties desiring informal settlement are to set forth in writing the various points of a proposed settlement, including findings of facts.

6.31(2) When signed by the parties and approved by the director, a settlement shall represent final disposition of the matter.

6.31(3) A proposed settlement that is not accepted or signed by the parties and the director shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

This rule is intended to implement Iowa Code section 17A.10.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 7. Rescind 701—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
TAX APPEALS, TAXPAYER REPRESENTATION, AND OTHER ADMINISTRATIVE PROCEDURES

701—7.1(421,17A) Applicability and scope of rules. These rules implement the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the laws of this state and other activities of the department. These rules govern the practice, procedure, and conduct of the informal proceedings, contested case proceedings, and certain other administrative procedures within the department's jurisdiction. The rules in this chapter apply to all informal proceedings, contested case

proceedings, licensing proceedings pending or commenced on or after their effective date; however, 701—Chapter 6 applies to appeals and contested case proceedings for matters under Iowa Code chapters 123 and 99G. 701—Chapter 3 contains rules on rulemaking for all matters within the department's jurisdiction. 701—Chapter 4 contains rules on declaratory order for all matters within the department's jurisdiction.

This rule is intended to implement Iowa Code chapter 17A.

701—7.2(421,17A) Definitions. Terms not defined below have the same meaning as defined in Iowa Code chapter 17A. Unless otherwise specifically stated, the terms used in these rules promulgated by the department have the meanings defined by the Act. These definitions apply to this chapter unless the text states otherwise:

"Act" means the Iowa administrative procedure Act.

"Appeal" means a dispute of a notice of assessment, refund denial, or other department action that may culminate in a contested case proceeding. "Protest" has the same meaning as appeal.

"Appeals section" means the section of the department designated by the director to administer the informal stage of the tax appeals process and participate in contested case proceedings for appeals before the department.

"Clerk" means the clerk of the legal services and appeals division or the clerk's designee.

"Department" or *"IDR"* means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"Division of administrative hearings" means the division of the department of inspections, appeals, and licensing responsible for holding contested case proceedings pursuant to Iowa Code chapter 10A.

"Entity" means any taxpayer other than an individual or sole proprietorship.

"GovConnectIowa" means the e-services portal of the department.

"Informal stage" means the procedures of the appeals process described in rule 701—7.10(17A).

"Issuance" means the date specified in the decision or order, the date of mailing of a decision, or order or date of delivery of the decision or order if service is by other means.

"Last-known address" means the last address associated with a taxpayer by tax type, as determined pursuant to rule 701—7.23(421).

"Motion" means the same as defined in Iowa Rule of Civil Procedure 1.431.

"Party" means the same as defined in Iowa Code section 17A.2(8) and includes intervenors.

"Person" means the same as defined in Iowa Code section 17A.2. "Public or private organization of any character or any other person covered by the Act other than an agency" as used in that definition includes estates, trusts, or fiduciary.

"Petition" means application for declaratory order; request to intervene in a declaratory order under consideration; or application for initiation of proceedings to adopt, amend or rescind a rule or document filed in licensing.

"Pleadings" means appeal, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

"Presiding officer" means the person designated to preside over a proceeding involving the department. A presiding officer of a contested case involving the department will be either the director or a qualified administrative law judge appointed, pursuant to Iowa Code chapter 17A, by the division of administrative hearings established pursuant to Iowa Code section 10A.801. In cases in which the department is not a party, at the director's discretion, the presiding officer may be the director or the director's designee. The presiding officer of an administrative appeal is the director of the department.

"Proceeding" means informal, formal, and contested case proceedings.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the director did not preside, as described in Iowa Code section 17A.15.

"Review unit" means the unit composed of the appeals section of the department and any of the attorney general's staff who have been assigned to review appeals filed by taxpayers.

"Taxpayer interview" means any in-person contact between an employee of the department and a taxpayer or a taxpayer's representative that has been initiated by a department employee.

"Taxpayer's representative" or *"taxpayer's authorized representative"* means an individual authorized to practice before the department on behalf of a taxpayer under Iowa Code section 421.59; an individual who has been named as an authorized representative on a fiduciary return of income form filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450 or 450B; or for proceedings before the department, any other individual the taxpayer designates who is named on a valid power of attorney if appearing on behalf of another.

This rule is intended to implement Iowa Code chapter 17A.

701—7.3(17A) How to submit an appeal, petition or related documents; service. Appeals, petitions, and other documents governed by this chapter may be filed electronically, by mail, or in person, in accordance with the limits described below. The headquarters of the department in the Hoover State Office Building in Des Moines, Iowa, will generally be open between the hours of 8 a.m. and 4:30 p.m. daily, except Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A.

7.3(1) *Ways to submit an appeal, petition, or related document.* Unless otherwise specified in another rule in this chapter, a person may submit an appeal, petition, related document, or document filed during an appeal or pending petition:

a. By submitting through GovConnectIowa. As of November 12, 2024, GovConnectIowa is available for filing petitions for declaratory order, petitions for rulemaking, and petitions for rule waiver for all tax types as well as for lottery and alcohol matters but is only available for filing appeals for the following tax types: sales, use, E911, withholding, motor vehicle fee for new registration, vehicle lease, cigarette, tobacco products, alternative nicotine, vapor device, vapor products, drug stamp, utility replacement, central assessments, statewide property, motor fuel, hotel/motel, local option sales, automobile rental, water service excise, individual income, fiduciary income, corporation income, S corporation income, partnership income, composite, franchise, inheritance, moneys and credits, and tax credits and distributions associated with these tax types.

b. By email to idrhearings@iowa.gov.

c. By mail to Legal Services and Appeals Division, Iowa Department of Revenue, P.O. Box 14457, Des Moines, Iowa 50306-3457.

d. By hand delivery to the department's customer service desk in the Hoover State Office Building, First Floor, 1305 East Walnut Street, Des Moines, Iowa 50319, during regular business hours.

7.3(2) *Filings with the division of administrative hearings and service upon the department during contested case proceedings.* All documents or papers required or permitted to be filed with an administrative law judge appointed by the division of administrative hearings to be a presiding officer in a contested case shall be filed in accordance with rule 481—10.12(17A). All papers or documents required or permitted by this chapter to be filed with the department or the director and served upon the opposing party or other person in a contested case shall be served by ordinary mail unless another rule specifically refers to another method.

7.3(3) *Service by the department.* All notices or documents required or permitted by this chapter to be served on parties or persons by the department or presiding officer that are not currently pending before an administrative law judge shall be served by ordinary mail unless the taxpayer has elected to receive communications exclusively through GovConnectIowa, pursuant to rule 701—8.6(421). For taxpayers registered in GovConnectIowa, posting the document in the taxpayer's GovConnectIowa account constitutes service or notice of the document. For taxpayer representatives registered in GovConnectIowa, posting the document in the taxpayer representative's GovConnectIowa account constitutes service or notice of the document. For nonregistered taxpayers or nonregistered taxpayer representatives, documents will be served by ordinary mail. When this nonregistered mailing is required, however, the department may note on the docket the parties served and the method of service instead of filing a certificate of service. With respect to any notice, correspondence, or communication served electronically, response deadlines shall be calculated from the date the taxpayer is notified electronically of the correspondence or the item is mailed, whichever is earlier.

This rule is intended to implement Iowa Code chapter 17A.

701—7.4(17A) Time requirements for filings.

7.4(1) *Computing time.* Time shall be computed in accordance with Iowa Code section 421.9A. For electronic submissions, in addition to the requirements described in Iowa Code section 421.9A, local time for the state of Iowa applies. In computing time in accordance with Iowa Code section 421.9A, the first day shall be excluded and the last included.

7.4(2) *Date of filing.* The date of filing for appeal requests, petitions, or other related documents shall be:

a. If sent electronically either through GovConnectIowa or as described on the department's website, determined by the date on which the electronic submission was completed.

b. If sent by regular mail, the date postmarked on the envelope sent to the department's principal office or, if the postmark is not available, the date the appeal is stamped as received by the department.

c. If hand delivered, the date the appeal is stamped as received by the department.

This rule is intended to implement Iowa Code chapter 17A.

701—7.5(17A) Form and style of documents.

7.5(1) *Requirements applicable to all filings under this chapter.*

a. Signatures. Signatures must meet the requirements of 701—subrule 8.2(6). The signature shall constitute a certification that the signer has read the document; that, under penalty of perjury, the signer declares that to the best of the signer's knowledge and belief, the information contained in the document is true, correct, and complete; and that no statement contained in the document is misleading.

b. Citations. Citations may be italicized or underlined.

7.5(2) *Paper.* Any paper documents that are allowed or required to be submitted by this chapter must:

a. Be clear and legible.

b. Be on white paper.

c. Be on the applicable department appeal, application for reinstatement, or petition form available on the department's forms website revenue.iowa.gov/forms under the category "Applications and Other" or, if not on the department's form, include a proper caption on the first page.

d. Include a signature.

e. Include copies as herein provided or as specified in other applicable rules.

7.5(3) *Email.* Any documents allowed or required to be filed by email under this chapter must be:

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2), or

b. The body of an email that meets all of the requirements of subrules 7.5(1) and 7.5(2).

7.5(4) *GovConnectIowa.* Any documents allowed or required to be filed through GovConnectIowa under this chapter must be:

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2) that is properly uploaded and properly submitted through GovConnectIowa.

b. Completed and submitted on the applicable GovConnectIowa form.

This rule is intended to implement Iowa Code chapters 17A and 554D and sections 421.17 and 421.27A.

701—7.6(17A) Docket. Every matter coming within the purview of this chapter is assigned a docket number that is the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding. After the transfer of a case to the division of administrative hearings for contested case proceedings, that division may assign another docket number to the case and, in that event, both docket numbers will be placed by the parties on all documents thereafter filed in the proceeding.

701—7.7(17A) Identifying details, requests for redaction.

7.7(1) *Information redacted by the department, subject to certain exceptions.* Prior to being made available for public inspection, the department will redact from an appeal or contested case the information required by Iowa Code sections 422.20(5) and 422.72(8). "Make available for public inspection" means disclosure to the public by the department pursuant to Iowa Code section 17A.3 or chapter 22.

7.7(2) *Process for requesting redaction of other details from a pleading, exhibit, attachment, motion, or written evidence.* If a taxpayer desires information contained in a record, other than the information described in Iowa Code sections 422.20(5)*"a"* and 422.72(8)*"a,"* to be redacted prior to public inspection, the taxpayer must file a motion and affidavit meeting the requirements below.

a. Process for filing a motion for redaction of other details during a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed after the notice of hearing is issued in a contested case must comply with subrule 7.17(5).

b. Process for filing a motion for redaction of other details prior to the commencement of a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed prior to a contested case must be filed with the clerk of the hearings section of the department. The motion must be filed separately from the appeal described in subrule 7.9(6).

c. Contents of motion. Motions filed under this rule, including those filed during contested cases, shall contain the following:

(1) The name of the person requesting redaction and the docket number of the proceeding.

(2) Clear and convincing evidence that the disclosure would reveal a trade secret or would constitute a clear, unwarranted invasion of personal privacy. Corporations, limited liability companies, other business entities (including but not limited to partnerships and joint ventures), and trusts do not have protectible personal privacy interests.

(3) An unredacted copy of the document containing the information at issue and also a copy of the document with the desired redaction made. If a copy of the document is not in the possession of the taxpayer, the motion must contain a precise description of the document in the possession of the department from which the redaction is sought and a precise description of the information to be redacted. If redaction is sought from more than one document, each document and the information sought to be redacted shall be listed in separate paragraphs.

(4) For each item for which redaction is requested, an explanation of the legal basis for the redaction requested, including an explanation of why the release of the information sought to be redacted is a clear, unwarranted invasion of personal privacy or a trade secret.

(5) An affidavit in support of redaction. The affidavit must:

1. Be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying redaction, not merely the legal basis for redaction or conclusory allegations.

2. Contain a general and truthful statement that the information sought to be redacted is not available to the public from any source or combination of sources, direct or indirect, and a general statement that the release would serve no public purpose.

d. Burden of proof. The burden of showing that redaction is justified is on the movant. The burden is not carried by mere conclusory statements or allegations, for example, that the release of the material would be a clear, unwarranted invasion of personal privacy or that the material is a trade secret.

e. Contested case proceeding. That the information sought to be redacted is part of the pleadings, motions, evidence, and the record in a contested case proceeding otherwise open for public inspection and that the matter would otherwise constitute confidential tax information is not grounds for redaction.

7.7(3) *Process for requesting redaction of other details in a final order, decision, or ruling.* Motions to redact information from a final order, decision, or ruling cannot be made until the order is issued and must be made within 30 days of the date of the order, decision, or ruling. The taxpayer must follow the requirements in paragraph 7.8(2)*"c"* and subrule 7.19(5). The department has 30 days to respond to the motion from the date the department's representatives receive notice from the presiding officer unless otherwise ordered by the presiding officer.

7.7(4) *Rulings.* Motions filed with the clerk of the hearings section will be ruled on by the director or may be referred by the director to an administrative law judge. Motions filed with the administrative law judge will be ruled on by the administrative law judge. In the case of motions before the director prior to contested case proceedings, the department may respond in writing to a motion on the request of the director or upon the initiative by department staff. Oral argument, including a hearing, may be held at the discretion of the presiding officer. The presiding officer may choose to close a hearing or other proceeding that may otherwise be open to the public due to the confidential nature of information covered by the motion during the pending motion.

7.7(5) *Limitation on motions.* If the motion or request is denied, the movant may not submit a motion to redact the same identifying details unless the movant is in possession of new information that may support the requested redaction(s) that the movant was not or could not have been aware of at the time of the original motion.

7.7(6) *Handling of the file while the motion is pending.* While a motion is pending, unless otherwise required or permitted by law, the department will treat the motion as if it has been granted and will not publicly release any information pursuant to Iowa Code chapter 22 or 17A sought to be kept confidential by the taxpayer.

This rule is intended to implement Iowa Code chapter 17A and sections 422.20(5) and 422.72(8).

701—7.8(17A) Tax appeals. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file an appeal, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The appeal must be filed as described in rule 701—7.3(17A).

7.8(1) *Deadlines.* The period for appealing department action relating to refund claims is the same statutory period as that for contesting an assessment. Failure to timely file a proper appeal will be construed as a waiver of opposition to the matter involved unless, on the director's own motion, pursuant to statutory authority, the powers of abatement or settlement are exercised.

7.8(2) *Paying an assessment that is divisible.* When an assessment involves divisible taxes that are not timely appealed, namely, an assessment that is divisible into a tax on each transaction or event, the taxpayer may contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment attributable to that specific type of transaction would be canceled. Any such appeal filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. If the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file an appeal as authorized by this rule.

7.8(3) *Types of divisible taxes.* All of the taxes administered and collected by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, franchise tax, partnership income, S corporation income, composite, and statewide property tax. The following noninclusive examples illustrate the application of the divisible tax concept:

EXAMPLE A: As a responsible party, X is assessed withholding income taxes, penalty, and interest on eight employees. X fails to timely appeal the assessment. X contends that X is not a responsible party. If X is a responsible party, X is required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X may pay an amount of tax, penalty, and interest attributable to one employee for one month and file a refund claim within the time period provided by law since, if X is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B: Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely appeal the assessment. Y was billed monthly for electricity by the power company to which Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property

for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y may pay an amount of tax, penalty, and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since, if Y is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

7.8(4) *Who may be named in an appeal.* The appeal shall be brought in the name of the aggrieved taxpayer. Each aggrieved taxpayer may protest more than one agency action in a single appeal, subject to the applicable statutory appeal period for each protested agency action. Individuals or entities required to file separate tax returns or those choosing to file separate tax returns may not combine appeals with any other individual or entity. Taxpayers who are not named in the department action under appeal are not aggrieved taxpayers and may not be included in the appeal. The appeal may be filed by and in the name of the aggrieved taxpayer or by the authorized representative described in Iowa Code section 421.59(2), Iowa Code chapter 633B, or subrule 8.8(6) legally entitled to institute a proceeding on behalf of the person or by an intervenor in contested case proceedings. In the event of a discrepancy between the name set forth in the appeal and the correct name, a statement of the reason for the discrepancy shall be set forth in the appeal.

7.8(5) *Form and content of the appeal.*

a. Department forms. Appeals may be filed using the form available on GovConnectIowa or the form available on the department's website: revenue.iowa.gov/forms.

b. Manually created appeals. Persons who do not use GovConnectIowa or the form available on the department's website shall use the following format:

(1) The appeal shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name and address and	*	APPEAL
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	(filled in by Department)

(2) The appeal shall substantially state in separate numbered paragraphs the following:

1. Proper allegations showing:

- Date of department action, such as the notice of assessment or refund denial;
- Whether the taxpayer failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
- Whether the appeal involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;
- Copies of the documented department action, such as the notice of assessment, refund claim, and refund denial letter;
- Other items that the taxpayer wishes to bring to the attention of the department; and
- A request for attorney fees, if applicable.

2. The type of tax, the taxable period or periods involved, and the amount in controversy.

3. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided. A taxpayer may only allege errors related to specific audit determinations made by the department or related to issues presented for audit determinations by the department. If a taxpayer did not present for a determination by the department a particular exemption claim in the taxpayer's sales tax refund return, the taxpayer may not allege error related to such exemption claim when the taxpayer appeals the denial of the requested refund.

4. Reference to any particular statute or statutes and any rule or rules involved, if known.

5. Description of records or documents that were not available or were not presented to department personnel prior to the filing of the appeal, if any. Copies of any records or documents that were not previously presented to the department shall be provided.

6. Any other matters deemed relevant and not covered in the above paragraphs.

7. The desire of the taxpayer to expedite proceedings. Rule 701—7.12(17A,421) contains more details on expedited proceedings.

8. A statement setting forth the relief sought by the taxpayer.

9. The signature of the taxpayer or the authorized representative. If the appeal is signed by the taxpayer, the address and telephone number of the taxpayer is to be included in the signature block. If the appeal is signed by an authorized representative, the address and telephone number of the authorized representative is to be included in the signature block. Appeals submitted by an authorized representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—8.8(17A,22,421,422), on file with the department, or one should be included with the appeal.

c. Spouses. If an appeal involves an assessment or a refund denial to a married couple and both spouses intend to appeal, both spouses must sign the document as drafted under paragraph 7.8(5)*"a"* or *"b."* Appeals submitted by an authorized representative must include an executed IA 2848 power of attorney form or representative certification form, as applicable, for each spouse unless an IA 2848 power of attorney form or representative certification form is on file with the department.

7.8(6) *Amendments.*

a. Subject to the statutory appeal period, the taxpayer may amend the appeal at any time before a responsive pleading is filed. Amendments to the appeal after a responsive pleading has been filed may be allowed by the presiding officer, subject to the statutory appeal period, with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

b. The department may request that the taxpayer amend the appeal for purposes of clarification or to comply with format requirements. If the taxpayer fails to amend the appeal within the time provided for in the department's request, the department may move to dismiss the appeal under paragraph 7.11(3)*"a."* Requests by the department to the taxpayer to amend the appeal after a responsive pleading has been filed may be allowed by the presiding officer, subject to the statutory appeal period, with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

7.8(7) *Alcohol and lottery appeals.* This chapter does not apply to appeals and contested case proceedings for matters under the Iowa alcoholic beverage control Act (Iowa Code chapter 123) or the Iowa lottery act (Iowa Code chapter 99G). Information about appeals under those chapters is contained in 701—Chapter 6.

701—7.9(17A) Resolution of tax liability. In the event that a proper appeal has been filed, other department personnel, when authorized by the appeals section, have the authority to discuss the resolution of any matter in the appeal either with the taxpayer or the taxpayer's representative. The personnel shall report their activities in this regard to the appeals section, and the section shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve an appeal.

This rule is intended to implement Iowa Code chapter 17A.

701—7.10(17A) Informal stage of the tax appeals process. When an appeal is filed, the parties are encouraged to utilize the informal procedures described in this rule to reach a resolution between the parties without the necessity of initiating contested case proceedings. That resolution may be the granting of the appeal in full or in part, the denial of the appeal in full or in part, or an agreement to settle the matter. Unless, in accordance with rule 701—7.12(17A,421), the taxpayer demands a contested case proceeding or an expedited hearing is agreed to or the department waives informal procedures upon notification to the taxpayer, such informal procedures will be initiated as herein provided upon the filing of a proper appeal.

7.10(1) *Appeals section review.* After an appeal is filed, the review unit, subject to the control of the director or the division administrator of the legal services and appeals division, will:

a. Review and evaluate the validity of the appeal.

b. Determine the correct amount of tax owing or refund due.

c. Determine the best method of resolving the dispute between the taxpayer and the department.

d. Take further action regarding the appeal, including any additions to and deletions from the audit, as may be warranted by the circumstances to resolve the appeal, including a request for an informal conference.

e. Determine whether the appeal complies with rule 701—7.8(17A) and request any amendments to the appeal or additional information.

7.10(2) *Determinations, conferences.* The review unit may concede any items contained in the appeal that it determines should not be controverted by the department. If the taxpayer has not waived informal procedures, the review unit may request that the taxpayer and the taxpayer's representative, if any, attend an informal conference with the review unit to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or the possibility of narrowing the issues presented in the appeal if no settlement can be made. The review unit may request clarification of the issues from the taxpayer or further information from the taxpayer or third persons.

7.10(3) *Findings.* A position letter addressing the issues raised in the appeal may be issued to the taxpayer or taxpayer's representative unless the issues may be more expeditiously determined in another manner or it is determined that such a letter is unnecessary.

7.10(4) *Format of review.* Nothing herein will prevent the review unit and the taxpayer from mutually agreeing on the manner in which the appeal will be informally reviewed.

7.10(5) *Settlements.* Only the director, a deputy director, the division administrator of the legal services and appeals division, or another person designated in writing by the director may approve and sign settlements of appeals. If a settlement is reached during informal procedures, a closing order stating that a settlement was reached by the parties and that the case is terminated shall be issued by the director and provided to all parties.

This rule is intended to implement Iowa Code section 17A.10.

701—7.11(17A,421) Dismissal of tax appeals.

7.11(1) *Appeals filed after expiration of statutory deadline.* Appeals that are not filed by the applicable statutory deadline shall be dismissed by the director or the director's designee in accordance with the procedure outlined in paragraph 7.11(1)*"a."*

a. Procedures for motions to dismiss. The department shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion in writing within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the appeal. Once such dismissal order is entered, the director or the director's designee shall close the appeal. If a resistance is filed, the department has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.15(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal was filed within the statutory appeal period. Thereafter, rule 701—7.18(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for denying the department's motion. The department's motion shall be granted unless the taxpayer can prove that it filed the appeal prior to the expiration of the statutory appeal deadline because the department failed to:

(1) Mail or personally deliver the notice of assessment, refund denial, or other notice of department action to the taxpayer's last-known address; or

(2) If applicable, also mail the notice of assessment, refund denial, or other notice of department action to the taxpayer's authorized representative; or

(3) Comply with the requirements of Iowa Code section 421.60(2)*"b."*

For purposes of this rule, "last-known address" and "personal delivery" mean the same as described in rule 701—7.23(421).

7.11(2) *Appeals not authorized by statute.* Appeals that are not authorized by statute or otherwise are inconsistent with the statutory requirements for an appeal shall be dismissed by the director in accordance with the procedure outlined in paragraph 7.11(1)*"a,"* except that the issue shall be limited to the question of whether the appeal is authorized by statute and consistent with statutory appeal requirements.

7.11(3) *Failure to pursue the appeal at the informal stage.* If the appeal was filed timely and informal procedures were initiated, the failure of the taxpayer to provide documents or information requested by the department, including the failure to respond to a position letter or an information request, shall constitute failure to pursue the appeal and is grounds for the department to dismiss the appeal in accordance with the procedure outlined in paragraph 7.11(3)*"a."* For purposes of this subrule, an evasive or an incomplete response will be treated as a failure to pursue the appeal.

a. Procedures for motions to dismiss. If the department seeks to dismiss the appeal, the department shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the appeal. If a resistance is filed, the department has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.15(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer failed to pursue the appeal, as that term is defined in this subrule. Thereafter, rule 701—7.18(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for reinstatement of dismissed appeals. If a motion to dismiss is filed and is unresisted, the appeal that was dismissed may be reinstated by the director or the director's designee for good cause if an application for reinstatement is filed with the clerk within 30 days of the date the appeal was dismissed. For purposes of this rule, "good cause" means the same as "good cause" in Iowa Rule of Civil Procedure 1.977.

c. Content and review of the application for reinstatement. The application shall set forth all reasons and facts upon which the taxpayer relies in seeking reinstatement of the appeal. Supporting documentation must be supplied. The department shall review and notify the taxpayer whether the application is granted or denied.

d. Denial of the application. If the department denies the application to reinstate the appeal, the taxpayer has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. The taxpayer shall send the written request to the clerk. When a written request for formal hearing is received, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice as prescribed in rule 701—7.15(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer has good cause to reinstate the dismissed appeal. Thereafter, rule 701—7.18(17A) pertaining to contested case proceedings shall apply in such reinstatement proceedings. If the taxpayer does not respond to a denial of the application for reinstatement within 30 days of the denial, the director or the director's designee will issue an order closing the appeal.

e. Failure to file timely application for reinstatement. If an application for reinstatement is filed after the 30-day deadline, the application shall not be accepted by the director or director's designee.

7.11(4) *Dismissal of appeals during contested case proceedings.* Once contested case proceedings have been commenced, it shall be grounds for a motion to dismiss that a taxpayer has either failed to diligently pursue the appeal or has refused to comply with requests for discovery set forth in rule 701—7.16(17A). Such a motion must be filed with the presiding officer.

This rule is intended to implement Iowa Code sections 17A.12, 421.10, 421.60, and 422.28.

701—7.12(17A,421) Demand for contested case proceeding. Pursuant to Iowa Code section 421.60(2) *"g,"* a taxpayer may make a written demand for a contested case proceeding after a period of six months from the filing of a proper appeal. Demands made prior to six months will be treated as premature and must be resubmitted six months or later from the filing of the appeal. Upon receipt of a timely written demand, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be applied in the manner described in the introductory paragraph of rule 701—7.13(17A).

This rule is intended to implement Iowa Code sections 17A.12 and 421.60.

701—7.13(17A) Answer. If the parties are unable to resolve the appeal informally, or if the parties waive informal proceedings as described in rule 701—7.12(17A,421), the department shall file an answer to the appeal with the clerk. Subject to the limitations in rule 701—7.12(17A,421), the department will file an answer within 30 days of receipt of written demand for a contested case hearing from the taxpayer. In the case of an appeal of an assessment, failure to answer within the 30-day time period and after a demand for hearing has been made shall result in the suspension of interest from the time that the department was required to answer until the date that the department files its answer. In the case of an appeal of a refund denial, failure to answer within the 30-day time period after a demand for hearing has been made shall result in the accrual of interest payable to the taxpayer at double the rate in effect under Iowa Code section 421.7 from the time the department was required to answer until the date that the department files its answer. Failure to file an answer within 30 days after the demand for contested case will not result in a default judgment for the taxpayer.

7.13(1) The answer of the department shall be drawn in a manner as provided by the Iowa Rules of Civil Procedure for answers filed in Iowa district courts.

7.13(2) Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the appeal. The answer shall be signed by the department's counsel or representative.

7.13(3) The department shall promptly serve a copy of the answer upon the representative of record or, if there is no representative of record, upon the taxpayer. The department may amend its answer at any time prior to the commencement of the evidentiary hearing in response to the filing of an amended appeal or to assert a new matter or an affirmative defense. The presiding officer has discretion to grant a continuance to avoid prejudice to the taxpayer or the department.

7.13(4) The provisions of this rule shall be considered as a part of the informal procedures since a contested case proceeding, at the time of the filing of the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the taxpayer or the department.

7.13(5) The department's answer may contain a statement setting forth whether the case should be transferred to the division of administrative hearings or the director should retain the case for hearing.

7.13(6) The department's answer should set forth the basis for retention of the case by the director as provided in subrule 7.18(1). If the answer fails to allege that the case should be retained by the director, the case should be transferred to the division of administrative hearings for contested case proceedings unless the director determines on the director's own motion that the case should be retained by the director.

7.13(7) Upon the filing of an answer, the clerk will transfer the appeal file to the division of administrative hearings within 30 days of the date of the filing of the answer unless the director determines not to transfer the case. If a party objects to a determination under rule 701—7.18(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

This rule is intended to implement Iowa Code chapter 17A and section 421.60.

701—7.14(17A) Subpoenas. Prior to the commencement of a contested case, the department has the authority to subpoena books, papers, and records and has all other subpoena powers conferred upon it by law. Subpoenas in this case shall be issued by the director or the director's designee. Once a contested case is commenced, subpoenas must be issued by the presiding officer.

This rule is intended to implement Iowa Code sections 17A.13, 421.9, 421.17, and 422.70.

701—7.15(17A) Commencement of contested case. A demand or request by the taxpayer for the commencement of contested case proceedings must be in writing and filed with the clerk by email to the address provided in paragraph 7.3(1)*"b"*; by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk to the address listed in paragraph 7.3(1)*"c"*; or by personal service to the department's customer service desk as described in paragraph 7.3(1)*"d."* Alternatively, a taxpayer that has a GovConnectIowa account may notify the clerk by using the Manage Appeal option in GovConnectIowa. The demand must be made no sooner than six months after the filing of the appeal. If the demand or request does not indicate a postmark date, then the date of receipt or the date personal service is made is considered the date of filing. Iowa Code section 622.105 describes the evidence necessary to establish proof of mailing.

7.15(1) When requesting a contested case hearing with the division of administrative hearings, the department shall complete a transmittal form consistent with rule 481—10.4(10A). The transmittal form is merely an administrative tool intended to facilitate the issuance of the notice of hearing.

7.15(2) At the request of a party or the presiding officer made prior to the issuance of the hearing notice, the presiding officer shall hold a telephone conference with the parties for the purpose of identifying the issues within the scope of the contested case, scheduling the hearing date, establishing discovery or other deadlines, and other procedural matters to be addressed in the notice of hearing. The notice of hearing shall be issued by the later of the following: within 30 days of the transmittal of the case from the department to the division of administrative hearings or one week after a telephone conference held under this subrule.

7.15(3) A contested case commences when the presiding officer delivers the notice of hearing by ordinary mail or electronic mail to the parties.

7.15(4) Any party may apply to the presiding officer for a continuance or a specific date for the hearing. The presiding officer may grant or deny such requests.

a. The notice of hearing shall include:

(1) A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is held;

(3) A reference to the particular sections of the statutes and rules involved; and

(4) A short and plain statement of the matters asserted, including the issues.

b. The statement of the issues in the notice of hearing shall not include issues that are not presented in the appeal or the answer.

7.15(5) After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings in accordance with this chapter.

This rule is intended to implement Iowa Code section 17A.12.

701—7.16(17A) Discovery.

7.16(1) The rules of the supreme court of the state of Iowa applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested cases.

7.16(2) Disputes concerning discovery shall be resolved by the presiding officer. If necessary, a hearing shall be scheduled, with reasonable notice to the parties, and, upon hearing, an appropriate order shall be issued by the presiding officer.

7.16(3) When the department relies on a witness in a contested case, whether or not the witness is a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, the department shall, on request, make such statements or reports available to a party for use on cross-examination unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute.

7.16(4) Identifiable department records that are relevant to disputed material facts involved in a contested case shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

This rule is intended to implement Iowa Code chapter 17A.

701—7.17(17A) Prehearing conference.

7.17(1) Following the commencement of the contested case and upon the motion of the presiding officer, or upon the written request of a party, the presiding officer shall direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

a. The possibility or desirability of waiving any provisions of the Act relating to contested cases by written stipulation representing an informed mutual consent;

b. The necessity or desirability of setting a new date for hearing;

c. The simplification of issues;

d. The necessity or desirability of amending the pleadings, subject to the applicable statute of limitations and the applicable statutory appeal period;

e. The possibility of agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of proof;

f. The procedure at the hearing;

g. Limiting the number of witnesses;

h. The names and identification of witnesses and the facts each party will attempt to prove at the hearing;

i. Conduct or schedule of discovery; and

j. Such other matters as may aid, expedite or simplify the disposition of the proceeding.

7.17(2) Any action taken at the prehearing conference shall be recorded in an order unless the parties enter into a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

7.17(3) When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed for the parties to present objections on the grounds that the order does not fully or correctly embody the agreements made at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters the order includes unless modified to prevent manifest injustice.

7.17(4) If either party to the contested case fails to appear at the prehearing conference without requesting a continuance and without submitting evidence or arguments that the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.18(5).

This rule is intended to implement Iowa Code section 17A.12.

701—7.18(17A) Contested case procedures.

7.18(1) *Evidentiary hearing.* Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested cases shall culminate in an evidentiary hearing open to the public.

a. Evidentiary hearings in which the presiding officer is an administrative law judge employed by the division of administrative hearings shall be held at the location designated in the notice of evidentiary hearing.

b. If the director retains a contested case, the location for the evidentiary hearing will generally be at the main office of the department at the Hoover State Office Building, First Floor, Des Moines, Iowa 50319. However, the department retains the discretion to change the location of the evidentiary hearing if necessary. The location of the evidentiary hearing will be designated in the notice of hearing issued by the director.

7.18(2) *Determination of presiding officer.* If the director retains a contested case for evidentiary hearing and the department is a party, the initial presiding officer will be the director. Upon determining that a case will be retained and not transferred to the division of administrative hearings, the director

shall issue to the parties a written notification of the determination that states the basis for retaining the case for evidentiary hearing.

a. The director may determine to retain a contested case for evidentiary hearing and decision upon the filing by the department of its answer under rule 701—7.13(17A). If the answer failed to allege that the case should be retained by the director and the case was transferred to the division of administrative hearings for contested case proceedings, either party may, within a reasonable time after the issuance of the hearing notice provided in rule 701—7.15(17A), make application to the director to recall and retain the case for hearing and decision. Any such application shall be served upon the assigned administrative law judge or presiding officer.

b. A taxpayer may file a written objection to the director's determination to retain the case for evidentiary hearing and may request that the contested case be heard by an administrative law judge or presiding officer and request a hearing on the objection. Such an objection must be filed with the clerk by email to the address provided in paragraph 7.3(1)*"b,"* by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk to the address listed in paragraph 7.3(1)*"c,"* or by personal service to the department's customer service desk as described in paragraph 7.3(1)*"d"* within 20 days of the notice issued by the director of the director's determination to retain the case.

c. The director may retain the case only upon a finding that one or more of the following apply:

(1) One of the reasons listed in Iowa Code section 17A.11(1)*"a."*

(2) The case involves an issue or issues the resolution of which would create important precedent;

(3) The case involves complex or extraordinary questions of law or fact;

(4) The case involves issues or questions of law or fact that, based on the director's discretion, should be retained by the director;

(5) The request is not consistent with a specified statute; or

(6) Assignment of an administrative law judge will result in lengthening the time for issuance of a proposed decision, after the case is submitted, beyond a reasonable time as provided in subrule 7.18(8). In making this determination, the director shall consider whether the assigned administrative law judge has a current backlog of submitted cases for which decisions have not been issued for one year after submission.

d. The director shall issue a written order specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If a party objects to the director's determination to retain a case for evidentiary hearing, transfer of the appeal file, if any, will be made after the director makes a final determination on the objection. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to the hearing whether a qualified administrative law judge will be available.

e. If there is no factual conflict or credibility of evidence offered in issue, either party, after the contested case has been heard and a proposed decision is pending with a presiding officer other than the director for at least one year, may make application to the director to transfer the case to the director for decision. In addition, if one or more criteria listed in paragraph 7.18(2)*"c"* exist, the director, on the director's own motion, may issue a notice to the parties of the director's intention to transfer the case to the director for decision. The opposing party may file, within 20 days after service of such application or notice by the director, a resistance setting forth in detail why the case should not be transferred. If the director approves the transfer of the case, the director shall issue a final contested case decision. The director or a party may request that the parties be allowed to submit proposed findings of fact and conclusions of law.

f. The director has the right to require that any presiding officer, other than the director, be a licensed attorney in the state of Iowa unless the contested case only involves licensing. In addition, any presiding officer must possess, upon determination by the director, sufficient technical expertise and experience in the areas of taxation and presiding over proceedings to effectively determine the issues involved in the proceeding.

g. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the director.

7.18(3) *Conduct of proceedings.*

a. A proceeding shall be conducted by a presiding officer who shall:

(1) Open the record and receive appearances;

(2) Administer oaths and issue subpoenas;

(3) Enter the notice of hearing into the record;

(4) Receive testimony and exhibits presented by the parties;

(5) In the presiding officer's discretion, interrogate witnesses;

(6) Rule on objections and motions;

(7) Close the hearing; and

(8) Issue an order containing findings of fact and conclusions of law.

b. The presiding officer may resolve preliminary procedural motions by telephone or videoconference in which all parties have an opportunity to participate. Other telephone or video proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or video hearing. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

c. Evidentiary proceedings shall be oral, open to the public, and recorded either by electronic means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters bear the costs of reporting. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the department for at least five years from the date of the decision. An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order:

(1) Taxpayer,

(2) Intervenor (if applicable),

(3) Department,

(4) Rebuttal by taxpayer,

(5) Oral argument by parties (if necessary).

d. If the taxpayer or the department appears without counsel or other representative who can reasonably be expected to be familiar with these rules, the presiding officer shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have counsel or representation. It should be the purpose of the presiding officer to assist any party appearing without such representative to the extent necessary to allow the party to present evidence, testimony, and argument on the issues. The presiding officer shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

e. If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

f. The presiding officer may enter a default decision as described in subrule 7.18(7).

g. Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the presiding officer.

7.18(4) *Rules of evidence.*

a. Oath. All testimony presented before the presiding officer shall be given under oath, which the presiding officer has authority to administer.

b. Production of evidence and testimony. The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records, or other real evidence.

c. Subpoena. When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the presiding officer the name of the case, the docket number, and the last-known mailing addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the

presiding officer, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case that the witness is required to attend. No costs for serving a subpoena will be allowed if the subpoena is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the presiding officer.

d. Admissibility of evidence.

(1) Evidence having probative value.

1. Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, substantially any part of the evidence may be required to be submitted in verified written form by the presiding officer.

2. Objections to evidentiary offers may be made at the hearing, and the presiding officer's ruling thereon shall be noted in the record.

(2) Evidence of a federal determination of the taxpayer's liability. Evidence of a federal determination of the taxpayer's liability such as a treasury department ruling, regulation or determination letter issued to the taxpayer; a taxpayer's federal court decision; or an Internal Revenue Service assessment issued to the taxpayer relating to issues raised in the proceeding are admissible, and the taxpayer is presumed to have conceded the accuracy of the federal determination unless the taxpayer specifically states wherein it is erroneous.

(3) Copies of evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) Stipulations. Approval of the presiding officer is not required for stipulations of fact to be used in contested case proceedings. In the event the parties file stipulations of fact in the proceedings, the stipulation is binding on the parties and the presiding officer.

e. Identification of exhibits. Exhibits that are offered by taxpayers and attached to a stipulation or entered in evidence shall be numbered serially, e.g., 1, 2, 3; exhibits offered by the department shall be lettered serially, e.g., A, B, C; and those offered jointly shall be numbered and lettered, e.g., 1-A, 2-B, 3-C.

f. Official notice. The official notice provisions of Iowa Code section 17A.14(4) apply to contested cases of the department.

g. Evidence outside the record. Except as provided by these rules, the presiding officer shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

h. Presentation of evidence and testimony. In any hearing, each party in attendance shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. A person whose testimony has been submitted in written form shall, if available, also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for re-direct examination and re-cross-examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

i. Offer of proof. An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

7.18(5) *Motions.*

a. Filing of motions after commencement of contested case proceedings. After commencement of contested case proceedings, appropriate motions may be filed with the presiding officer by any party

when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the motions are based.

b. Service, rulings. Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. The presiding officer will rule on such motions by issuing a written order. A copy of the order containing the ruling on the motion shall be served on the parties and authorized representatives. A motion may be made orally during the course of a hearing; however, the presiding officer may request that the motion be reduced to writing and filed with the presiding officer.

c. Consent of the opposing party, burden. To avoid a hearing on a motion, it is advisable to secure the consent of the opposing party prior to filing the motion. If consent of the opposing party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause as to why the motion should be granted.

d. Affidavits. The party making the motion may affix thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposing party may reply with counter affidavits.

e. Resistance. The party opposing a motion, except in the case of motions for summary judgment, must file its resistance within ten days of the date of filing of the motion unless a presiding officer otherwise orders a different deadline to file the resistance.

f. Reply. The movant may file a reply within seven days of the date of filing of the resistance to the motion.

g. Types of motions. Types of motions include but are not limited to:

(1) Motion for continuance. Motions for continuance should be filed no later than ten days before the scheduled date of the contested case hearing unless the grounds for the motion are first known to the moving party within ten days of the hearing, in which case the motion shall be promptly filed and shall set forth why it could not be filed at least ten days prior to the hearing. Grounds for motion for continuance include, but are not limited to, the unavailability of a party, a party's representative, or a witness; the incompletion of discovery; and the possibility of settlement of the case.

(2) Motion for dismissal.

(3) Motion for summary judgment.

(4) Motion for redaction of identifying details in the decision. More information is contained in rule 701—7.7(17A).

(5) Motion for default.

(6) Motion to vacate default.

h. Summary judgment procedure. Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may move, with or without supporting affidavits, for summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 60 days prior to the date set for the contested case hearing unless otherwise ordered by the presiding officer. Any party resisting the motion shall file the following within 30 days of the date of filing of the motion: a resistance; a statement of disputed facts, if any; and a memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The movant may reply to the resistance within 15 days of the date of filing of the resistance.

(3) Upon any motion for summary judgment pursuant to this rule, there shall be affixed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits that support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of

the party's pleading but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the presiding officer at the hearing of the motion, by examining the pleadings and the evidence before the presiding officer and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The presiding officer shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot present, by affidavit, facts essential to justify the party's opposition, the presiding officer may refuse the application for judgment, may order a continuance to permit affidavits to be obtained, may order depositions be taken or discovery be completed, or may make any other order appropriate.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule 7.18(8).

7.18(6) *Briefs and oral argument.*

a. At any time, upon the request of any party or in the presiding officer's discretion, the presiding officer may require the filing of briefs on any of the issues before the presiding officer prior to or at the time of hearing, or at a subsequent time. At the conclusion of hearing, the parties should be prepared to make oral arguments as to the facts and law if directed by the presiding officer.

b. A copy of all briefs shall be filed. Filed briefs shall conform to the requirements of subrules 7.5(1) and 7.5(2).

c. The parties may agree to a briefing schedule. If the parties agree to a briefing schedule and if the presiding offer adopts the agreed-upon briefing schedule by issuing an order to that effect, the schedule is binding on the parties and the presiding officer except that, for good cause shown, the time may be extended upon application of a party.

7.18(7) *Defaults.* If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

a. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading or has failed to appear after proper service.

b. A default decision or a decision rendered on the merits after a party failed to appear or participate in a contested case proceeding becomes a final department action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided in subrule 7.18(8). A motion to vacate must state all facts relied upon by the moving party that establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, and such affidavit(s) must be attached to the motion.

c. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

e. For purposes of this rule, "good cause" means the same as "good cause" in Iowa Rule of Civil Procedure 1.977.

f. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adversely affected party as provided in subrule 7.18(11).

g. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

h. A default decision may award any relief consistent with the request for relief by the party in whose favor the default decision is made and embraced in the contested case issues, but unless the defaulting party has appeared, the relief awarded cannot exceed the relief demanded.

i. A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for a stay.

7.18(8) *Orders.*

a. Proposed decisions submitted by parties. At the conclusion of the hearing, the presiding officer, in the presiding officer's discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the presiding officer shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law. In addition to or in lieu of the filing of briefs, upon the request of all of the parties waiving any contrary contested case provisions of law or of these rules, the presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law, and the presiding officer may sign and adopt as the decision or proposed decision one of such proposed findings of fact and conclusions of law without any changes or with such changes that are supported by the record and law.

b. Preparing the proposed decision. The decision in a contested case is an order that shall be in writing or stated in the record. The order shall include findings of fact prepared by the presiding officer, unless the presiding officer is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of the taxpayer, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of the amount of such award unless the parties agree otherwise. All decisions and orders in a contested case proceeding shall be based solely on the legal bases and arguments presented by the parties. In the event that the presiding officer believes that a legal basis or argument for a decision or order exists, but has not been presented by the parties, the presiding officer shall notify the parties and give them an opportunity to file a brief that addresses such legal basis or argument.

c. Decision on motions to redact identifying details. When a motion has been made to redact identifying details in an order on the basis of personal privacy or trade secrets, the justification for such redaction or refusal to redact shall be made by the moving party and shall appear in the order.

d. Proposed and final decisions. When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes final and not subject to judicial review unless there is an appeal to or review on motion of the director within 30 days of the date of the order, including Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, or 10 days, excluding Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, for a revocation order pursuant to rule 701—7.26(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director's motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal to or review

by the director within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become final and not subject to judicial review. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues presented at the hearing before the presiding officer or raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues that will be considered by the director.

e. Application to review interlocutory decisions. Notwithstanding this rule, where a presiding officer other than the director issues an interlocutory decision or ruling which does not dispose of all the issues, except reasonable litigation costs, in the contested case proceeding, the party adversely affected by the interlocutory decision or ruling may apply to the director within 20 days (10 days for a revocation proceeding) of the date of issuance of the interlocutory decision or ruling to grant an appeal in advance of the proposed decision. The application shall be served on the parties and the presiding officer. The party opposing the application shall file any resistance within 15 days of the service of the application unless, for good cause, the director extends the time for such filing. The director, in the exercise of discretion, may grant the application on finding that such interlocutory decision or ruling involves substantial rights and will materially affect the proposed decision and that a determination of its correctness before hearing on the merits will better serve the interests of justice. The order of the director granting the appeal may be on terms setting forth the course of proceedings on appeal, including advancing the appeal for prompt submission, and the order shall stay further proceedings below. The presiding officer, at the request of the director, shall promptly forward to the director all or a portion of the file or record in the contested case proceeding.

f. Appeals to and reviews by director—notice to administrative hearings division. In the event of an appeal to or review of the proposed order by the director, the administrative hearings division shall be promptly notified of the appeal or review by the director. The administrative hearings division shall, upon such notice, promptly forward the record of the contested case proceeding and all other papers associated with the case to the director.

g. Director's authority in appeals and review of proposed decisions. On an appeal or review of a proposed decision, the director has all the power which the director would have in initially making the final decision except as it may limit the issues on notice to the parties. A decision by the director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding of fact or may reverse or modify any conclusion of law that the director finds to be in error.

h. Issuing orders. Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service, regular mail, certified mail, return receipt requested, AEDMS as described in 481—Chapter 16, or any other method to which the parties may agree. For example, a copy of the order can be submitted by electronic mail if both parties agree.

i. Cross-appeals. A cross-appeal may be taken within the 30-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 701—7.26(17A), the cross-appeal may be taken within the ten-day period for taking an appeal to the director or in any event within five days after the appeal to the director is taken.

j. Transmission of case from administrative hearings division back to the department. Upon issuance of a closing order or the proposed decision by a presiding officer other than the director, such presiding officer no longer has authority over the contested case, except to resolve taxpayer requests for awards of reasonable litigation costs. Thereafter, any further proceedings associated with or related to the contested case must occur before the director.

k. Exhaustion of administrative remedies required. A party may not seek judicial review until the director has issued a final decision of the agency. If a party seeks judicial review of a proposed decision

of an administrative law judge without appealing to the director or without review of the proposed decision by the director, the party is deemed to have failed to exhaust adequate administrative remedies.

7.18(9) *Stays.*

a. During the pendency of judicial review of the final contested case order of the department, the party seeking judicial review may file with the director an application for a stay. The application shall set forth in detail the reasons why the applicant is entitled to a stay and shall specifically address the following four factors:

(1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter;

(2) The extent to which the applicant will suffer irreparable injury if the stay is not granted;

(3) The extent to which the granting of a stay to the applicant will substantially harm the other parties to the proceedings; and

(4) The extent to which the public interest relied on by the department is sufficient to justify the department's actions in the circumstances.

b. The director shall consider and balance the previously mentioned four factors and may consult with department personnel and the department's representatives in the judicial review proceeding. The director shall expeditiously grant or deny the stay.

7.18(10) *Costs.*

a. A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded by the department reasonable litigation costs incurred subsequent to the issuance of the notice of assessment or refund denial that are based upon the following:

(1) The reasonable expenses of expert witnesses.

(2) The reasonable costs of studies, reports, and tests.

(3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer. No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

b. An award for reasonable litigation costs shall not exceed $25,000 per case.

c. No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

d. For purposes of this subrule, "prevailing taxpayer" means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy, or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department in issuance of the assessment or refund denial was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

e. The definition of "prevailing taxpayer" is taken from the definition of "prevailing party" in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service's position was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

f. The taxpayer has the burden of establishing the unreasonableness of the department's position.

g. Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not, per se, either authorize an award of reasonable litigation costs or preclude such award.

h. If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

i. The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the appeal, or the request for award will not be considered.

j. A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding, or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

k. At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:

(1) Whether the department's position was substantially justified;

(2) Whether the taxpayer is the prevailing taxpayer;

(3) Whether the taxpayer has established how the alleged reasonable litigation costs were incurred. The burden is upon the taxpayer to establish how the alleged reasonable litigation costs were incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;

(4) Whether alleged litigation costs are reasonable or necessary;

(5) Whether the taxpayer has met the taxpayer's burden of demonstrating all of these points.

7.18(11) *Interlocutory appeals.* Upon written request of a party or on the director's own motion, the director may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the director at the time of the review of the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

7.18(12) *Consolidation and severance.*

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. Severance. On motion by a party, the presiding officer may, for good cause shown, order any contested case or portions thereof severed. If the presiding officer severs one or more issues from the remaining issues in the contested case, the contested case proceeds only on the issues that the presiding officer ordered for resolution. Once the decision on the issues that the presiding officer ordered for resolution becomes final and is not subject to further appeals, the parties may proceed, if necessary, with contested case on the issues that the presiding officer severed.

c. Stipulations. Stipulations of fact are encouraged, but no party can be required to stipulate to any facts. Stipulations as to the law are invalid.

d. Informal disposition. Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, or consent order or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the presiding officer that the case has been settled. Upon request, the presiding officer shall issue a closing order to reflect such a disposition. The contested case is terminated upon issuance of a closing order.

e. Mutual waivers. Unless otherwise precluded by law, the parties in a contested case proceeding may mutually agree to waive any provision under this rule governing contested case proceedings.

This rule is intended to implement Iowa Code sections 17A.12, 17A.14, 17A.15, 421.60 and 452A.68.

701—7.19(17A) Interventions. Interventions are governed by the Iowa Rules of Civil Procedure.

This rule is intended to implement Iowa Code chapter 17A.

701—7.20(17A) Record and transcript.

7.20(1) The record in a contested case shall include:

a. All pleadings, motions, and rulings;

b. All evidence received or considered and all other submissions;

c. A statement of all matters officially noticed;
d. All questions and offers of proof, objections, and rulings thereon;
e. All proposed findings and exceptions;
f. All orders of the presiding officer; and
g. The order of the director on appeal or review.

7.20(2) Oral hearings regarding proceedings on appeal to or considered on motion of the director that are recorded by electronic means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. Such a request must be filed with the clerk who will be responsible for making the transcript. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review if so requested and if no objection is made by any other party to the proceeding or the director.

7.20(3) Upon request, the department shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means bear the cost of that recording unless otherwise provided by law.

7.20(4) Upon issuance of a proposed decision that leaves no issues open for further consideration or upon issuance of a closing order, the administrative hearings division shall promptly forward the record of a contested case proceeding to the director. However, the administrative hearings division may keep the tapes of any evidentiary proceeding in case a transcript of the proceeding is required and, if one is required, the administrative hearings division shall make the transcription and promptly forward the tapes and the transcription to the director.

This rule is intended to implement Iowa Code section 17A.12.

701—7.21(17A) Application for rehearing. Any party to a contested case may file an application with the director for a rehearing in the contested case with the clerk in one of the manners described in subrule 7.3(1), stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the final order is issued. A copy of such application shall be timely served by the applicant on all parties in conformity with rule 701—7.3(17A). The director shall have 20 days from the filing of the application for rehearing to grant or deny the application. If the application for rehearing is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing is deemed denied if not granted by the director within 20 days after filing.

7.21(1) The application for rehearing shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name and address and	*	APPLICATION FOR REHEARING
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	

7.21(2) The application for rehearing shall substantially state in separate numbered paragraphs the following:

a. Clear and concise statements of the reasons for requesting a rehearing and each and every error that the party alleges to have been committed during the contested case proceedings;

b. Clear and concise statements of all relevant facts upon which the party relies;

c. Reference to any particular statute or statutes and any rule or rules involved;

d. The signature of the party or that of the party's representative, the address of the party or of the party's representative, and the telephone number of the party or the party's representative.

7.21(3) No applications for rehearing shall be filed with or entertained by an administrative law judge.

This rule is intended to implement Iowa Code section 17A.16.

701—7.22(17A) Ex parte communications and disqualification.

7.22(1) *Ex parte communication.* A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk. The clerk will transfer to the presiding officer the filed copy of the prohibited communication.

a. Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in this rule, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

b. "Ex parte" communication defined. Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

c. How to avoid prohibited communications. To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with this chapter and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. Where permitted, oral communications may be initiated through conference telephone calls including all parties or their representatives.

d. Joint presiding officers. Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

e. Advice to presiding officer. Persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the parties are not disqualified from participating in the making of a proposed or final decision under any provision of law and the parties comply with these rules.

f. Procedural communications. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines.

g. Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

h. Disclosure by presiding officer. Promptly after receiving the communication or being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

7.22(2) *Disqualification of a presiding officer.* Request for disqualification of a presiding officer must be filed in the form of a motion supported by an affidavit asserting an appropriate ground for disqualification. A substitute presiding officer may be appointed by the division of administrative hearings if the disqualified presiding officer is an administrative law judge. If the disqualified presiding officer is the director, the governor must appoint a substitute presiding officer.

a. Grounds for disqualification. A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted, or advocated in connection with that case the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case the specific controversy underlying that contested case or a pending factually related contested case or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

(6) Has a spouse or relative within the third degree of relationship that:

1. Is a party to the case or an officer, director, or trustee of a party to the case;
2. Is a lawyer in the case;
3. Is known to have an interest that could be substantially affected by the outcome of the case; or
4. Is likely to be a material witness in the case; or

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

b. Personally investigated. "Personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other department functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and these rules.

c. Disqualification and the record. In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

d. Motion asserting disqualification.

(1) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party

may move for disqualification but must establish the grounds by the introduction of evidence into the record.

(2) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and seek a stay as provided under this chapter.

This rule is intended to implement Iowa Code sections 17A.11 and 17A.17.

701—7.23(421) Mailing to the last-known address or personal delivery of notices of assessment and refund denial letters.

7.23(1) *Failure by department to mail to last-known address or personally deliver.*

a. If the department fails to either mail a notice of assessment to the taxpayer's last-known address or personally deliver the notice to the taxpayer, interest is waived for the month the failure occurs through the month of correct mailing or personal delivery.

b. In addition, if the department fails to either mail to the taxpayer's last-known address or personally deliver to the taxpayer a notice of assessment or denial of a claim for refund or fails to mail or personally deliver a copy of the notice to the taxpayer's authorized representative, if applicable, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered or for a period not to exceed one year, whichever is the lesser period.

c. Collection activities, except in the case of a jeopardy assessment, shall be suspended and the statute of limitations for assessment and collection of the tax shall be tolled during the period in which interest is waived.

7.23(2) *Determination of last-known address.*

a. A taxpayer's last-known address for a particular tax type shall be one of the following most recently updated in the department's records:

(1) The address provided in an application to register or receive a permit for a particular tax type;

(2) The address used on the most recent filed and processed Iowa tax return of a particular tax type;

(3) The address received by the department in a written, concise statement the taxpayer mailed to: Changes in Name or Address, Iowa Department of Revenue, P.O. Box 10465, Des Moines, Iowa 50306;

(4) The address provided by the taxpayer in GovConnectIowa;

(5) The address provided by the taxpayer in any correspondence to the department;

(6) The address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

b. While the determination of last-known address may differ by tax type, a notice of assessment or refund claim denial will be considered to be mailed to the last-known address if it is mailed to the taxpayer's last-known address used for another tax type.

7.23(3) *Mail or personal delivery to a taxpayer.* The following shall constitute personal delivery to a taxpayer:

a. Personal service upon a taxpayer by any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure.

b. Providing a notice of assessment or refund claim denial to the taxpayer by electronic means based on the taxpayer's election to receive electronic communications in GovConnectIowa.

c. Mailing to an address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

d. By any other method that is reasonably calculated to result in the taxpayer's actually receiving the notice, if the taxpayer actually receives the notice.

7.23(4) *Mail or personal delivery to authorized representatives.* The department may mail or personally deliver a copy of a notice to an authorized representative by one of the following methods:

a. Mailing to the address used on the most recently filed and processed written authorization as described in rule 701—8.8(17A,22,421,422) for the taxpayer the authorized representative is representing, or the most recent address on file;

b. In the case of fiduciary or inheritance tax matters, mailing to the address for the authorized representative contained on the most recently filed and processed return;

c. By providing the notice electronically through GovConnectIowa or similar method of electronic service;

d. By any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure;

e. By any other method that is reasonably calculated to result in the authorized representative's actually receiving a copy of the notice if the authorized representative actually receives a copy of the notice.

This rule is intended to implement Iowa Code section 421.60.

701—7.24(441) Appeals of director's rejection of assessor appointment or reappointment.

7.24(1) *Written request for appeal.* Any assessor or conference board wishing to contest the director's rejection of the conference board's appointment of an assessor under 701—subrule 10.15(4) or reappointment of an assessor under 701—subrule 103.16(3) shall file an appeal, in writing, within 30 days of the director's notice of decision. Any person who does not seek an appeal within 30 days of the director's notice shall be precluded from challenging the director's decision.

7.24(2) *Procedures.* Appeals will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

a. Subrules 7.3(2) and 7.3(3);

b. Rule 701—7.7(17A);

c. The introductory paragraph of rule 701—7.8(17A) and subrule 7.8(6);

d. Subrules 7.11(1), 7.11(2), and 7.11(4);

e. Rule 701—7.12(17A,421);

f. Subrules 7.13(1) to 7.13(3);

g. Rule 701—7.14(17A);

h. Rule 701—7.15(17A);

i. Rule 701—7.16(17A);

j. Rule 701—7.17(17A);

k. Subrule 7.18(1); subrules 7.18(3) through 7.18(7); subrule 7.18(8), except paragraph 7.18(8)*"b"* related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.18(9) and 7.18(12);

l. Rule 701—7.19(17A);

m. Rule 701—7.20(17A);

n. Rule 701—7.21(17A);

o. Rule 701—7.22(17A); and

p. Rule 701—8.8(17A,22,421,422).

7.24(3) *Presiding officer.* The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.24(4) *Contents of the appeal.* The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the department action giving rise to the appeal.

b. The date of the department action giving rise to the appeal.

c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to the particular statutes, rules, or agreement terms, if known.

e. References to and copies of any documents or other evidence relevant to the appeal.

f. Any other matters deemed relevant to the appeal.

g. A statement setting forth the relief sought.

h. The signature, mailing address, and telephone number of the person or that person's representative.

7.24(5) *Burden of proof.* The burden of proof is on the party challenging the director's decision under 701—subrule 10.15(4) or 103.16(3).

This rule is intended to implement Iowa Code section 441.6(3) and chapter 17A.

701—7.25(441) Appeals and hearings regarding the director's intent to remove a member of the board of review.

7.25(1) *Written request for hearing.* A member of the board of review who has received a notice of intent to remove from the director and who wishes to contest the removal shall file a written request for a hearing within 30 days after the receipt of the notice of the director's intent to remove the member. Any person who does not seek a hearing within 30 days of receipt of the notice of the director's intent to remove shall be precluded from challenging the removal.

7.25(2) *Procedures.* Hearings will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

a. The introductory paragraph of rule 701—7.7(17A), excluding the first sentence of the introductory paragraph of 701—7.7(17A); and subrule 7.8(6);

b. Subrule 7.8(1);

c. 701—7.9(17A);

d. Subrules 7.11(1) to 7.11(4);

e. Rule 701—7.12(17A,421);

f. Rule 701—7.13(17A);

g. Rule 701—7.14(17A);

h. Rule 701—7.15(17A);

i. Subrule 7.18(1); 7.18(3) through 7.18(7); subrule 7.18(8), except paragraph 7.18(8)*"b"* related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.18(9), and 7.18(12);

j. Rule 701—7.17(17A);

k. Rule 701—7.18(17A);

l. Rule 701—7.19(17A);

m. Rule 701—7.20(17A); and

n. Rule 701—7.21(17A).

7.25(3) *Presiding officer.* The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.25(4) *Contents of the appeal.* The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the department action giving rise to the appeal.

b. The date of the department action giving rise to the appeal.

c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to the particular statutes, rules, or agreement terms, if known.

e. References to and copies of any documents or other evidence relevant to the appeal.

f. Any other matters deemed relevant to the appeal.

g. A statement setting forth the relief sought.

h. The signature, mailing address, and telephone number of the person or that person's representative.

7.25(5) *Burden of proof.* The burden of proof is on the party challenging the director's intent to remove a board member.

This rule is intended to implement Iowa Code section 441.32(2)*"e"* and chapter 17A.

701—7.26(17A) License and permit denials and revocations.

7.26(1) *Specified license or permit denial and revocation processes.* Procedures related to alcohol and lottery license denials and revocations are contained in 701—Chapters 1000 and 1102. Procedures related to sales or use tax permit revocations are contained in 701—Chapter 201. For all other license and permit denials, this rule applies.

7.26(2) *Denial of license or permit; refusal to renew license or permit.*

a. Written notice in general. When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, the department will serve notice of intent to deny or refuse the license by restricted certified mail or by personal service as in a civil action. The notice will contain a statement of facts or conduct and the provisions of law which warrant the denial of the license or the refusal to renew a license. The notice will provide the licensee or applicant with 30 days to request a hearing and information about how to contact the department to make such a request.

b. Requesting a hearing. If a hearing is requested, the matter will be transferred to the administrative hearings office unless retained by the director.

c. Notice of hearing. A notice of hearing issued as described in rule 701—7.15(17A) upon the licensee or applicant.

d. Licensee opportunity to file a petition. If the licensee so desires, the licensee may file a petition as provided in subrule 7.26(4) with the presiding officer within 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.18(17A) governing contested case proceedings shall apply.

e. Treatment of existing license while matter is pending. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and in the case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a later date fixed by order of the department or the reviewing court.

7.26(3) *Revocation of license.*

a. Written notice in general. The department will not revoke, suspend, annul or withdraw any license until written notice is served by restricted certified mail or by personal service as in a civil case. The notice will provide the licensee with the 30 days to request a hearing and information about how to contact the department to make such a request. If a hearing is requested, the matter will be transferred to the division of administrative hearings unless retained by the director. A notice of hearing will be issued by the presiding officer as described in rule 701—7.15(17A) The licensee whose license is to be revoked, suspended, annulled, or withdrawn, will be given an opportunity to show at an evidentiary hearing conducted pursuant to rule 701—7.18(17A) compliance with all lawful requirements for the retention of the license.

b. Contents of notice. In addition to the requirements of rule 701—7.15(17A), the notice shall contain a statement of facts or conduct and the provisions of law that warrant the revocation, suspension, annulment, or withdrawal of the license.

c. Licensee opportunity to file petition. A licensee whose license may be revoked, suspended, annulled, or withdrawn may file a petition as provided in subrule 7.26(4) with the department prior to the hearing. The petition should be filed at the address provided on the notice to revoke, suspend, annul, or withdraw. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.18(17A) governing contested case proceedings shall apply.

d. Emergency proceedings. Notwithstanding paragraph 7.26(3)*"a,"* if the department finds that public health, safety, or welfare imperatively requires emergency action and the department incorporates a finding to that effect in an order to the licensee, summary suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted

and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

7.26(4) *Petition.*

a. When a person desires to file a petition as provided in subrules 7.26(2) and 7.26(3), the petition to be filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	PETITION
_____	*	Docket No.
State taxpayer's name and address, and	*	_____
type of license)	*	(filled in by Department)

b. The petition shall substantially state in separate numbered paragraphs the following:

(1) The full name and address of the petitioner;

(2) Reference to the type of license and the relevant statutory authority;

(3) Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;

(4) Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and

(5) The signature of the petitioner or petitioner's representative, the address of petitioner and of the petitioner's representative, and the telephone number of petitioner or petitioner's representative.

This rule is intended to implement Iowa Code section 17A.18.

ITEM 8. Adopt the following **new** subrule 201.10(3):

201.10(3) *Appeals.* The department will provide notice of a sales permit denial according to 701—subrule 7.26(2). Any request for hearing or contested case of the department's intent to deny a sales tax permit application is governed by rule 701—7.15(17A) and the contested rules in 701—Chapter 7.

ITEM 9. Adopt the following **new** subrule 201.11(3):

201.11(3) *Intent to revoke; opportunity for hearing.*

a. The department will provide notice of intent to revoke a sales or use tax permit by ordinary mail. A permittee will have 30 days to petition the department for a hearing on the proposed revocation. If the permittee does not petition the department within 30 days, the permit is revoked.

b. If the permittee files a petition for a hearing on the proposed revocation, the department will transmit the case to the division of administrative hearings unless retained by the director. The presiding offer will issue a notice of hearing by restricted certified mail or by personal service as in a civil case. Notice shall contain a statement of facts or conduct and the provisions of law that warrant the revocation of the permit. A hearing may be set no less than ten days from the date of the notice sent under this paragraph. The permittee will be given an opportunity to show at an evidentiary hearing conducted pursuant to rule 701—7.18(17A) compliance with all lawful requirements for the retention of the permit. The permittee may file a petition with the presiding officer prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the permittee prior to the hearing. Thereafter, rule 701—7.18(17A) governing contested case proceedings shall apply.

c. If the department finds that public health, safety, or welfare imperatively requires emergency action and the department incorporates a finding to that effect in an order to the permittee, summary suspension of a permittee shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

ARC 8341C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to forms and communications and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 8, "Forms and Communications," 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 421.14.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 421 through 454.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt new Chapter 8. This chapter describes generally the forms used by the Department, how to obtain them, how to file them, acceptable forms of signatures on forms, and when and how substitute forms may be used. The Department proposes to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language pursuant to Executive Order 10.

Rule 701—8.7(422,523) implements the statutory requirement for certain businesses to file tax returns electronically by providing definitions, prescribing acceptable methods for electronic filing, and providing for exceptions to the requirement. This rule was revised to include the moneys and credits tax type, rather than creating a separate new rule dedicated to that tax type. Additionally, a rule on authorized representatives that is proposed to be removed from 701—Chapter 7 has been moved to this chapter under rule 701—8.8(17A,22,421,422), where it is better suited. This rule provides for how and when third parties may represent a taxpayer before the Department and the circumstances in which a third party may be authorized to receive confidential tax information from the Department.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. New paragraph 8.7(3)"f" was added to subrule 8.7(3) after the publication of the Regulatory Analysis. This paragraph describes the electronic filing obligations of composite tax return filers, which were inadvertently left out of the prior filing. No other changes have been made to the proposed text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Benjamin Clough
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.587.0662
Email: ben.clough@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 9 to 10 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 12:30 to 1:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
FORMS AND COMMUNICATIONS

701—8.1(421) Definitions. For the purposes of this chapter, the following definitions apply, unless the context otherwise requires:

"Communication" means any method of transfer of data, information, or money by any conduit or mechanism.

"Department" means the Iowa department of revenue.

"Department form" means a form that is distributed by the department.

"Director" means the director of the department or the director's designee.

"Form" means any overall physical arrangement and general layout of communications, using any method of communication, related to tax, alcohol or other administration and prescribed by the director or otherwise required by law.

"GovConnectIowa" means the e-services portal of the department.

"IRS" means the federal Internal Revenue Service.

"Person" means any individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Return" means the same as defined in Iowa Code section 421.6.

"Substitute form" means a form that is intended to replace a department form.

This rule is intended to implement Iowa Code section 421.14.

701—8.2(421) Department forms.

8.2(1) *Generally.* Department forms may be available in electronic format, on paper, or in other formats as prescribed by the director. Communications with the department, for which department forms have been created, shall be carried out using those forms or substitute forms.

8.2(2) *Compliance with department forms.* Each direction of every instruction contained within or accompanying department forms shall be followed, and each question within or accompanying every form shall be answered as if the instructions and forms were contained in these rules.

8.2(3) *Obtaining department forms.* Department forms and instructions may be obtained from Taxpayer Services, Iowa Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457; by telephoning 800.367.3388 or 515.281.3114; or on the department's website at revenue.iowa.gov.

8.2(4) *Filing department forms.* A department form may be filed with the department as directed on the department form or in the corresponding instructions. Filing a department form using any other method requires prior approval from the department. Attempting to file a department form using an unapproved method may, at the discretion of the director, result in the rejection of the form and all information contained therein.

8.2(5) *Electronic reporting.* No prior approval is necessary for electronic reporting when the reporting is in accordance with department policy. Any other electronic reporting of a department form requires department approval unless otherwise authorized. Electronic reporting may be required for certain taxpayers and tax types. Additional information regarding electronic reporting for income taxes is available at iowaforms.gov. Electronic forms for other tax types administered by the department are available through GovConnectIowa.

8.2(6) *Signatures.*

a. Paper filings. Unless expressly prohibited by state or federal law, a return, application, or other form may be submitted using an original signature, or a copy or facsimile of a signature. For purposes of this rule, "copy or facsimile of a signature" may be a copy or facsimile of an original signature or a copy or facsimile of an electronic signature.

b. Electronic filings. For income tax returns submitted through the IRS e-file program, see rule 701—8.5(422). For all other returns, applications, or other documents, the following applies. Unless expressly prohibited by state or federal law, a return, application or other form accepted by the department as filed by email or other electronic means may be submitted using an electronic signature or a signature designated by the department in lieu of a handwritten signature. For purposes of this rule, "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a tax return, application, or other document filed with the department and executed or adopted by a person with the intent to sign the return, application, or other document filed with the department. Electronic signatures appear in many forms and may be created by many different technologies. No specific technology is required. For purposes of this rule, "signature designated by the department" means a symbol or other information that is provided by the department to the taxpayer or the taxpayer's representative and is to serve instead of the handwritten signature of the taxpayer. In a situation where the taxpayer or the taxpayer's representative has submitted a return, application, or other document to the

department by email, GovConnectIowa, or other electronic means with an electronic signature or signature designated by the department, the department will collect information from the signator to establish the signator's identity.

This rule is intended to implement Iowa Code sections 421.14, 422.13, 422.14, 422.16, 422.36, 423.31, 450.53, 452A.60, and 453A.14.

701—8.3(421) Substitute forms.

8.3(1) *Generally.* A substitute form may be in electronic format, on paper, or created using other media for communication. Approval shall be obtained prior to the use of any substitute form, unless otherwise noted in this rule. The director may change any department form without providing notice to users of any substitute form. The director may require use of department forms in communications with the department concerning tax administration or other matters.

8.3(2) *Types of substitute forms.* Many types of forms may, upon approval when necessary, be substituted for department forms. Descriptions of a partial list follow.

a. Reproduced forms. A reproduced form is a legible photocopy or an exact copy of a department form. A reproduced form may be used without prior approval of the department if the reproduced form meets the following conditions:

(1) The reproduced form does not vary from the department form in size or any other format specification.

(2) No rule prohibits the reproduction of the department form.

(3) The reproduced form does not vary from criteria stated elsewhere in this chapter.

b. Replacement forms. A replacement form is produced by imagery or otherwise replicated using the department form as a model, but it is not an exact copy of a department form. A form that is created in its entirety, including layout, by computer is a replacement form. A replacement form may include modifications, such as line enlargement or copy deletion. A replacement form must receive department approval prior to use.

c. Federal forms. A federal form is a form that is distributed by the IRS. A federal form, or its alternate, may be used without department approval if the form is approved for federal use and Iowa tax instructions or other administrative instructions authorize or require the use of the federal form in lieu of a department form.

8.3(3) *Registration and approval of substitute forms.*

a. Registration. A developer of a substitute form must register with the department by submitting the Registration for Substitute Forms and Barcode Approval. Each registration is valid for one tax year only. Failure to register with the department may, at the discretion of the director, result in the rejection of the developer's forms and all information contained therein.

b. Approval. Once registered, the developer of a substitute form must request department approval of the form, unless approval is not necessary. The developer may request department approval by submitting a PDF of the form to IDRSubForms@iowa.gov. Those forms listed on the Iowa Substitute Forms Checklist, which is provided with the Registration for Substitute Forms and Barcode Approval, should be submitted for approval. If doubt exists about the need for approval of a particular substitute form, the form should be submitted for consideration. Attempting to file an unapproved substitute form with the department may, at the discretion of the director, result in the rejection of the form and all information contained therein.

8.3(4) *Quality of substitute forms.*

a. General information. All substitute forms must, to the extent practicable, reflect the same size, color, content, design, and legibility as department forms posted on the department's website at revenue.iowa.gov.

b. Printed substitute forms. When printed on paper, a substitute form must use only black ink or black imaging material, unless the corresponding department form indicates otherwise. A printed substitute form generally must be printed on 20-pound white paper stock with a brightness rating of at least 92 on the TAPPI scale.

c. Distinctive markings and symbols. A department form may contain distinctive symbols. These symbols must be reproduced on any substitute forms.

8.3(5) *Filing substitute forms.* A substitute form may be filed with the department as directed on the corresponding department form or instructions or by any other method approved by the department. Attempting to file a substitute form with the department using an unapproved method may, at the discretion of the director, result in the rejection of the form and all information contained therein.

8.3(6) *Removable media and electronic reporting.* Submitting a substitute form on removable media, such as compact disc, requires prior approval from the department. No prior approval is necessary for electronic reporting when the reporting is in accordance with department policy. Any electronic reporting of a substitute form requires department approval, unless otherwise authorized. Additional information regarding electronic reporting is available at Processing Services, P.O. Box 10413, Des Moines, Iowa 50306; or by email at IDRSubForms@iowa.gov.

This rule is intended to implement Iowa Code section 421.14.

701—8.4 Reserved.

701—8.5(422) Electronic filing of Iowa income tax returns. There is no statutory requirement that individual income taxpayers file their Iowa income tax returns electronically. Some businesses, estates, and trusts may be required to file Iowa tax returns electronically. Taxpayers not subject to an electronic filing requirement also have the option to file by paper. When a taxpayer files an electronic return, all information related to the return should be electronically transmitted through an approved channel. No information is to be submitted on paper unless specifically requested by the department. A taxpayer's electronic Iowa return shall include the same information as if the taxpayer had filed a paper return.

8.5(1) *Definitions.* For the purpose of this rule, the following definitions apply, unless the context otherwise requires:

"Acknowledgment" means a report generated by the department and sent electronically to a transmitter via the IRS indicating the department's acceptance or rejection of an electronic submission.

"Declaration for e-File Return form" means a taxpayer declaration form that authenticates the electronic tax return, authorizes its transmission, and consents to the financial transaction order as designated using the financial institution information provided.

"Direct debit" means an order for electronic withdrawal of funds from a taxpayer's financial institution account for payment to the department.

"Direct deposit" means an order for electronic transfer of a refund into a taxpayer's financial institution account.

"E-file provider" means a firm that is assigned an Electronic Filing Identification Number (EFIN) by the IRS to assume any one or more of the following IRS e-file provider roles: electronic return originator, intermediate service provider, transmitter, software developer, or reporting agent.

"Electronic filing" means a paperless filing of the Iowa income tax return, order for financial transaction, or both by way of the IRS e-file program, also known as federal/state electronic filing (MeF).

"Electronic return originator" or *"ERO"* means an authorized IRS e-file provider that originates the electronic submission by any one of the following methods: electronically sending an electronic tax return to a transmitter that will transmit the electronic tax return to the IRS, directly transmitting the electronic tax return to the IRS, or providing the electronic tax return to an Intermediate Service Provider for processing prior to transmission to the IRS.

"Electronic signature" includes data in electronic form, which is logically associated with other data in electronic form and executed or adopted by a person with the intent to sign a document. This type of signature has the same legal standing as a handwritten signature if the requirements in either paragraph 8.5(2)*"b"* or *"c"* are met. Electronic signatures appear in many forms and may be created by many different technologies. No specific technology is required.

"Intermediate service provider" means the firm that assists with processing submission information between the ERO (or the taxpayer in the case of online filing) and a transmitter.

"Online filing" means the process for taxpayers to self-prepare returns by entering return data directly into commercially available software, software downloaded from an Internet site and prepared offline, or through an online Internet site.

"Origination of an electronic return" means the action by an ERO of electronically sending the return directly to an Intermediate Service Provider, a transmitter, or the IRS.

"Reporting agent" means a firm that originates the electronic submission of certain returns for its clients or transmits the returns to the IRS in accordance with the IRS electronic filing procedures, or both.

"Software developer" means an approved IRS e-file provider that develops software according to IRS and Iowa specifications for the purposes of formatting electronic returns, transmitting electronic returns directly to the IRS, or both. A software developer may sell its software.

"Stockpiling" means collecting returns from taxpayers or from other e-file providers and waiting more than three calendar days after receiving the information necessary for transmission to transmit the returns to the department.

"Transmitter" means a firm that transmits electronic tax return information directly to the IRS and routes electronic acknowledgments from the IRS (and the states) to the firm originating the electronic return.

8.5(2) *Completion and documentation of the electronic return.*

a. The electronic submission must match the prepared return. The taxpayer(s) must declare the authenticity of the electronic return before it is transmitted. If the ERO makes changes to the electronic return after the Declaration for e-File Return form has been signed by the taxpayer(s), a new Declaration for e-File Return form must be completed and signed by the taxpayer(s) before the return is transmitted.

b. Electronic signature via remote transaction. In lieu of in-person handwritten signatures, a paid preparer, at the discretion of the taxpayer, may collect taxpayers' electronic signatures remotely by a process using identity verification and audit trail in the manner that the IRS allows for Form 8879.

c. Electronic signature via in-person transaction. Before a taxpayer electronically signs a Declaration for e-File Return form in which the ERO is physically present with the taxpayer, the ERO must validate the taxpayer's identity unless there is a multiyear business relationship. A multiyear business relationship is one in which the ERO has originated returns for the taxpayer for a prior tax year and has identified the taxpayer using a valid government picture identification and the method in paragraph 8.5(2)*"b."* For in-person transactions, identity verification through a record check is optional.

d. The ERO must provide the taxpayer with a copy of all information to be filed. The taxpayer and ERO must retain all tax documentation for three years. The Declaration for e-File Return form and accompanying schedules are to be furnished to the department only when specifically requested.

8.5(3) *Direct deposit and direct debit.*

a. Taxpayers designating direct deposit of the Iowa refund or direct debit of payment remitted to the department on electronically filed returns must provide proof of account ownership to the ERO. The department is not responsible for the misapplication of a direct deposit refund or direct debit payment caused by error, negligence, or wrongdoing on the part of the taxpayer, e-file provider, financial institution, or any agent of the above.

b. Once the return has been transmitted, the financial order may not be altered. The department may, when processing procedures allow, grant a taxpayer's timely request to revoke the financial order. The taxpayer is responsible for revoking the financial order if the specified payment is not exactly as intended. A direct deposit or direct debit order will be disregarded by the department if the electronic submission is rejected for any reason as indicated in the acknowledgment.

c. The department may, when processing procedures require, convert a direct deposit order to a paper warrant. If a refund is deposited into an incorrect bank account, the department will issue a paper refund warrant once the funds are returned by the financial institution.

d. Payment withdrawal date.

(1) Funds will be withdrawn from the account specified in the direct debit order no sooner than the date specified by the taxpayer.

(2) Payment must be timely made to prevent the assessment of all applicable penalty and interest. A direct debit payment within an electronic submission is considered timely made when:

1. The department accepts the electronic submission;
2. The electronic postmark date is prior to the tax due date;
3. The payment withdrawal date is prior to the tax due date; and
4. The direct debit payment is honored by the specified financial institution.

(3) When the tax due date has not yet elapsed, the withdrawal date should occur on or before the tax due date. Scheduling a withdrawal date after the tax due date will result in the assessment of all applicable penalty and interest unless the taxpayer otherwise makes payment before the tax due date.

(4) When the tax due date has already elapsed, the withdrawal date should specify immediate payment to prevent the accrual of additional interest.

(5) Withdrawal cannot occur prior to the electronic postmark date. When the taxpayer attempts to schedule a withdrawal date that is prior to the electronic postmark date, the electronic postmark date is the withdrawal date.

(6) If a taxpayer wants to change the withdrawal date specified in a financial order, the taxpayer must revoke the financial order and submit a new financial order. If the department determines that the taxpayer may have erroneously scheduled a withdrawal date, the department may notify the taxpayer of the possible error, but the department is not required to do so.

8.5(4) *Software approval.* Software developers that want to develop electronic submission formatting software for e-filing Iowa returns shall register their respective software products annually with the department. The department publishes specifications, test packages, and testing procedures. Software must pass transmission tests before the department will approve it for electronic filing of Iowa income tax returns. The department will define the test period annually.

8.5(5) *ERO acceptance to participate.* Once accepted by the IRS as an ERO for a specific tax type, the ERO is automatically accepted to e-file Iowa returns of that tax type, provided that the department offers the tax type for e-file.

8.5(6) *Suspension of an e-file provider from participation in the Iowa electronic filing program.*

a. The department may immediately suspend, without notice, an e-file provider from the Iowa electronic filing program. In most cases, a suspension is effective as of the date of the letter informing the e-file provider of the suspension. Before suspending an e-file provider, the department may issue a warning letter describing specific corrective action required to correct deviations set forth in paragraph 8.5(6)*"b."* An e-file provider will be automatically prohibited from participating in the Iowa electronic filing program if denied participation in, or suspended from, the federal electronic filing program.

b. An e-file provider that is eligible to participate in the federal electronic filing program may be suspended from the Iowa electronic filing program if any of the following conditions occur. The list is for illustrative purposes only and is not deemed to be all-inclusive.

(1) Deterioration in the format of electronic returns transmitted.

(2) Unacceptable cumulative error or rejection rate or failure to correct errors resulting from the transmission of electronic returns.

(3) Untimely received, illegible, incomplete, missing, or unapproved substitute Declaration for e-File Return forms when requested by the department.

(4) Stockpiling returns at any time while participating in the Iowa electronic filing program.

(5) Failure on the part of the transmitter to retrieve acknowledgments within two working days of the department's providing them.

(6) Failure on the part of the transmitter to initiate the communication of acknowledgments to the ERO within two working days of the department's providing them.

(7) Significant complaints about the e-file provider.

(8) Failure on the part of the e-file provider to cooperate with the department's efforts to monitor e-file providers, investigate electronic filing abuse, and investigate the possible filing of fraudulent returns.

(9) Submitting the electronic return with information that is not identical to information on the Declaration for e-File Return form.

(10) Transmitting the electronic return with software not approved by the department for use in the Iowa electronic filing program for the given tax type and tax period.

(11) Failure on the part of the e-file provider to provide W-2s, 1099s, or out-of-state tax returns when requested by the department.

8.5(7) *Administrative procedure for denial of participation or suspension of participation.*

a. When a firm has requested participation in the Iowa electronic filing program but there is reason to deny the request, the department shall send written notice to the firm advising that entry into the program has been denied. When an e-file provider is a participant in the Iowa electronic filing program but is to be suspended from the program for any condition described in subrule 8.5(6), the department will send written notice to notify the e-file provider about its suspension from the program.

b. When the firm either disagrees with the denial of participation or the suspension from participation, the firm must file a written appeal to the department within 60 days of the date of the denial or the suspension. The written appeal must be filed pursuant to rule 701—7.8(17A). During the administrative review process, the denial of the firm's participation in or the suspension of the firm from the Iowa electronic filing program shall remain in effect.

This rule is intended to implement Iowa Code sections 422.21 and 422.68.

701—8.6(421) Electing to receive communications in electronic format in lieu of paper. A taxpayer that is a registered account holder in GovConnectIowa may elect to receive notices, correspondence, or other communication electronically through GovConnectIowa in lieu of receiving them by mail.

8.6(1) *How to make the election.* The election must be made by selecting the appropriate setting on GovConnectIowa.

8.6(2) *Limitations.*

a. This election only exists for persons registered in GovConnectIowa.

b. Unless specified elsewhere in rule, this option is limited to notices, correspondence, or other communications on tax types managed in GovConnectIowa.

c. Where the department finds it beneficial to continue to send items by regular mail, the department may continue to send regular mail even if an electronic copy is also provided and even if the person elects to receive electronic mail.

8.6(3) *When service occurs.* If the department sends a notice, correspondence, or other communication by both mail and electronic communication, service occurs upon the earlier of when the communication is posted to GovConnectIowa or mailed.

8.6(4) *Taxpayer authorized representatives.* Authorized representatives as described in rule 701—8.8(17A,22,421,422) cannot opt out of paper mail for the taxpayers they represent. For each account an authorized representative represents, the authorized representative will receive paper copies of notices, correspondence, or other communication sent to the represented taxpayer. If the authorized representative creates a login and requests and is granted account access for the represented taxpayer, the authorized representative will be able to view electronic versions of the notices, correspondence, or other communication the represented taxpayer receives, but the authorized representative will still receive paper copies of those notices, correspondence, or other communication.

This rule is intended to implement Iowa Code section 421.60(11).

701—8.7(422,533) Mandatory electronic filing for certain business entity and fiduciary taxpayers. Iowa corporate and fiduciary income and franchise taxpayers, credit unions subject to the moneys and credits tax, and pass-through entities subject to Iowa income reporting requirements, are required to file their annual returns in an electronic format approved by the department for any tax year in which certain criteria are met. This rule provides information needed to determine whether any entity is subject to this electronic filing requirement for a given tax year.

8.7(1) *Definitions.*

"Business entity," when used in this rule, means entities taxed as corporations, partnerships, S corporations, and financial institutions as defined in Iowa Code section 422.61.

"Fiduciary taxpayer" means the same as "fiduciary" as defined in Iowa Code section 422.4.

"Iowa tax credits" means refundable and nonrefundable tax credits authorized under the Iowa Code for the tax year in which they are claimed or applied, but does not include credits for prior payments.

"Return," when used in this rule, means Form IA 1120, IA 1120S, IA 1120F, IA 1065, IA PTE-C, IA 1041, or Iowa credit union moneys and credits tax return, as context requires, and includes amended returns, supporting schedules, attachments, or lists that are supplemental to or part of the filed return.

"Taxpayer," unless the context otherwise requires, means any business entity, financial institution, credit union or fiduciary taxpayer as defined in this rule.

"Tax year" means any period of up to 12 months, including periods of less than 12 months, for which a taxpayer subject to this rule is required to file an Iowa income tax, franchise tax, moneys and credits, or information return.

"Total gross receipts" means gross receipts or sales from all business operations conducted within and without Iowa without any adjustment for returns and allowances, and also includes receipts from all interest, dividends, rents, and royalties; income from ordinary and capital gains; and the distributive share of income received by the taxpayer from a partnership, S corporation, estate, or trust.

8.7(2) *Electronic format for filing.* The following are the only approved methods of electronic filing:

a. Business entity and fiduciary taxpayers. A business entity or fiduciary taxpayer that meets any of the criteria for mandatory electronic filing in subrule 8.7(3) shall file a paperless Iowa income or franchise tax return by way of the Internal Revenue Service (IRS) Modernized e-File (MeF) program, also known as federal/state electronic filing, in a manner consistent with the requirements of rule 701—8.5(422).

b. Moneys and credits taxpayers. Credit unions shall file a paperless Iowa moneys and credits tax return using an electronic form provided by the department through GovConnectIowa.

8.7(3) *Criteria for mandatory electronic filing.* This subrule applies to business entities for tax years ending on or after December 31, 2022; to fiduciary taxpayers for tax years ending on or after December 31, 2023; and to moneys and credits taxpayers for any tax year ending on or after December 31, 2024. Every taxpayer required to file an Iowa income, franchise, or moneys and credits tax return for an applicable year must file using the electronic format specified in subrule 8.7(2) if the taxpayer meets any of the following criteria for the tax year:

a. Gross receipts. The taxpayer has $250,000 or more in total gross receipts for the tax year.

b. Iowa tax credits. The taxpayer claims or applies $25,000 or more of Iowa tax credits on the return for the tax year.

c. Iowa Schedules K-1. The taxpayer is required to issue ten or more Iowa Schedules K-1 to its partners, members, shareholders, or beneficiaries for the tax year.

d. Consolidated corporate return. The taxpayer elects or is required to file or be included on an Iowa consolidated corporate income tax return under Iowa Code section 422.37 for the tax year.

e. Moneys and credits return. All credit unions required to file an Iowa moneys and credits tax return for a tax year are required to file electronically.

f. Composite return. Any partnership, S corporation, or fiduciary filer that is both required to file an Iowa composite return and required to electronically file an income tax return for any period under this subrule must also electronically file the composite return for that period.

8.7(4) *Returns not in compliance with this rule.* Any return filed in any manner other than the manner specified in subrule 8.7(2) by a taxpayer that meets any of the criteria for mandatory electronic filing as described in subrule 8.7(3) is not a valid return. The taxpayer is a nonfiler for the tax year for which the return was required, and may be subject to the failure to file penalties as provided for in rules 701—10.6(421) and 701—10.9(421), until such time as the taxpayer files the return in the proper electronic format. This subrule shall not apply if an exception has been granted under subrule 8.7(5).

8.7(5) *Exceptions.* At the department's discretion, exceptions to the electronic filing requirement under this rule may be granted for good cause. The taxpayer bears the burden to prove that good cause exists for the failure to file electronically. Except as provided in paragraph 8.7(5)*"b,"* a claim that the return preparation software purchased or licensed by a taxpayer or taxpayer's return preparer does not

include all of the features necessary to comply with the taxpayer's Iowa filing obligations shall not be considered good cause for purposes of granting an exception to the electronic filing requirement.

a. Requests for exceptions to the electronic filing requirement.

(1) Form of request. Requests for exceptions to the electronic filing requirement must be submitted by mail or online through GovConnectIowa on forms provided by the department.

(2) Timing of request. Requests for exceptions to the electronic filing requirement must be submitted before the return is filed.

(3) Department determination. The department will notify the taxpayer in writing whether a request for an exception to the electronic filing requirement has been approved or denied. If the department does not respond to a taxpayer's valid request for an exception to the electronic filing requirement within 90 days of the date the request is received, the request shall be deemed accepted.

(4) Applicability of exception. An exception to the electronic filing requirement, if granted, shall only be valid for the tax year for which it was approved.

b. Special relief provided by the department. The department may, at its discretion, offer a good-cause exception to the electronic filing requirement for filers of a specific return type or form for a specific filing period by providing such an exception in the instructions for that return type or form or by an order issued by the director. Taxpayers must comply with all instructions provided by the department in order to qualify for relief.

c. Temporary one-time relief for business entity and fiduciary taxpayers. For tax years ending on or before December 31, 2023, if the department determines a taxpayer that filed a paper return was required to file in an electronic manner as provided in this rule, the department will notify the taxpayer in writing of the requirements of this rule. If the taxpayer properly files in an electronic manner within 30 days of the date of the notification under this paragraph, the department shall grant an exception to the requirements of this rule and deem the originally filed paper return a valid return. A taxpayer shall only be granted the benefit of this paragraph for one eligible return.

d. Temporary one-time relief for moneys and credits taxpayers. For tax years ending on or before December 31, 2024, if the department determines a moneys and credits taxpayer that filed a paper return was required to file in an electronic manner as provided in this rule, the department will notify the taxpayer in writing of the requirements of this rule. If the taxpayer properly files in an electronic manner within 30 days of the date of the notification under this paragraph, the department shall grant an exception to the requirements of this rule and deem the originally filed paper return a valid return. A taxpayer shall only be granted the benefit of this paragraph for one eligible return.

This rule is intended to implement 2022 Iowa Acts, House File 2552, division II.

701—8.8(17A,22,421,422) Authorized representatives—powers of attorney and representative certifications. No individual will be recognized as representing any taxpayer in regard to any tax claim, tax appeal, or other tax matter before the department or in any communication with or hearing before the department, or any agent thereof, unless a written authorization in compliance with this rule and Iowa Code section 421.59 is first filed with the department. If a taxpayer wishes to allow the department to discuss otherwise confidential tax matters with an individual without giving that individual authority to act on the taxpayer's behalf, the taxpayer must provide the department with written authorization to disclose such confidential tax information as provided in rule 701—5.7(17A,22,99G,123,421-454).

8.8(1) *Individuals authorized to represent a taxpayer, generally; transfers of decision-making authority.*

a. If a taxpayer wishes to have any other individual act on the taxpayer's behalf in matters before the department, the taxpayer must file with the department an IDR power of attorney form, as described in subrule 8.8(5), authorizing that individual to do so. This applies even if an individual desires to represent a taxpayer only through correspondence with the department but does not intend to personally appear before the department in a hearing or conference.

b. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file a representative certification form as described in subrule 8.8(6).

8.8(2) *Powers authorized.*

a. An IDR power of attorney or representative certification form, or other form designated by the department, as applicable, is required by the department before an individual can perform one or more of the following acts on behalf of the taxpayer:

(1) To receive copies of any notices or documents sent by the department, its representatives, or its attorneys.

(2) To receive, but not to endorse or collect, checks made payable to the taxpayer in payment of a refund of Iowa taxes, penalties, or interest. Certain representatives with a valid representative certification form or equivalent authorization may be authorized to receive, endorse, and collect checks made payable to the taxpayer in payment of a refund of Iowa taxes, penalties, or interest.

(3) To execute waivers (including offers of waiver) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

(4) To execute consents extending the statutory period for assessment or collection of taxes.

(5) To fully represent the taxpayer in any hearing, determination, final or otherwise, or appeal. Subrule 8.8(8) contains additional requirements.

(6) To enter into any settlement or compromise with the department.

(7) To execute any release from liability necessary as a prerequisite to divulging otherwise confidential information concerning the taxpayer.

(8) To authorize a third party as authorized representative or disclosure designee for the taxpayer.

(9) To waive, withdraw, or dismiss any claims or defenses or amend a pleading, to the extent permitted by subrule 7.8(7).

b. The taxpayer may limit the scope of the authority of an authorized representative appointed via an IDR power of attorney form by expressly stating the limitations, if any, on the IDR power of attorney form submitted to the department. The scope of authority of an authorized representative may not expand beyond those powers authorized in this rule.

8.8(3) *Submitting a form.*

a. Submit separately. An IDR power of attorney form or representative certification is not accepted as an attachment to a tax return except as provided by these rules. A power of attorney form or representative certification form must be submitted in accordance with the submission instructions on the form(s).

b. Original or electronic forms accepted. The department may accept either an original form, an electronically scanned and transmitted form, or a copy of a form. A copy received by facsimile transmission (fax) or email may be accepted.

c. Timely submission. The form must be submitted within six months of the date of signature, or it will be considered invalid.

d. Appointment of a representative via another form. The department designates certain returns or other departmental forms on which a taxpayer may appoint an authorized representative.

e. Signature. The signature on the form must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

8.8(4) *Communications with represented taxpayers.* Any notice or other written communication (or copy thereof) from the department provided to the authorized representative, where required or permitted to be given to the taxpayer, will be given to the taxpayer as well.

8.8(5) *Powers of attorney.* Taxpayers must ensure that all required fields of the IDR power of attorney form are properly completed.

a. Individuals who may execute an IDR power of attorney form. Individuals who are permitted to execute an IDR power of attorney form are as follows:

(1) Individual. In matters involving an individual taxpayer, an IDR power of attorney form must be signed by the taxpayer or the taxpayer’s authorized representative.

(2) Joint or combined returns. In matters involving a joint return, each taxpayer must complete and submit an IDR power of attorney form, even if the taxpayers are represented by the same appointee(s). In any matter concerning a joint return, the authorized representative of one spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

b. Contents of the IDR power of attorney form. A valid IDR power of attorney form contains the following information:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., social security number (SSN), federal employer identification number (FEIN), or any federal- or Iowa-issued tax identification number), or other number as approved by the department;

(3) Name, mailing address, and identification number of the representative (i.e., preparer's tax identification number (PTIN), SSN, centralized authorization file (CAF) number, any federal- or Iowa-issued tax identification number, or other number as approved by the department);

(4) Description of the matter(s) for which representation is authorized, which may include:

1. The type of tax(es) involved or an indication that all tax types are within the scope of authority;

2. The specific year(s) or period(s) involved or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date);

3. Iowa tax permit number;

4. No limitation on tax type, year/period, or permit will allow the authorized representative to act for any tax type/year/period/permit.

(5) A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 8.8(2).

(6) A signature on the form, which may be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

(7) Any other information required by the department.

c. Authorization period for an IDR power of attorney form.

(1) An IDR power of attorney form may be used to authorize representation for tax periods that end within three years after the date on which the form is signed by the taxpayer. The authority granted may concern an unlimited number of tax periods that have ended prior to the date on which the IDR power of attorney form is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax period section is left blank, all tax periods, including those ending up to three years in the future, are included.

(2) The authority granted by an IDR power of attorney form ceases to be effective for tax periods as defined in subparagraph 8.8(5)*"c"*(1) upon revocation by the taxpayer; incapacity of the taxpayer; death of the taxpayer; or withdrawal, death, or incapacity of the authorized representative.

d. Evaluation of documentation provided. The department will evaluate the IDR power of attorney form and any additional documentation to confirm authority. Authority to act before the department only covers those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer has the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

e. Revocation and withdrawal.

(1) Revocation by the taxpayer.

1. By written statement. By filing a statement of revocation with the department, a taxpayer may revoke authority granted by an IDR power of attorney form without authorizing a new representative. The statement of revocation must indicate that the authority of the previous representative is revoked and be signed by the taxpayer. The name and address of each representative whose authority is revoked must be listed (or a copy of the prior IDR power of attorney form must be attached). If the writing indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or an entity representative form.

2. By filing a new IDR power of attorney form. Filing a new IDR power of attorney form for a particular tax type(s) and tax period(s) automatically revokes a previously granted authority for the same tax type(s) and tax period(s). For a previously designated authorized representative to remain as the taxpayer's authorized representative when a subsequent IDR power of attorney form is filed, the taxpayer must include the representative on the newly submitted IDR power of attorney form. This rule applies regardless of whether the power of attorney authority is authorized by an IDR power of attorney

form or on a return as described in subrule 8.8(7). This subrule does not apply to entities appointed as authorized entity representatives under subrule 8.8(9).

(2) Withdrawal by the authorized representative. By filing a statement with the department, an authorized representative may withdraw from representation in a matter in which an IDR power of attorney form has been filed. The statement must be signed by the representative and identify the name, identification number, and address of the taxpayer(s); the name, address and identification number of the representative withdrawing; and the matter(s) from which the representative is withdrawing. A representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired.

(3) Administrative revocation by the department. The department may administratively revoke any third-party access authority, including those appointed via the IDR power of attorney form or representative certification form.

8.8(6) *Representative certification; durable and general powers of attorney.*

a. Authorized representatives. Individuals with the authority to act on behalf of a taxpayer granted outside of IDR, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file with the department a form certifying their authority to represent the taxpayer prior to utilizing that authority with the department. Individuals authorized by an IDR power of attorney form should not file a representative certification form for themselves.

b. Contents of the representative certification form. The representative certification form must include the following information:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., SSN, FEIN, any federal- or Iowa-issued tax identification number relative to matters covered by the IDR power of attorney form, or other number as approved by the department);

(3) Name, mailing address, and identification number (i.e., SSN, CAF number, any federal- or Iowa-issued tax identification number, or other number as approved by the department) of the representative.

(4) Proof of authority must be included with the form as follows:

1. Durable power of attorney or general power of attorney other than an IDR power of attorney form: a copy of the power of attorney document;

2. Guardian, conservator, or custodian appointed by a court: documentation as required in Iowa Code section 421.59(2)*"a"*;

3. Receiver appointed pursuant to Iowa Code chapter 680: a copy of the relevant court order(s);

4. Licensed attorney appearing on behalf of the taxpayer or the taxpayer's estate in a court proceeding: a copy of the filed notice of appearance in the relevant court proceeding;

5. Parent or guardian of a minor taxpayer: a copy of the return signed by the parent or guardian or proof of status as parent or guardian, such as a birth certificate or equivalent document, stating parent and minor taxpayer's names, as well as the minor taxpayer's date of birth. By submitting a copy of a return signed by the parent or guardian, the parent or guardian will only have authority in relation to that return. Without other authorization, such as a court-ordered guardianship, a parent's right to access a minor taxpayer's account will cease when the minor taxpayer reaches majority;

6. Executor or personal representative: a copy of the will or court order appointing the individual;

7. Trustee: a copy of the certificate of trust, trust document, or court order appointing the representative;

8. The following categories of authorized representative do not require documentation:

- Individual holding one of the following titles within a corporation, association, partnership, or other entity:
  - Officer/employee of corporation/association;
  - Designated partner authorized to act on behalf of a partnership;
  - Individual authorized to act on behalf of a limited liability company in tax matters;
- Governmental representative.
- Successor of a very small estate under Iowa Code section 633.356(2).

(5) Affirmation of authority to act on behalf of the taxpayer, and agreement to only act within that authority. Affirmation will be signed under penalty of perjury.

(6) A signature of the representative on the form, which must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization;

(7) Any other information requested by the department.

c. Evaluation of documentation provided. The department will evaluate documentation submitted in support of a representative certification to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer has the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

d. Revocation. A representative certification may be revoked in the following ways:

(1) By the representative being withdrawn, following procedures in subparagraph 8.8(5)*"e"*(2).

(2) By the taxpayer, following procedures in subparagraph 8.8(5)*"e"*(1).

(3) By another representative. An authorized representative properly appointed by a representative certification or an IDR power of attorney form may notify the department that an authorized representative no longer has authority to act on behalf of the taxpayer by filing a statement of revocation with the department. The notification statement must indicate the taxpayer's name, address, and identification; state that the authority of the former representative has ceased; and be signed by a current authorized representative. Also, the name and address of each representative who no longer has authority must be listed (or a copy of the prior representative certification form must be attached).

(4) Administrative revocation by the department, following procedures in paragraph 8.8(5)*"e."*

8.8(7) *Returns that may be used to grant power of attorney authority.* An IDR power of attorney form is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14, a corporation or S corporation return filed under Iowa Code section 422.36 or 422.37, a partnership return filed under Iowa Code section 422.15, a franchise tax return filed under Iowa Code section 422.62, a moneys and credits return filed under Iowa Code section 533.329, or a tax return filed under Iowa Code chapter 450.

8.8(8) *Individuals authorized to represent themselves or others in a contested case proceeding.* The right to represent oneself or others in connection with any contested case proceeding before the department or administrative hearings division is limited to the following classes of individuals, so long as such representation is not barred by another provision of law. Representatives must have a valid IDR power of attorney form or valid representative certification form on file with the department to represent others in a contested case proceeding. The right to represent a taxpayer before the department or the administrative hearings division does not confer the right to represent the taxpayer in a judicial proceeding.

a. Individuals representing themselves. One spouse may not represent the other in contested case proceedings unless the spouse is acting in a capacity described in paragraphs 8.8(8)*"b"* through *"j"*;

b. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;

c. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with the requirements for admission to practice before the courts of the state of Iowa pro hac vice;

d. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542;

e. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer. Attorneys who are acting in the capacity of a director or officer of a corporation must comply with paragraph 8.8(8)*"b"* or *"c"*;

f. Partners representing their partnership. Attorneys who are acting in the capacity of a partner must meet the requirements of paragraph 8.8(8)*"b"* or *"c"*;

g. Fiduciaries including trustees, receivers, guardians, personal representatives, administrators, and executors. For purposes of this rule, a fiduciary is considered to be the taxpayer and not a representative of the taxpayer;

h. Government officials authorized by law;

i. Enrolled agents, currently enrolled under 31 CFR Section 10.6(2011) for practice before the IRS, representing a taxpayer in proceedings under Iowa Code chapter 422; and

j. Conservators, guardians, or durable powers of attorney appointed to handle tax matters.

8.8(9) *Entities as authorized representatives.*

a. Appointment.

(1) A taxpayer may authorize an entity to act on its behalf in tax-related matters by following the procedures described in this subrule in a manner approved by the department. By appointing an authorized entity representative, the taxpayer consents to the authorized entity representative, and any individuals submitted to the department by the authorized entity representative, as described in paragraph 8.8(9)*"c,"* sending and receiving the taxpayer's information to and from the department and taking any other action described in these rules. By appointing an authorized entity representative, the taxpayer understands that the authorized entity representative is solely responsible for maintaining an accurate list of individuals allowed to act on the taxpayer's behalf. The taxpayer agrees that any improper disclosure or use of the taxpayer's information by the entity or entity's current or former employees, agents, or contractors is solely the responsibility of the entity and the entity's employees, agents, or contractors. The department is not liable for any acts or omissions of the entity or the entity's employees, agents, or contractors.

(2) The taxpayer's consent must be in writing, in a form specified by the department, including a signature and date. The signature must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

b. Department approval of authorized entity representatives.

(1) The department will review authorized entity representative appointments.

(2) The department has the authority to approve, deny, or remove third-party access to any entity or individual employee upon review.

c. Duties of the authorized entity representative.

(1) The authorized entity representative is responsible for managing access for individual employees that it authorizes to act on behalf of the taxpayer in a manner defined by the department. The authorized entity representative provides the department a single point of contact for matters involving the entity's status as an approved entity representative.

(2) The authorized entity representative single point of contact must have a valid IA 2848 or representative certification form on file on behalf of the authorized entity representative.

(3) The authorized entity representative will provide information regarding each individual employee authorized to act on behalf of the taxpayer as determined by the department. This information will be used to identify the individual employee when contacting the department. The authorized entity representative will maintain with the department an accurate and up-to-date list of individual employees that the authorized entity representative has authorized to act on a taxpayer's behalf under this rule. The authorized entity representative will remove any individuals from its list with the department as soon as an individual is no longer employed by the entity or is no longer authorized by the entity to act on behalf of a taxpayer. The authorized entity representative shall submit all information and changes to information to the department via GovConnectIowa.

(4) The authorized entity representative is responsible for the actions taken by its employees, agents, and contractors on behalf of the taxpayer.

(5) The authorized entity representative shall remain in good standing with the department.

d. Powers authorized. An authorized entity representative may be granted any or all of the powers described in subrule 8.8(2). The taxpayer may limit the authorized entity representative as described therein and by tax type. If the tax type field is left blank, all tax types are included within the scope of the authorized entity representative's authority.

e. Contents of form. A valid IDR authorized entity representative form contains the information specified in paragraph 8.8(5)*"b."*

f. Authorization period.

(1) An authorized entity representative may be used to authorize representation for an unlimited number of tax periods prior to or following the date on which the form is received by the department. If the tax period is left blank, all tax periods are included.

(2) At any time while the taxpayer has an effective authorized entity representative appointment filed with the department, the taxpayer consents to allowing the authorized entity representative and any individuals listed by the authorized entity representative, as described in paragraph 8.8(9)*"c,"* to send and receive the taxpayer's information to and from the department and take any other action described in these rules.

(3) The authority granted by an IDR power of attorney form ceases to be effective upon revocation by the taxpayer or withdrawal or dissolution of the authorized entity representative. It is the sole responsibility of the taxpayer to revoke an authorized entity representative.

g. Revocation and withdrawal.

(1) Revocation by the taxpayer. Such appointment may be revoked by the taxpayer at any time, via GovConnectIowa or in writing to the department. The revocation must include the name and identification number of the taxpayer, the name of the representative entity, an indication of the wish to withdraw, and the taxpayer's dated signature. If the revocation indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or entity representative form.

(2) Withdrawal by the authorized entity representative. By filing a statement with the department, an authorized entity representative may withdraw from representation appointed under this subrule. The statement must be signed by the authorized entity representative single point of contact and must identify the name and address of the taxpayer(s) and the matter(s) from which the authorized entity representative is withdrawing. An authorized entity representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired. Such statement shall be signed by the authorized entity representative single point of contact.

(3) Administrative revocation by the department. The department may administratively revoke any entity representative authority.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

ARC 8331C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to interest, penalty, and exceptions to penalty and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," and to adopt a new Chapter 10, "Interest, Penalty, and Exceptions to Penalty," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 421.7, 421.27 and 421.60.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt new Chapter 10, which implements statutes relating to penalties and interest associated with Iowa tax filings. The Department proposes to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language pursuant to Executive Order 10. Additionally, rules on the order of application of

payments and jeopardy assessments are proposed to be removed from this chapter and adopted under 701—Chapter 11 in a separate rulemaking to be in a general administration chapter, where they are better suited.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been proposed to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Benjamin Clough
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.587.0662
Email: ben.clough@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 9 to 10 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 12:30 to 1:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
INTEREST, PENALTY, AND EXCEPTIONS TO PENALTY

701—10.1(421) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

"Department" means the Iowa department of revenue.

"Director" means the director of the department or the director's designee.

"Taxes" means all taxes and charges arising under Title X of the Iowa Code, and all other taxes administered by the department including but not limited to the moneys and credits tax arising under Iowa Code section 533.329, except the beer barrel tax under Iowa Code section 123.136 and the wine gallonage tax under Iowa Code section 123.183.

This rule is intended to implement Iowa Code chapter 421.

701—10.2(421) Interest.

10.2(1) *Rate determination.* Except where a different rate of interest is provided by Title X of the Iowa Code, the rate of interest on interest-bearing taxes and interest-bearing refunds arising under Title X is fixed for each calendar year by the director. In addition to any penalty computed, there shall be added interest as provided by law from the original due date of the return. Any portion of the tax imposed by statute that has been erroneously refunded and is recoverable by the department shall bear interest as provided in Iowa Code section 421.7(2) from the date of payment of the refund, considering each fraction of a month as an entire month.

10.2(2) *Examples of the application of interest.* The following scenarios demonstrate how interest will be applied to tax liabilities and refunds under various fact patterns. For purposes of these examples, the interest rate in effect for year one is 5 percent per year, the interest rate in effect for year two is 7.5 percent per year, and the interest rate in effect for year three is 10 percent per year.

EXAMPLE 1: The taxpayer, A Corp, owes corporate income taxes assessed for tax year zero. The assessment was made by the department in year one. On January 1 of year two, that assessment had not been paid. The rate of interest on the unpaid tax assessed has accrued at the rate of 5 percent per annum (0.416 percent per month) through December 31 of year one. Commencing on January 1 of year two, the rate of interest on the unpaid tax will accrue at the rate of 7.5 percent per annum for the year (0.625 percent per month).

EXAMPLE 2: The taxpayer, Y, owes retail sales taxes assessed to it for the audit period January 1, through December 31 of year one. The assessment is made on March 1 of year two. For the tax periods in which the tax became due prior to January 1 of year two, the interest rate on such unpaid sales taxes accrued at 5 percent per annum (0.416 percent per month). Commencing on January 1 of year two, the entire unpaid portion of the tax assessed which was delinquent at that time will begin to accrue interest at the rate of 7.5 percent per annum. Those portions of the tax assessed first becoming delinquent in year two will bear interest at the rate of 7.5 percent per annum (0.625 percent per month). In the event that any portion of the tax assessed remains unpaid on January 1 of year three, the rate of interest will then accrue in year three at a rate of 10 percent per annum (0.833 percent per month).

EXAMPLE 3: The taxpayer, Z, files a refund claim for tax year zero individual income taxes in March of year two. The refund claim is allowed in May of year two and is paid. Z is entitled to receive interest at the rate of 5 percent per annum (0.416 percent per month) upon the refunded tax accruing through December 31 of year one and is entitled to interest at the rate of 7.5 percent per annum (0.625 percent per month) upon such tax from January 1 of year two until the refund is paid.

EXAMPLE 4: A's tax year zero individual income tax liability becomes delinquent on May 1 of year one. A owes interest, commencing on May 1 of year one at the rate of 5 percent per annum (0.416 percent per month). In the event that A does not pay the liability in year one, the interest will then accrue in year two at a rate of 7.5 percent per annum (0.625 percent per month).

EXAMPLE 5: Decedent died December 31 of year zero. The inheritance tax was due 12 months after death or December 31 of year one. Prior to the due date, the estate was granted an extension of time, until September 1 of year two, to file the return and pay the tax due. The tax, however, was paid March 15 of year three. Interest accrues on the unpaid tax during the period of the extension of time (January 1 to September 1 of year two) and the remainder of year two at the rate of 7.5 percent per annum. Interest accrues on the delinquent tax from January 1 to the date of payment on March 15 of year three at the rate of 10 percent per annum.

The examples set forth in these rules are not meant to be all-inclusive. In addition, other rules set forth the precise circumstance when interest begins to accrue and whether interest accrues for each month or fraction of a month or annually as provided by law. Interest accrues as provided by law, regardless of whether the department has made a formal assessment of tax.

This rule is intended to implement Iowa Code section 421.7.

701—10.3(421,422,423,450,452A) Interest on refunds and unpaid tax.

10.3(1) *Interest on refunds.* For those taxes on which interest accrues on refunds, interest shall accrue through the month in which the refund is mailed to the taxpayer and no further interest will accrue unless the department did not use the most current address as shown on the latest return or refund claim filed with the department.

10.3(2) *Interest on unpaid tax.* Interest due cannot be waived except in accordance with the settlement authority described in Iowa Code sections 421.5 and 17A.10.

This rule is intended to implement Iowa Code sections 421.5, 421.60, 422.25(3), 422.28, 423.47, 437A.13, 450.94, 452A.65 and 533.329.

701—10.4(421) Frivolous return penalty. A $500 civil penalty is imposed on any return of a taxpayer that is considered to be a frivolous return. A frivolous return is a return that lacks sufficient information from which the substantial correctness of the amount of tax liability can be determined or contains information that on its face indicates that the amount of tax shown is substantially incorrect and that reflects a position of law that is frivolous or is intended to delay or impede the administration of the tax laws of this state.

If the frivolous return penalty is applicable, the penalty will be imposed in addition to any other penalty that has been assessed. If the frivolous return penalty is relevant, the penalty may be imposed even under circumstances when it is determined that there is no tax liability on the return.

10.4(1) *Nonexclusive examples of circumstances under which the frivolous return penalty may be imposed.* The following are examples of returns filed in circumstances under which the frivolous return penalty may be imposed:

a. A return claiming a deduction against income or a credit against tax liability that is clearly not allowed such as a "war," "religious," or "conscientious objector" deduction or tax credit.

b. A blank or partially completed return that was prepared on the theory that filing a complete return and providing required financial data would violate the Fifth Amendment privilege against self-incrimination or other rights guaranteed by the Constitution.

c. An unsigned return where the taxpayer refused to sign because the signature requirement was "incomprehensible or unconstitutional" or the taxpayer was not liable for state tax since the taxpayer had not signed the return.

d. A return that contained personal and financial information on the proper lines but where the words "true, correct and complete" were crossed out above the taxpayer's signature or where the taxpayer claimed the taxpayer's income was not legal tender and was exempt from tax.

e. A return where the taxpayer claimed that income was not "constructively received" and the taxpayer was the nominee-agent for a trust.

f. A return with clearly inconsistent information.

g. A document filed for refund of taxes erroneously collected with the contention that the document was not a return and that no wage income was earned. This was inconsistent with attached W-2 Forms reporting wages.

h. A return that includes falsified information or supporting documentation.

10.4(2) *Nonexclusive examples where the frivolous return penalty is not applicable.* The following examples illustrate situations where the frivolous return penalty would not be applicable:

a. A return that includes a deduction, credit, or other item that may constitute a valid item of dispute between the taxpayer and the department.

b. A return that includes innocent or inadvertent mathematical or clerical errors, such as an error in addition, subtraction, multiplication, or division or the incorrect use of a table provided by the department.

c. A return that includes a statement of protest or objection, provided the return contains all required information.

d. A return that shows the correct amount of tax due, but the tax due is not paid.

This rule is intended to implement Iowa Code section 421.8.

701—10.5 Reserved.

701—10.6(421) Penalties.

10.6(1) *Penalties applicable to all taxpayers.* A penalty shall be assessed upon tax due under the circumstances described in this subrule. The rates for penalties described in this rule are uniform for all tax types. Unless otherwise specified in this subrule, see rule 701—10.7(421) for waivers that may apply to these penalties.

a. For failure to timely file a return, there is a 5 percent penalty on the unpaid tax. This penalty, once imposed, will be assessed on all subsequent amounts found by the taxpayer or the department to be due for the tax period. This penalty is in addition to any other penalty provided by law.

b. For failure to timely pay the tax due on a return, there is a 5 percent penalty on the unpaid tax. This penalty is in addition to any other penalty provided by law.

c. For a deficiency of tax due found during an audit or examination, there is a 5 percent penalty on the unpaid tax. This penalty is in lieu of the penalty for failure to timely pay but is in addition to any other penalty provided by law.

d. For willful failure to file a return with the intent to evade tax or a filing requirement, or in the case of willfully filing a false return with the intent to evade tax, there is a 75 percent penalty. This penalty is in lieu of other penalties applicable under this rule. This penalty is not subject to waiver.

e. For failure to remit at least 90 percent of the tax due by the time an extension for further time to file a return is made, there is a 10 percent penalty on the unpaid tax.

f. For failure to remit payment of taxes in the form or manner required by the rules of the director, there is a 5 percent penalty on the amount of the payment remitted in the incorrect form or manner, not to exceed $500 per instance. This penalty shall be waived if the taxpayer was not notified of the requirement to remit tax payments electronically or if the incorrect electronic transmission of the payment was made before the taxpayer was notified of the requirement to remit tax payments electronically.

10.6(2) *Penalties applicable to specified businesses for tax years beginning on or after January 1, 2022, in which no tax is due.*

a. Definitions. For purposes of this subrule, the following definitions apply:

"Imputed Iowa liability" means the specified business's Iowa net income after the application of the Iowa business activity ratio, if applicable, multiplied by the applicable tax rate for the tax year, less any Iowa tax credits available to be claimed by the specified business in the current year. For purposes of the imputed Iowa liability calculation, "Iowa tax credits" does not include any credit for withholding or estimated tax. The applicable tax rate is:

1. In the case of an entity taxed as a C corporation, the top corporation income tax rate under Iowa Code section 422.33,
2. In the case of a financial institution as defined in Iowa Code section 422.61, the franchise tax rate under Iowa Code section 422.63, or
3. In the case of an entity taxed as an S corporation or partnership, the top individual income tax rate under Iowa Code section 422.5A.

"Income return" includes an Iowa corporation income tax return (IA 1120), an Iowa franchise tax return (IA 1120F), an Iowa S corporation income tax return (IA 1120S), and an Iowa partnership income tax return (IA 1065).

"Specified business" means any of the following:

1. An entity taxed as a C corporation that is required to file an Iowa corporation income tax return (IA 1120). This includes a consolidated group of corporations electing or required to file an Iowa consolidated return under Iowa Code section 422.37.
2. An entity taxed as an S corporation that is required to file an Iowa S corporation income tax return (IA 1120S).
3. A financial institution that is required to file an Iowa franchise tax return (IA 1120F).
4. An entity taxed as a partnership that is required to file an Iowa partnership income tax return (IA 1065).

b. For a failure by a specified business to timely file an income return when no tax is due, a penalty shall be assessed equal to the greater of $200 or 5 percent of the imputed Iowa liability of the specified business, not to exceed $25,000. A specified business that has Iowa tax due for a tax year (such as an S corporation subject to Iowa income tax on built-in gains or passive investment income) is not subject to this penalty for that tax year but may be subject to other penalties provided in this rule.

c. For willful failure by a specified business to file an income return with no tax shown due with the intent to evade a filing requirement, or in the case of willfully filing a false income return with no tax shown due with the intent to evade reporting of Iowa-source income, a penalty shall be assessed equal to the greater of $1,500 or 75 percent of the imputed Iowa liability of the specified business. This penalty is not subject to waiver. A specified business that has Iowa tax due for a tax year (such as an S corporation subject to Iowa income tax on built-in gains or passive investment income) is not subject to this penalty for that tax year but may be subject to other penalties provided in this rule.

10.6(3) *Examples.* The following are examples to illustrate the computation of penalties imposed under this rule. For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax due was paid.

Example (a) — Failure to Timely File and Failure to Timely Pay

a. Tax due is $100.

b. Return filed 2 months and 10 days after the due date.

c. $0 paid prior to filing.

The calculation for the total amount due 3 months after the due date is shown below:

Tax	$100	
Penalty	10	(5% for failure to timely file, 5% for failure to timely pay)
Interest	3	(3 months interest)
Total amount due	$113	

Example (b) — Failure to Timely Pay

a. Tax due is $100.

b. Return is timely filed.
c. $0 paid with the return.
The calculation for the total amount due 5 months after the due date is shown below:

Tax	$100	
Penalty	5	(5% for failure to timely pay)
Interest	5	(5 months interest)
Total amount due	$110	

Example (c) — Audit Deficiency on Timely Filed Return
a. Timely filed return reported $100 tax due.
b. $100 paid with return.
c. Audit completed 8 months after the due date of the return.
d. $100 in additional tax found due during audit.
The calculation for the total amount due is shown below:

Computed tax after audit	$200	
Less tax paid with return	100	
Additional tax due	$100	
Penalty	5	(5% for audit deficiency)
Interest	8	(8 months interest)
Total amount due	$113	

Example (d) — Audit Deficiency on Late Return Granted an Exception From Failure to File
a. Tax due reported on return is $100.
b. Return filed 3 months and 10 days after the due date.
c. $100 paid with the return.
d. Taxpayer is granted an exception from penalty for failure to timely file and failure to timely pay.
e. Audit completed 8 months after the due date of the return.
f. $100 additional tax found due during audit.
The computation for the total amount due is shown below:

Tax due after audit	$200	
Less tax paid with return	100	
Additional tax due	$100	
Penalty	5	(5% for audit deficiency. No penalty for failure to file.)
Interest	8	(8 months interest)
Total amount due	$113	

Example (e) — Audit Deficiency on Late Filed Return No Pay Return
a. Tax due reported on the return is $100.
b. Return filed 3 months and 10 days after the due date.
c. $114 in tax, penalty, and interest paid with the return.
d. Audit completed 8 months after the due date.
e. $100 additional tax found due during audit.
The computation for the total amount due is shown below:

Tax due reported on original return	$100	
Penalty	10	(5% for failure to timely file, 5% for failure to timely pay)
Interest	4	(4 months interest)
Total amount due on original return	$114	
Additional tax due after audit	$100	
Penalty	10	(5% for failure to file, 5% for audit deficiency)
Interest	8	(8 months interest)
Amount due after audit	$118	
Total amount due for tax period	$232	

Example (f) — Failure to Timely File by a Specified Business

a. Tax due for tax year 2023 is $0 because the entity is a partnership (IA 1065).

b. Return is filed 7 months and 10 days after the due date.

c. Partnership net income after calculation of the Iowa business activity ratio is $30,000.

d. Net income multiplied by the top individual tax rate in 2023 of 6.5 percent is $1,950.

e. Iowa tax credits available are $1,000.

f. Imputed Iowa liability is $950.

g. The penalty is the greater of 5 percent of the imputed Iowa liability ($48) or $200.

The calculation for the total amount due is shown below:

Tax	$0
Penalty	200
Interest	0
Total amount due	$200

701—10.7(421) Waiver of penalty. Under certain circumstances, the penalty for failure to timely file a return, failure to timely pay the tax due with the filing of a return, or failure to pay following an audit by the department may be waived. The taxpayer has the burden to prove the necessary conditions to waive a penalty.

10.7(1) Definitions. For purposes of this rule, the following definitions apply:

"Act of God" means an unusual and extraordinary manifestation of nature that could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight.

"Immediate family" includes the spouse, children, or parents of the taxpayer. There is a rebuttable presumption that relatives of the taxpayer beyond the relation of spouse, children, or parents of the taxpayer are not within the taxpayer's immediate family for purposes of the waiver exceptions.

"Sanctioned self-audit program" means an audit performed by the taxpayer with forms provided by the department as a result of contact by the department to the taxpayer prior to voluntary filing or payment of the tax. Filing voluntarily without contact by the department does not constitute a sanctioned self-audit.

"Substantial authority" means the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions.

In determining whether there is substantial authority, only the following will be considered authority: applicable provisions of Iowa statutes, provisions of the Internal Revenue Code and United States Treasury regulations that were applicable for the tax period(s) in question, Iowa administrative rules construing those statutes, court cases, administrative rulings, legal periodicals, department guidance and tax return instructions current for the applicable tax period(s), tax treaties and regulations, and legislative intent as reflected in committee reports.

Conclusions reached in treatises, legal opinions rendered by other tax professionals, descriptions of statutes prepared by legislative staff, legal counsel memoranda, and proposed rules and regulations are not substantial authority.

There is substantial authority for the tax treatment of an item if there was current substantial authority at the time the return containing the item is due to be filed or there was current substantial authority on the last day of the taxable year to which the return relates.

The taxpayer must notify the department at the time the return or payment is originally due of the substantial authority the taxpayer is relying upon for not filing the return or paying the tax due.

10.7(2) Documentation. Unless otherwise indicated, written documentation is required to support the waiver of a penalty.

10.7(3) For failure to timely file a return or failure to timely pay tax due, the 5 percent penalties shall be waived upon a showing of the following exceptions.

a. An amount of tax greater than $0 is due and at least 90 percent of the tax required to be shown due has been paid by the due date of the tax return. This exception does not apply to the penalty for failure to timely file by a specified business under subrule 10.6(2).

b. A taxpayer required to file a monthly or quarterly return is allowed one late return or one late payment within a three-year period.

(1) The use by the taxpayer of any other penalty exception under this subrule will not count as a late return or payment for purposes of this subrule.

(2) If the taxpayer receives this waiver, the taxpayer must make timely filings and payments for three years prior to being eligible for another waiver under this paragraph.

(3) This exception does not apply to an income return, a franchise return, or a moneys and credits return.

(4) This exception is determined on the basis of the tax period for which the return or payment is due and not the date on which the return is filed or payment is made.

EXAMPLE: Taxpayer A, a retail business with multiple employees, has not been late in filing returns or making payments for five years. Taxpayer A files its withholding return for the fourth quarter of 2020, due January 20, 2021, on the due date but does not make the payment until the next day. Taxpayer A incurs the penalty for failing to timely pay, but the penalty will be waived under this exception. Taxpayer A is not eligible for a waiver for a late return filing or late payment again until the due date for the fourth quarter of 2023.

c. Death of a taxpayer, a member of the immediate family of the taxpayer, or the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing of a return or timely payment of tax. There is a rebuttable presumption that a death that occurs more than 30 days before the date the return or payment is due does not interfere with timely filing or payment. The taxpayer, or taxpayer's legal representative, has the burden of supplying proof of when the death occurred. A taxpayer who is eligible for this waiver will be allowed 30 days from the date the return or payment is originally due to file the return or make the associated payment without incurring penalty.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return and paying the tax when such illness or hospitalization interferes with the timely filing of a return or timely payment of tax.

(1) There is a rebuttable presumption that the onset of an illness or hospitalization that precedes the due date of the return or payment by more than 30 days does not interfere with the timely filing or timely payment of tax.

(2) The taxpayer will be allowed at least 30 days from the date the return or payment form is due or until the illness or hospitalization no longer reasonably interferes with the taxpayer's ability to file the return without incurring a penalty.

(3) The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred, when it occurred, and how the illness or hospitalization interfered with the taxpayer's ability to timely file a return or timely pay.

e. Destruction of records by fire, flood, or act of God when the destruction interferes with the timely filing of a return or timely payment of tax. There is a rebuttable presumption that an "act of God" that precedes the due date of the return or payment by 30 days or more did not interfere with the timely filing or payment.

f. The taxpayer presents proof that the taxpayer at the due date of the return or payment relied upon applicable, documented, written advice made specifically to the taxpayer; to the taxpayer's preparer; or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or Internal Revenue Service. The advice must be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The reliance must be the direct cause of the failure to file or failure to pay. The advice must be current and not superseded by a court decision; ruling of a quasi-judicial body such as an administrative law judge or the director; or by the adoption, amendment, or repeal of a rule or law.

g. Reliance upon the results of a previous audit was a direct cause for failure to file or pay where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or by adoption, amendment, or repeal of a rule or law.

h. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return. Mathematical,

computation, or transposition errors are not considered as facts and circumstances disclosed on a return. These types of errors will not be considered as penalty exceptions.

i. The return or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

l. The availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer.

m. For estates with disclaimers, a penalty will not be imposed for failure to pay or a late-filed Iowa inheritance tax return if the sole reason for the failure to pay or late-filed inheritance tax return is due to a beneficiary's decision to disclaim property or disclaim an interest in property from the estate. However, for the penalty to be waived, the Iowa inheritance tax return must be filed and all tax must be paid to the department within the later of nine months from the date of death or 60 days from the delivery or filing date of the disclaimer pursuant to Iowa Code section 633E.12.

10.7(4) In addition to any applicable waivers for failure to timely pay the tax due on a return in subrule 10.7(3), the 5 percent penalty for failure to timely pay the tax due shall be waived upon a showing of any of the following exceptions:

a. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department. This exception does not apply to a sanctioned self-audit program conducted by the department or to adjustments from a state partnership audit as described in Iowa Code section 422.25C(2).

b. Changes to Iowa tax liability.

(1) For changes to Iowa tax liability resulting from a federal partnership level audit, the partnership or a direct or indirect partner voluntarily and timely complies with its reporting and payment requirements following the final determination date of the audit. Requirements for reporting federal partnership level audit adjustment to Iowa can be found in Iowa Code section 422.25A.

(2) For changes to Iowa tax liability resulting from an audit or examination by the Internal Revenue Service other than a federal partnership level audit, the taxpayer voluntarily files a complete federal adjustments report and pays any additional Iowa tax due within 180 days of the final determination date of the federal audit or examination. For purposes of this paragraph, "federal adjustments report" means a filing that includes an amended Iowa return with any required supporting schedules, a copy of the federal audit report or other federal documents that show the final determination and explains all the final federal adjustments, and a copy of the amended federal return if one was filed.

(3) This exception does not apply to adjustments from a state partnership audit as described in Iowa Code section 422.25C(2).

10.7(5) For a deficiency of tax due on a return found during an audit or examination, the 5 percent penalty is waived under the following exceptions:

a. At least 90 percent of the tax due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice as described in paragraph 10.7(3)*"f."*

c. Reliance upon results in a previous audit was a direct cause for failure to file or pay as described in paragraph 10.7(3)*"g."*

d. The taxpayer presents documented proof of substantial authority as described in paragraph 10.7(3)*"h."*

701—10.8(421) Tax return extension in disaster areas. If a natural disaster is declared by the governor in any area of the state, the director may extend for a period of up to one year the due date for the filing of any tax return and may suspend any associated penalty or interest that would accrue during that period

of time for any affected taxpayer whose principal residence or business is located in the covered area, if the director determines it necessary for the efficient administration of the tax laws of this state. The director will notify the public of any possible extensions of tax filings as well as possible suspensions of penalty and interest. Notification will be made through different means available to the director including but not limited to press releases, media information, and the department's website. Persons eligible for extension shall complete any application or form if required by the department and satisfy any requirements or conditions for the extension.

This rule is intended to implement Iowa Code section 421.17(30).

701—10.9(421) Failure to file penalty. A penalty may be assessed for failure to file a return if a taxpayer is subject to a return filing requirement. This penalty may be assessed on any person required to file a return for any tax type administered by the department. This penalty shall be assessed 90 days after the department has issued a demand letter if a return has not been filed. This penalty will be equal to $1,000 for each failure to file. This penalty is in addition to any other penalty provided by law.

10.9(1) *Demand letter.*

a. The department may send a demand letter to a taxpayer at any time after the taxpayer has failed to file a return, as defined in Iowa Code section 421.6, by the due date. Once this letter has been issued, the taxpayer has 90 days from the date on the letter to file all returns referenced in the letter or show proof that all returns referenced in the letter have already been filed before a penalty will be assessed.

b. The letter shall contain the following title and heading:

FAILURE TO FILE DEMAND LETTER

The Iowa Department of Revenue has determined you have not filed one or more required returns. Under Iowa Code section 421.27(8), failure to file your return(s) as described in this letter within 90 days of the date of this letter will result in a $1,000 penalty for each return that is not filed. Penalties under Iowa Code section 421.27(8) are in addition to other penalties under Iowa law.

c. The letter shall also contain the following:

(1) Date of demand letter.

(2) Tax period(s) involved.

(3) Return(s) to be filed.

(4) Date by which the return(s) must be filed to avoid incurring a penalty under Iowa Code section 421.27(8).

(5) Total penalty under Iowa Code section 421.27(8) that will be assessed if the return(s) are not filed within 90 days.

10.9(2) *Waiver of penalty.*

a. Documentation. Unless otherwise indicated, written documentation from the taxpayer is required to support the waiver of this penalty.

b. Good reason. This penalty can be waived if the taxpayer proves by a preponderance of the evidence that the taxpayer did not file a return within 90 days of the date of the demand letter due to a "good reason" as defined in this rule. "Good reason" can only be shown by proving one of the following circumstances:

(1) Destruction of records by fire, flood, or act of God when the destruction interferes with the filing of a return within 90 days of the date of demand letter. "Act of God" means the same as defined in subrule 10.7(1).

(2) The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return when such illness or hospitalization interferes with the filing of a return within 90 days of the date of the demand letter.

(3) The return is filed but erroneously mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

(4) A timely appeal of a department action, other than the demand letter, contesting the filing requirement of the return(s) stated in the demand letter was filed before the date stated in the letter pursuant to subparagraph 10.9(1)*"c"*(4).

(5) Other good reason within the discretion of the department, if the taxpayer has mutually agreed, in writing, with the department to file the required return(s) within a reasonable period of time beyond the date stated in the letter pursuant to subparagraph 10.9(1)*"c"*(4).

c. Subsequent issuance. The department may issue a new demand letter for the same filing obligation if the taxpayer continues to fail to file after the waiver is granted.

EXAMPLE 1: X fails to file a return. The department sends X a failure to file demand letter pursuant to subrule 10.9(1). X fails to file the return within 90 days of the date of the demand letter. X is assessed a $1,000 penalty. X is still required to file the return.

EXAMPLE 2: Y fails to file a return. The department sends Y a failure to file demand letter under subrule 10.9(1). Y fails to file the return within 90 days of the date of the demand letter. Y is assessed a $1,000 penalty. Y demonstrates to the department that Y was in the hospital and that the hospitalization interfered with Y's filing of the return within 90 days of the demand letter. The department waives the $1,000 penalty. Y is still required to file the return.

EXAMPLE 3: Same facts as Example 2. After receiving the good reason waiver, Y does not file the return. The department issues a new failure to file demand letter under subrule 10.9(1) for the same return that the department sought to be filed in Example 2. Y fails to file the return within 90 days of the date of the second demand letter. Y is assessed a $1,000 penalty. Y is no longer hospitalized and has no other good reason pursuant to paragraph 10.9(2)*"b."* The $1,000 penalty is not waived. A good reason waiver for the first demand letter does not permanently relieve Y from filing the return. Granting the waiver for a good reason for the first demand letter does not prevent the department from issuing a new demand letter for the same filing obligation.

10.9(3) *Rescission.* The department may rescind the demand letter in writing any time before the penalty is assessed under Iowa Code section 421.27(8) if the taxpayer demonstrates to the department's satisfaction that the taxpayer has no Iowa return filing requirement or that the filing requirement has been met. The taxpayer has the burden to prove by a preponderance of the evidence that no filing obligation exists. The department may also rescind the demand letter if the taxpayer proves a good reason exists as described in paragraph 10.9(2)*"b"* that prevents the taxpayer from filing the return and the taxpayer has mutually agreed, in writing, with the department to file the required return within a reasonable period of time. The department may issue a new demand letter for the same filing obligation if the taxpayer continues to fail to file after the reasonable period of time mutually agreed to by the taxpayer and the department due to proof of a good reason has expired or if, after the department previously determined the taxpayer had no filing requirement, the department obtains additional information that shows the taxpayer does have a filing requirement.

EXAMPLE 4: Z fails to file a return and receives a demand letter. Z presents proof to the department that Z has no filing requirement. In response to this information, the department rescinds the demand letter. Z does not need to file the return within 90 days, and the department does not impose a $1,000 penalty on Z.

EXAMPLE 5: Same facts as Example 4. After the department rescinds the demand letter, the department receives new information showing Z is required to file a return. The department can send Z a new demand letter for the same return.

This rule is intended to implement Iowa Code section 421.27.

ARC 8340C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to tax administration and filing returns and payment of tax and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 11, "Administration," and to adopt a new Chapter 11, "Tax Administration"; and to amend Chapter 202, "Filing Returns and Payment of Tax," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 421.17, 421.60, 422.25, 422.30, 423.37, 423.41, 452A.43, 452A.62, 452A.76, 453A.30 and 453B.9.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt new Chapter 11. This chapter provides guidance on the Department's administration of Iowa taxes, including Iowa sales and use tax, new registration fee, equipment tax, cigarette and tobacco taxes, and fuel taxes. The Department proposes to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language pursuant to Executive Order 10. Existing rules 701—11.9(422,423) and 701—11.10(423) are proposed to be moved to Chapter 202 where they are better suited. Additionally, rules on jeopardy assessments and the order of application of payments are proposed to be moved to this chapter under rules 701—11.7(422,453B) and 701—11.8(421,422) and removed from 701—Chapter 10 in a separate rulemaking.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been proposed to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Michael Mertens
Department of Revenue
Hoover State Office Building
P.O. Box 10457

Des Moines, Iowa 50306-3457
Phone: 515.587.0458
Email: michael.mertens@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 9 to 10 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 12:30 to 1:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
TAX ADMINISTRATION

701—11.1(421) Definitions. For purposes of this chapter:

"Department" means the Iowa department of revenue.

"Director" means the director of revenue or the director's designee.

"Taxpayer" includes any person subject to the provisions of a tax or charge administered by the department whether acting on the person's own behalf or as an agent or fiduciary.

This rule is intended to implement Iowa Code chapter 421.

701—11.2(421) Scope.

11.2(1) Except as otherwise provided in this chapter, this chapter provides certain rules related to the department's administration of the following taxes:

a. Sales and use taxes and local option taxes under Iowa Code chapters 423 and 423B.
b. Fee for new registration under Iowa Code section 321.105A.
c. Hotel and motel tax under Iowa Code chapter 423A.
d. Automobile rental excise tax under Iowa Code chapter 423C.
e. Equipment tax under Iowa Code chapter 423D.
f. Water service excise tax under Iowa Code chapter 423G.
g. Motor fuel, special fuel, and electric fuel taxes under Iowa Code chapter 452A.
h. Cigarette and tobacco taxes under Iowa Code chapter 453A.

11.2(2) The tax administration rules described in this chapter are not intended to be comprehensive. The administrative code chapters for each relevant tax may contain additional tax administration rules.

This rule is intended to implement Iowa Code chapter 421.

701—11.3(321,421,423,452A,453A) Taxpayer records.

11.3(1) *Records required.* Every taxpayer shall keep and preserve records. The records must include the normal books of account ordinarily maintained by a person engaged in the activity in question including but not limited to all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns or reports. The records must be made available for examination upon request by the director.

11.3(2) *Automatic data processing records.* Automatic data processing (ADP) is defined in this rule as including electronic data processing (EDP).

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records that will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director upon request. The system should be designed so that the supporting documents are readily available. An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from a source to a financial statement or tax return or report; or the reverse; that is, to have an auditable system.

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

(1) The application being performed.

(2) The procedure employed in each application, which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures.

(3) The controls used to ensure accurate and reliable processing. Program and system changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

11.3(3) *Electronic data interchange or EDI technology.*

a. Definitions. The following definitions are applicable to this subrule:

"Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

"Electronic data interchange" or *"EDI technology"* means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

"Hard copy" means any documents, records, reports, or other data printed on paper.

"Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

"Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

b. This subrule prescribes requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Iowa law. It is also the purpose of this subrule to address these requirements where all or part of the taxpayer's records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems. A taxpayer must maintain all records that are necessary for determination of the correct tax liability as set forth in this

subrule. All required records must be made available on request by the department. If a taxpayer retains records required to be retained under this subrule in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. Nothing in this subrule will be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this subrule. However, this will not relieve a taxpayer of the obligation to comply with the requirement to make records available to the department.

c. Recordkeeping requirements—machine-sensible records. A taxpayer that maintains and retains books, records, and other sources of information in the form of machine-sensible records must comply with the following:

(1) General requirements. A taxpayer must comply with the following general requirements regarding the retention of machine-sensible records:

1. Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicate records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format. The term "standard record format" does not mean that every taxpayer must keep records in an identical manner. Instead, it requires that if a taxpayer utilizes a code system to identify elements of information in each record when creating and maintaining records, the taxpayer is required to maintain a record of the meaning of each code and any code changes so the department may effectively review the taxpayer's records.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer that does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct a traditional paper document for tax purposes.

(2) Electronic data interchange requirements. A taxpayer must comply with the following requirements for records received through electronic data interchange:

1. Where a taxpayer uses an electronic data interchange process and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain the following minimal information: vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping details. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy the requirements set forth in the preceding paragraph at any level within the accounting system and need not retain the original EDI transaction records provided that the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains the other records such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its original EDI transaction for tax purposes.

(3) Electronic data processing systems requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule. In addition, pursuant to Iowa law, the department must have access to the

taxpayer's EDI processing, accounting, or other systems for the purposes of verifying or evaluating the integrity and reliability of those systems to provide accurate and complete records.

(4) Business process information. To verify the accuracy of the records being retained, the taxpayer must comply with the following:

1. Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. The description must include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

2. The taxpayer must be capable of demonstrating the following:

- The functions being performed as they relate to the flow of data through the system;
- The internal controls used to ensure accurate and reliable processing; and
- The internal controls used to prevent unauthorized addition to, alteration of, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this rule:

- Record formats or layouts;
- Field definitions (including a record of any changes in the system or codes with the meaning of all codes used to represent information);
- File descriptions (e.g., data set name); and
- Detailed charts of accounts and account descriptions.

d. Record maintenance requirements. The department recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records such as the labeling of records, the location and security of the storage environment, the creation of backup copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, November 2, 2009, Edition. The taxpayer's computer hardware and software must accommodate the extraction and conversion of retained machine-sensible records.

e. Access to machine-sensible records. If a taxpayer retains records required to be retained under this rule in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon the request of the department.

(1) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that must take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Access will be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the department with the hardware, software, and personnel resources to access the machine-sensible records.

2. The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

3. The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department.

4. The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

f. Taxpayer's responsibility and discretionary authority. In conjunction with meeting the requirements of paragraph 11.3(3)*"c,"* a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with this subrule for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of paragraph 11.3(3)*"c."* The taxpayer should document the process that created the separate file to show the relationship between that file and the original records. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract will not relieve the taxpayer of its responsibilities under this rule.

g. Alternative storage media. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under

this rule to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents, provided the rules governing alternative storage media are met.

h. Microfilm, microfiche, and other storage-only imaging systems. These shall meet the following requirements:

(1) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available upon request. Such documentation shall, at a minimum, contain sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(2) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

(3) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

(4) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(5) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(6) There is no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

i. Effect on hard-copy recordkeeping requirements. Except as otherwise provided, the provisions of this subrule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on alternative storage media as indicated in this subrule.

(1) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), hard-copy records need not be created.

(2) Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule.

(3) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(4) Nothing in this rule will prevent the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

11.3(4) *Preservation of records.*

a. The records required in this rule shall be preserved, at a minimum, for the length of time that the records may be relevant to the department's determination of tax liability for any tax year, and shall be open for examination by the department during this period of time.

b. If a tax liability has been assessed and an appeal is pending to the department, district court, or an appellate court, the records described in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

c. If the requirements of this rule are not met, the records will be considered inadequate.

This rule is intended to implement Iowa Code sections 321.105A, 421.17, 423.41, 452A.10, 453A.15, 453A.18, 453A.19, and 453A.24.

701—11.4(421,423,452A,453A) Audit of records.

11.4(1) *In general.* The department has the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the

correctness of a return or report filed or determining the tax liability of any taxpayer. The right to examine records includes but is not limited to the right to examine copies of the taxpayer's state and federal income tax returns.

11.4(2) *Delegation of authority.* Pursuant to statutory authority, the director delegates to department staff the power to examine reports, returns, and records; make audits; determine the correct amount of tax, penalty, interest, and fines due; and take all actions authorized to collect the same, subject to review by or appeal to the director.

11.4(3) *Audit costs.*

a. In the case of fuel taxes under Iowa Code chapter 452A, the costs incurred in examining the records of a taxpayer are at the taxpayer's expense when the records are kept at an out-of-state location. Costs will include meals, lodging, and travel expenses but will not include salaries of department personnel.

b. In the case of cigarette and tobacco taxes under Iowa Code chapter 453A, when it is determined upon audit that any person dealing in cigarettes owes additional tax, the costs of the audit are assessed against such person as additional penalty.

This rule is intended to implement Iowa Code sections 421.17, 423.37, 452A.43, 452A.62, 452A.76, and 453A.30.

701—11.5(421) Time and place of taxpayer interviews. This rule governs taxpayer interviews related to all taxes and charges administered by the department. If a taxpayer is selected for an interview, the time and place of the interview is to be fixed by an employee of the department and employees of the department are to endeavor to schedule a time and place that is reasonable under the circumstances.

11.5(1) *Time of taxpayer interviews.* The department will schedule the day(s) for a taxpayer interview during a normally scheduled workday(s) of the department during the department's normal business hours. The department will schedule taxpayer interviews throughout the year without regard to seasonal fluctuations in the business of particular taxpayers or their representatives. The department will, however, work with taxpayers or their representatives to try to minimize any adverse effects in scheduling the date and time of a taxpayer interview.

11.5(2) *Type of taxpayer interview.*

a. The department will determine whether a taxpayer interview will be an office interview (i.e., an interview conducted at a department office) or a field interview (i.e., an interview conducted at the taxpayer's place of business or residence, or some other location that is not a department office) based on which form of interview will be more conducive to effective and efficient tax administration.

b. The department will grant a request to hold an office interview at a location other than a department office in case of a clear need.

11.5(3) *Place of taxpayer interview.* The department will make an initial determination of the place for an interview based on the address shown on the return for the tax period to be examined. Requests by taxpayers to transfer the place of interview will be resolved on a case-by-case basis using the criteria set forth in paragraph 11.5(3)*"c."*

a. Office taxpayer interviews. An office interview of an individual or sole proprietorship generally is based on the residence of the individual taxpayer. An office interview of a taxpayer that is a business or other legal entity generally is based on the location where the taxpayer's original books, records, and source documents are maintained.

b. Field taxpayer interviews. A field interview generally will take place at the location in this state where the taxpayer's original books, records, and source documents pertinent to the interview are maintained. In the case of a business, this usually will be the taxpayer's principal place of business.

c. Requests by taxpayers to change place of interview. The department will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place that the department has set for an interview. In considering these requests, the department will take into account the following factors:

(1) The location of the taxpayer's current residence;

(2) The location of the taxpayer's current principal place of business;

(3) The location where the taxpayer's books, records, and source documents are maintained;

(4) The location at which the department can perform the interview most efficiently;

(5) The department resources available at the location to which the taxpayer has requested a transfer; and

(6) Other factors that indicate that conducting the interview at a particular location could pose undue inconvenience to the taxpayer.

d. Granting of requests to change place of interview. A request by a taxpayer to transfer the place of interview generally will be granted under the following circumstances:

(1) In the case of a taxpayer that is a small business, if an interview is scheduled at the taxpayer's place of business and the taxpayer can demonstrate in writing that conducting the interview at the place of business would essentially require the business to close or would unduly disrupt business operations, the department will change the place of interview.

(2) If a taxpayer does not reside at the residence where an interview has been scheduled, the department will agree to transfer the examination to the taxpayer's current residence.

(3) If the taxpayer's books, records, and source documents are maintained at a location in this state other than the location where the interview has been scheduled, the department will agree to transfer the interview to the location where the taxpayer's books, records, and source documents are maintained.

e. Other factors that affect the location of an interview include:

(1) The location of the place of business of a taxpayer's representative generally will not be considered in determining the place for an interview. However, the department in its sole discretion may determine, based on the factors described in paragraph 11.5(3)*"c,"* to transfer the place of interview to the representative's office.

(2) If any applicable period of limitations of assessment and collection provided in the Iowa Code will expire within 13 months from the date of a taxpayer's request to transfer the place of interview, the department may require, as a condition to the transfer, that the taxpayer agree in writing to extend the limitations period up to one year.

(3) The department is not required to transfer an interview to an office that does not have adequate resources to conduct the interview.

(4) Notwithstanding any other provision of this rule, employees of the department may decline to conduct an interview at a particular location if it appears that the possibility of physical danger may exist at that location. In these circumstances, the department may transfer an interview to a department office and take any other steps reasonably necessary to protect its employees.

(5) Nothing in this rule shall be interpreted as precluding the department from initiating the transfer of an interview if the transfer would promote the effective and efficient conduct of the interview. Should a taxpayer request that such a transfer not be made, the department will consider the request according to the principles and criteria set forth in paragraph 11.5(3)*"c."*

(6) Regardless of where an interview takes place, the department may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The department generally will visit for these purposes on a normal workday of the department during the department's normal business hours.

11.5(4) *Audio recordings of taxpayer interviews.*

a. A taxpayer is permitted, upon advance notice to the department, to make an audio recording of any interview of the taxpayer by the department relating to the determination or collection of any tax. The recording of the interview is at the taxpayer's own expense and must be with the taxpayer's own equipment.

b. Requests by taxpayers to make audio recordings must be addressed to the department employee who is conducting the interview and must be received by no later than ten calendar days before the interview. If ten calendar days' advance notice is not given, the department may, in its discretion, conduct the interview as scheduled or set a new date.

c. The department employee conducting the interview will approve the request to record the interview if:

(1) The taxpayer (or representative) supplies the recording equipment;

(2) The taxpayer acknowledges that the department may produce its own recording of the proceedings;

(3) The recording takes place in a suitable location; and

(4) All participants in the proceedings other than department personnel consent to the making of the audio recording and all participants identify themselves and their role in the proceedings.

d. A department employee is also authorized to record any taxpayer interview if the taxpayer receives prior notice of the recording and is provided with a transcript or a copy of the recording upon the taxpayer's request.

e. Requests by taxpayers (or their representatives) for a copy or transcript of an audio recording produced by the department must be addressed to the employee conducting the interview and must be received by the department no later than 30 calendar days after the date of the recording. The taxpayer must pay the costs of duplication or transcription.

f. At the beginning of the recording of an interview, the department employee conducting the interview must state the employee's name, the date, the time, the place, and the purpose of the interview. At the end of the interview, the department employee will state that the interview has been completed and that the recording has ended.

g. When written records are presented or discussed during the interview being recorded, they must be described in sufficient detail to make the audio recording a meaningful record when matched with the other documentation contained in the case file.

This rule is intended to implement Iowa Code section 421.60.

701—11.6(421) Adjustments.

11.6(1) *Notice of proposed adjustments.*

a. An employee of the department designated by the director to examine returns and make audits who discovers discrepancies or omissions in returns or who discovers that no return was filed when one was due is authorized to notify the person of this discovery by mail or electronically in accordance with rule 701—8.6(421). This notice is not an assessment. It informs the person of the amount that would be due if the proposed adjustments are finalized.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of a proposed adjustment in connection with a return may do either of the following:

(1) Pay the additional amount stated to be due, if any. If payment is made and the person wishes to contest the matter, the person should then file a claim for refund. Payment is not required until an assessment is made, although interest will continue to accrue if payment is not made.

(2) If no payment is made, the person may discuss with the employee who notified the person of the proposed adjustments all matters of fact and law that may be relevant to the situation. This person may also ask for a conference with the Alcohol and Tax Compliance Division. Documents and records supporting the person's position may be required.

c. If after following the procedures outlined in this subrule, no agreement is reached and the person does not pay the amount determined to be correct, if any, or if the department in its discretion does not send notice of the proposed adjustments, the department will send a notice of assessment or a denial of a refund claim which initiates the appeal period.

11.6(2) *Notice of assessment.*

a. A notice of assessment will be issued in accordance with the Iowa Code, within the time period prescribed by the Iowa Code, and will be sent by mail or electronically in accordance with rule 701—8.6(421).

b. If the notice of assessment is timely appealed in accordance with 701—Chapter 7, proceedings to collect the tax will not be commenced until the appeal is ultimately determined unless the department has reason to believe that a delay caused by the appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa.

11.6(3) *Supplemental assessments.* The department may, at any time within the applicable statute of limitations period for examining a tax return, issue a supplemental assessment whenever it is ascertained that any prior assessment or refund adjustment was inaccurate. The department may also, at any time

within the applicable statute of limitations period for examining a tax return, issue an assessment whenever it is ascertained that any prior refund was issued in error.

11.6(4) *Denial of a refund claim.* A denial of a refund claim will be issued in accordance with the Iowa Code. The department may issue a denial of a refund claim in whole or in part at any time if the department determines a claim for refund is untimely or without merit.

11.6(5) *Effect of resolved assessments or refund adjustments.* If an assessment or refund adjustment is appealed in accordance with 701—Chapter 7 and is resolved, whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code section 421.60.

701—11.7(422,453B) Jeopardy assessments.

11.7(1) *Generally.* This rule governs jeopardy assessments for all taxes and charges administered by the department. A jeopardy assessment may be made where the director believes for any reason that assessment or collection of the tax will be jeopardized by delay. In addition, all assessments made pursuant to Iowa Code chapter 453B are jeopardy assessments. The department is authorized to estimate the applicable tax base and the tax upon available information, add penalty and interest, and demand immediate payment. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

11.7(2) *Request for bond.*

a. In the event a taxpayer seeks to post a bond in lieu of summary collection of a jeopardy assessment, pending final determination of the amount of tax legally due, the taxpayer must file a Jeopardy Assessment Bond Request Form, available on the department's website, with the clerk of the appeals section for the department. The department will accept or reject the bond request, in writing, within ten days. If the department does not respond within ten days, the bond request is deemed rejected. The department is not required to accept bond requests. If the department accepts the bond request, the clerk of the appeals section for the department shall be notified. The approval is conditioned upon the taxpayer's posting the bond in accordance with this rule.

b. Bond requests may be made any time after a timely appeal of the jeopardy assessment has been filed with the department in accordance with 701—Chapter 7, except that any bond request whereby the taxpayer seeks to postpone a scheduled sale of assets seized by or on behalf of the department must be filed with the clerk of the appeals section for the department no later than ten days from the date on which notice of the sale was mailed to, or otherwise served upon, the taxpayer. Portions of an assessment that are undisputed must be paid in full at the time a bond request is filed.

11.7(3) *Posting of bond.* If the department accepts the bond request, the taxpayer shall post the bond within 15 days from the date the taxpayer was notified of the acceptance by the department. If the taxpayer fails to post the bond by the deadline, the bond request is deemed rejected and no bond will be allowed.

11.7(4) *Type of bond.*

a. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings up to the amount of the bond.

b. A personal bond, without a surety, is only permitted if the taxpayer posts with the clerk of the appeals section for the department, cash, a cashier's check, a certificate of deposit, or other marketable securities which are approved by the department with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of Iowa Code chapter 636 relating to personal and corporate sureties shall govern to the extent not inconsistent with the provisions of this subrule.

11.7(5) *Form of surety bond.* The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE

HOOVER STATE OFFICE BUILDING

DES MOINES, IOWA

IN THE MATTER OF	*	
	*	
(Taxpayer's Name, Address and	*	SURETY BOND
designate proceeding, e.g.,	*	
income, sales, etc.)	*	DOCKET NO.
	*	

KNOW ALL PERSONS BY THESE PRESENTS:

That we _____(taxpayer)_____ as principal, and _____(surety)_____, as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue for the use of the State of Iowa, in the sum of $ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above-named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated this _____ day of _____, _____.

_____
Principal

_____
Surety

_____
Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA)
ss
COUNTY OF) _____

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts," and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution."

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____ Surety (type name)	$ _____	$ _____
_____ Surety (type name)	$ _____	$ _____

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, _____.

(Seal)

Notary Public in and
for the State of Iowa

11.7(6) *Duration of bond.* The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated as provided by law.

11.7(7) *Exoneration of bond.* Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the department when any of the following events occur: upon full payment of the tax, penalty, interest, costs or fees found to be due; upon filing a bond for the purposes of

judicial review which bond is sufficient to secure the unpaid tax penalty, interest, costs and fees; or if no additional tax, penalty, interest, costs or fees are found to be due that have not been previously paid, upon entry of a final unappealable order which resolves the underlying appeal.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—11.8(421,422) Application of payments to fees, penalty, interest, and then tax due. This rule governs the application of payments for all taxes and charges administered by the department.

11.8(1) *Reapplication of prior payments.* The department will not reapply prior payments made on or before the due date of the original return by the taxpayer to penalty or interest determined to be due after the date of those prior payments. However, the department will apply payments to penalty and interest which were due at the time the payment was made.

Example (a) — Delinquent Return

a. Tax due is $1,000.

b. Return filed two months late.

c. $1,000 paid with the return.

d. Assume 0.7% monthly interest for purpose of example.

e. The department bills the additional tax in the third month after the due date. The taxpayer pays the assessment in the third month.

The computation of fees, penalty, interest, and tax is shown below:

Tax	$1,000.00	
Penalty	100.00	(5% failure to file penalty and 5% failure to timely pay penalty)
Interest	14.00	(2 months interest)
Subtotal	$1,114.00	
Less payment	(1,000.00)	
Remaining tax due	$ 114.00	
Interest	.80	(1 month interest)
Total due	$ 114.80	

Two years after the due date, the Internal Revenue Service conducts an audit and increases the taxpayer's taxable income. The department redetermines the taxpayer's liability 26 months after the due date as follows:

Tax as redetermined by the department	$1,100.00	
Penalty	110.00	(5% failure to file penalty and 5% failure to timely pay penalty)
Interest	15.40	(2 months interest)
Less payment	($1,000.00)	
Subtotal	$225.40	
Interest	1.58	(1 month interest)
Less payment	($114.80)	
Remaining tax due	$112.18	
Interest	18.06	(23 months interest)
Total due	$ 130.24	

Example (b) — Timely Filed No Remit

a. Tax due is $1,000.

b. Return timely filed.

c. $0 paid.

d. Assume 0.7% monthly interest for purpose of example.

The calculation for the total amount due five months after the due date is shown below:

Tax	$1,000.00	
Penalty	50.00	(5% failure to timely pay penalty)
Interest	35.00	(5 months interest)

Total due	$1,085.00

The department bills the amount due in the fifth month after the due date and the taxpayer pays the billed amount in the eighth month after the due date. The payment is applied as follows:

Tax	$1,000.00	
Penalty	50.00	(5% failure to timely pay penalty)
Interest	56.00	(8 months interest)
Subtotal	$1,106.00	
Less payment	($1,085.00)	
Remaining tax due	$ 21.00	

Taxpayer does not pay the remaining tax due of $21, which continues to accrue interest. Three years after the due date the taxpayer reports the result of an Internal Revenue Service audit which increases the taxpayer's income and tax due to the department. The department recomputes the taxpayer's liability as follows:

Tax as redetermined by the department	$1,200.00	
Penalty	60.00	(5% failure to timely pay penalty)
Interest	67.20	(8 months interest)
Less payment	($1,085.00)	
Remaining tax due	$ 242.20	
Interest	47.47	(28 months interest)
Total due	$289.67	

11.8(2) *Refunds from department audit.* In those instances where a department audit reduced the amount of tax, fees, penalty, and interest due over the amount paid, the department will, when possible, reapply payments so that the amount refunded is tax on which interest will accrue as set forth in the Iowa Code.

11.8(3) *Partial payments.*

a. Where partial payments are made, the department will apply payments to fees, penalty, interest, and then to tax due. If fees, penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the fees, penalty, then the interest, then the tax for the earliest period, then to the fees, penalty, interest, and tax for each following tax period in chronological order from the earliest tax period to the latest tax period, until the payment is exhausted.

b. Where there are both agreed-to and unagreed-to items as a result of an audit, the taxpayer and the department may agree to apply payments to the fees, penalty, interest, and then to tax due on the agreed-to items of the audit when all of the fees, penalty, interest, and tax on the agreed-to items are paid. In these instances, subsequent payments will not be applied to fees, penalty, and interest accrued on the agreed-to items of the audit.

11.8(4) *Taxpayer designation of tax type and period to which voluntary payments are to be applied.*

a. A taxpayer may designate in a separate written instruction at the time a voluntary payment is made the type of tax and tax periods to which any voluntary payment is to be applied.

b. The taxpayer may not designate the application of a voluntary payment between fees, penalty, interest, and tax due for a particular type of tax or tax period.

c. The taxpayer may not designate the application of payments which are the result of a jeopardy assessment or enforced collection. Enforced collection includes, but is not limited to, garnishment of wages or bank accounts, setoff of public payments as defined in Iowa Code section 421.65, and seizure of assets.

This rule is intended to implement Iowa Code sections 421.60 and 422.25.

ITEM 2. Amend paragraph **202.6(1)"f"** as follows:

f. ~~*Record-keeping*~~ *Recordkeeping requirements.* The parties involved in transactions involving a direct pay permit shall have the following ~~record-keeping~~ recordkeeping duties:

(1) Permit holder. The holder of a direct pay permit will retain possession of the direct pay permit and keep a record of all transactions made pursuant to the direct pay permit in compliance with rule ~~701—11.4(423)~~ 701—11.3(321,421,423,452A,453A).

(2) Vendor. A vendor will retain a valid exemption certificate under rule ~~701—288.3(423)~~ 701—209.1(423) that is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule ~~701—11.4(423)~~ 701—11.3(321,421,423,452A,453A). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule ~~701—288.3(423)~~ 701—209.1(423).

ITEM 3. Adopt the following **new** rule 701—202.18(422,423):

701—202.18(422,423) Information disclosures to certain persons.

202.18(1) When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to the person the amount of unpaid sales or use taxes due by a taxpayer. The person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. Examples of those who might seek information on a taxpayer are persons from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property.

202.18(2) Upon request, the department may disclose to any person whether or not a taxpayer has a sales tax permit because the law requires the taxpayer's permit to be conspicuously posted at all times in the taxpayer's place of business, thus becoming public information.

202.18(3) The information disclosed pursuant to this rule is not a violation of Iowa Code section 422.72.

This rule is intended to implement Iowa Code sections 422.72, 423.42, and 423.23.

ITEM 4. Adopt the following **new** rule 701—202.19(423):

701—202.19(423) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix or, in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to Iowa Code section 423.35, the director has determined that the following procedures apply with regard to bonds:

202.19(1) *When required.*

a. New applications for sales tax permits.

(1) An applicant for a new sales tax permit may be required to post a bond or security if:

1. It is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or

2. The new applicant held a permit for a prior business and the remittance record of the tax under the prior permit falls within one of the conditions in paragraph 202.19(1)*"b,"* or

3. The department experienced collection problems while the applicant was engaged in business under the prior permit, or

4. The applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in paragraph 202.19(1)*"b"* or the person had a previous sales tax permit that has been revoked.

(2) The applicant is substantially similar to the extent that said applicant is owned or controlled by persons who owned or controlled the previous permit holder. For example, X, a corporation, had a previous sales tax permit revoked. X is dissolved, and its shareholders create a new corporation, Y, which applies for a sales tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

b. Existing permit holders.

(1) Existing permit holders may be required to post a bond or security under the following circumstances:

1. When they have had one or more delinquencies in remitting the sales tax or filing timely returns during the last 24 months if filing returns on an annual basis.

2. When they have had four or more delinquencies in remitting the sales tax or filing timely deposits or returns during the last 24 months if filing returns on a monthly basis.

(2) The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or the late payment of the tax will not count as a delinquency if the permit holder has satisfied one of the conditions set forth in Iowa Code section 421.27.

c. Return of bond. If a permit holder has been required to post a bond or security or if an applicant for a permit has been required to post a bond or security, upon the filing of the bond or security if the permit holder maintains a good filing record for a period of two years, the permit holder may request that the department return the bond or security. The department may elect to return the bond without a request from the permit holder.

d. Applying bond. The department may apply a bond to any existing tax liability of the permit holder at its discretion.

202.19(2) *Type of security or bond.*

a. When it is determined that a permit holder or applicant for a sales tax permit is required to post collateral to secure the collection of the sales tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities or certificates of deposit. "Cash" means guaranteed funds, including but not limited to the following:

(1) Cashier's check,

(2) Money order, or

(3) Certified check.

b. If cash is posted as a bond, the bond will not be considered filed until the final payment is made if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An acknowledgement of assignment from the bank must accompany the original certificate of deposit filed with the department. When a permit holder elects to post cash rather than a certificate of deposit as a bond, conversion to certificate of deposit will not be allowed. When the permit holder is a corporation, an officer of the corporation may assume personal liability as security for the payment of the sales tax. The officer will be evaluated as provided in subrule 202.19(1) as if the officer applied for a sales tax permit as an individual.

202.19(3) *Amount of bond or security.* When it is determined that a permit holder or applicant for a sales tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond unless the facts warrant a greater amount:

a. If the permit holder or applicant will be or is a monthly filer, a bond or securities in an amount sufficient to cover five months' sales tax liability will be required.

b. If the applicant or permit holder will be or is an annual filer, the bond or securities that will be required would be in the amount of one year's tax liability.

c. The department does not accept bonds for less than $100. If the bond amount is calculated to be less than $100, a $100 bond is required.

This rule is intended to implement Iowa Code section 423.35.

ITEM 5. Adopt the following **new** rule 701—202.20(423):

701—202.20(423) Taxpayer records—specific requirements. Records required to be kept in accordance with rule 701—11.3(321,421,423,452A,453A) include but are not limited to the following:

202.20(1) A daily record of the amount of all cash and time payments and credit sales.

202.20(2) A record of the amount of all merchandise purchased and of all services performed for a taxpayer, including all bills of lading, invoices and copies of purchase orders.

202.20(3) A record of all deductions and exemptions taken in filing an Iowa tax return.

202.20(4) A true and complete inventory of the value of the stock on hand taken at least once a year. This includes an inventory of merchandise accepted as partial payment of the sales price on new merchandise.

202.20(5) An accurate record of all services performed, including materials purchased for use in performing these services.

202.20(6) Exemption certificates that are evidence of exempt sales; 701—Chapter 209 contains more information.

This rule is intended to implement Iowa Code section 423.41.

ARC 8330C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to nonlocal business entity bond forfeitures and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt Chapter 28, "Nonlocal Business Entity Bond Forfeitures," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 9C and 91C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 9C and 91C.

Purpose and Summary

The purpose of this proposed rulemaking is to move content from rule 701—7.30(9C,91C) into a new Chapter 28. The Department proposes to remove portions of the rule that the Department determined are unnecessary, outdated, or duplicative of statutory language pursuant to Executive Order 10. The proposed chapter describes the Department's interpretation of the underlying statute to help the public understand the procedures involved for nonlocal business entity bond forfeitures under Iowa Code chapters 9C and 91C. Creating a new chapter for this information provides a more logical location for the information than where it was previously included in 701—Chapter 7. This move will make the information easier to find.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been proposed to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 9 to 10 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 12:30 to 1:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 28:

CHAPTER 28
NONLOCAL BUSINESS ENTITY BOND FORFEITURES

701—28.1(9C,91C) Procedure. The following subrules shall govern the procedure for that forfeiture under Iowa Code chapters 9C and 91C.

28.1(1) *Definitions.*

"Nonlocal business entity" is either an out-of-state contractor or a transient merchant as those terms are defined in this subrule.

"Out-of-state contractor" means a general contractor, subcontractor, architect, engineer, or other person who contracts to perform in this state construction or installation of structures or other buildings or any other work covered by Iowa Code chapter 103A and whose principal place of business is outside Iowa.

"Taxes payable" means any amount referred to in the definitions of "taxes payable by an out-of-state contractor" and "taxes payable by a transient merchant."

"Taxes payable by an out-of-state contractor" means tax, penalty, interest, and fees that the department, another state agency, or a subdivision of the state has determined to be due by assessment or due as a result of an appeal from an assessment. The tax assessed must accrue as the result of a contract to perform work covered by Iowa Code chapter 103A.

"Taxes payable by a transient merchant" refers to all taxes administered by the department and penalties, interest, and fees that the department has previously determined to be due by assessment or due as a result of an appeal from an assessment.

"Transient merchant," for the purposes of this rule, means the same as defined in Iowa Code section 9C.1.

28.1(2) *Increases in existing bonds.* If an out-of-state contractor has on file with the secretary of state a bond for any particular contract and for that particular contract the contractor has tax due and owing but unpaid and this tax is greater than the amount of the bond, the department shall require the out-of-state contractor to increase the bond on file with the secretary of state in an amount sufficient to pay tax liabilities that will become due and owing under the contract in the future.

28.1(3) *Responsibility for notification.* Concerning taxes that are payable by an out-of-state contractor but that are not administered by the department of revenue, it shall be the duty of the department or subdivision of Iowa state government to which the taxes are owed to notify the department of revenue of the taxes payable by the out-of-state contractor in order to institute bond forfeiture proceedings or an increase in the amount of the bond that the out-of-state contractor must post.

28.1(4) *Initial notification.* After it is determined that a bond ought to be forfeited, notice of this intent shall be sent to the nonlocal business entity and its surety of record, if any, in accordance with Iowa Code section 91C.7(4). This notice may be sent by ordinary mail. The notice shall state the intent to demand forfeiture of the nonlocal business entity's bond, the amount of bond to be forfeited, the nature of the taxes alleged to be payable, the period for which these taxes are due, and the department or subdivision of Iowa to which the taxes are payable. The notice shall also state the statutory authority for the forfeiture and the right to a hearing upon timely application.

28.1(5) *Appeal of bond forfeiture.* The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for appeals of other department action in rule 701—7.8(17A). The caption of the application shall be basically in the form set out in 701—subrule 7.8(5), except the type of proceeding shall be designated as a bond forfeiture collection. The body of the application for hearing must substantially resemble the body of the protest described in 701—subrule 7.8(5). However, referring to 701—numbered paragraph 7.8(5)*"b"*(2)"1," the nonlocal business entity shall state the date of the notice described in subrule 28.1(4). With regard to 701—subparagraph 7.8(5)*"b"*(2), in the case of a tax payable that is not administered by the department, the errors alleged may be errors on the part of other departments or subdivisions of the state of Iowa. The application for hearing shall be filed with the department's administrative law judge in the manner described in rule 701—7.9(17A). The docketing of an application for hearing shall follow the procedure for the docketing of an appeal under that rule.

28.1(6) *Prehearing, hearing and rehearing procedures.* The following rules are applicable to preliminary and contested case proceedings under this rule: 701—7.3(17A) through 701—7.14(17A) and 701—7.17(17A) through 701—7.23(17A).

28.1(7) *Sureties and state departments other than revenue.* If there exist taxes payable by an out-of-state contractor and these taxes are payable to a department or subdivision of state government other than the department of revenue, that department or subdivision shall be the real party in interest to any proceeding conducted under this rule and it shall be the responsibility of that department or subdivision to provide its own representation and otherwise bear the expenses of representation.

This rule is intended to implement Iowa Code sections 9C.4 and 91C.7.

ARC 8347C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to miscellaneous operational rules of the lottery and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 1100, "Miscellaneous Operational Rules of the Lottery," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99G.9, 99G.25 and 99G.30.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99G.9, 99G.25 and 99G.30.

Purpose and Summary

This proposed chapter provides generally applicable rules that govern the operation of the Iowa Lottery that do not fit neatly in other chapters. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapters 1 and 2 are proposed to be rescinded. This rulemaking proposes to readopt the chapters under the Department of Revenue as 701—Chapter 1100. Finally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been proposed to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 10 to 11 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 1:30 to 2:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 1100:

CHAPTER 1100
MISCELLANEOUS OPERATIONAL RULES OF THE LOTTERY

701—1100.1(99G) Promotional use of tickets by persons without lottery licenses. Tickets may be given away for promotional purposes by persons without a lottery license in conjunction with the purchase of a product or service or an admission fee without violating this provision provided that the actual cost of the product or service or admission fee is not calculated to include the ticket price, and the promotion is not designed, intended, or conducted to circumvent the department's licensing requirements.

This rule is intended to implement Iowa Code sections 99G.9, 99G.25, and 99G.30.

701—1100.2(99G) Background and informational statements.

1100.2(1) All prospective vendors for major procurements, and any other prospective vendor as required by the department, shall submit to criminal history and background investigations as conditions

for submission of a bid. Any person identified as an officer, director, trustee, partner, sole proprietor, employee, or other person identified by the department as a key person in a sensitive position or relationship with a prospective vendor may also be required to submit to a criminal history and background investigation as required by the department.

Prospective vendors, and any individual identified as a key person, will comply with all requirements necessary for criminal history and background investigations, as determined by the department. Failure to comply with all requirements may result in bid disqualification.

1100.2(2) Any change in key personnel during the bidding process or during the contract term must be reported to the department before the change occurs. Replacement personnel will be subject to investigation.

1100.2(3) If a prospective vendor or any key personnel thereof is found to have been convicted of any felony related to the security or integrity of the lottery in Iowa or any other jurisdiction, the prospective vendor will be automatically disqualified from the selection process without further investigation.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

ARC 8348C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to prizes and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 1101, "Prizes," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99G.9, 99G.21, 99G.30 and 99G.31.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99G.9, 99G.21, 99G.30 and 99G.31.

Purpose and Summary

This proposed chapter provides generally applicable rules that govern claiming and payment of prizes when players win games offered by the Iowa Lottery. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 11 is rescinded. This rulemaking proposes to readopt the chapter under the Department of Revenue as Chapter 1101. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been made to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 10 to 11 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 1:30 to 2:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 1101:

CHAPTER 1101
PRIZES

701—1101.1(99G) Claiming prizes.

1101.1(1) A prize claim shall be entered in the name of a single individual or organization. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses or has applied for a federal employer's identification number (FEIN) as issued by the Internal Revenue Service. Groups, family units, organizations, clubs, or other organizations that are not legal entities, do not possess a FEIN, or have not applied for a FEIN must designate one individual in whose name the claim will be entered.

1101.1(2) By submitting a claim, a player agrees that the state, the lottery commission, the lottery division, the department of revenue, and the officials, officers, and employees of each shall be discharged from all further liability upon payment of the prize.

1101.1(3) By submitting a claim, the player also agrees that the prizewinner's name may be used for publicity purposes by the lottery.

1101.1(4) An original ticket or share must be presented before payment of any prize will occur. No reproductions, facsimiles, or copies of any kind are allowed.

1101.1(5) The player must sign the original ticket or share prior to presenting the ticket to another party for the purpose of checking or validating the ticket. The lottery and retailers shall verify that there is a signature on any ticket submitted for checking or validation.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.2(99G) Claim period. A prize must be claimed within the time limit specifically designated in these rules or as specified in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.3(99G) Invalid tickets not entitled to prize payment. If a ticket presented to the lottery division is invalid pursuant to the terms of these rules or the game specific rules, the ticket is not entitled to prize payment.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.4(99G) Ticket is a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature if a signature space is provided. The person who signs the ticket is thereafter considered the owner of the ticket unless circumstances indicate the person is not the rightful owner of the ticket.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.5(99G) Assignment of prizes. Payments of prizes will be made as follows:

1101.5(1) If a prize is payable in installments, all future installments of the prize will be made to the person or legal entity that received the initial installment of the prize or to a person designated by the court to receive payment following the prizewinner's death unless otherwise assigned according to these rules.

1101.5(2) The right to control receipt of a lottery prize is substantially limited. See 26 U.S.C. §451 (2019) and Treas. Reg. §1.451-2(a) (1979). The right to receive payment of a lottery prize or a future installment of a lottery prize shall not be sold, assigned or otherwise transferred in any manner without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

1101.5(3) In the event that a legal entity other than an individual is entitled to a lottery prize won jointly by more than one individual, the individuals originally entitled to share the prize cannot sell, assign or otherwise transfer their interest in the legal entity receiving prize payment or their right to receive future payments from the legal entity without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1101.6(99G) Prize payment to minors. If the person entitled to a prize is under the age of 18, the payment of the prize may be made by delivery of cash or a check payable to the order of the minor or to a parent or legal guardian of the minor, or other payment methods as determined by the department. Claim forms and tickets submitted by minors must be signed by a parent or legal guardian of the minor.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.30(3), and 99G.31.

701—1101.7(99G) Time of prize payment. The lottery division will pay all prizes within a reasonable time after verifying a claim and determining a winner. The date of the first installment payment of any prize to be paid in installment payments is the date the claim is validated and processed unless these rules or applicable game specific rules specify a different date. Subsequent installment payments will be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The lottery division may, at any time, delay any prize payment to review a change in circumstances relative to the prize awarded, the payee, or the claim.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.30.

701—1101.8(99G) Prizes payable for the life of the winner. If any prize is payable for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner shall be deemed to be 20 years.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.9(99G) Prizes payable after death of winner. All prizes and portions of prizes that remain unpaid at the time of the prizewinner's death are payable to the court-appointed representative of the prizewinner's estate or to a single individual pursuant to the terms of a final order closing the estate.

The lottery division may withhold payment until it is satisfied that the proper payee has been identified, or it may petition the court to determine the proper payee. In making payment, the lottery division may rely on the presentation of a certified copy of the letters of appointment as an administrator, executor, or other personal representative for the prizewinner's estate or on a certified copy of the final order closing the estate. Payment to the representative of the estate of the deceased owner of any prize winnings or to another individual pursuant to a final order closing the estate absolves the state, the lottery commission, the lottery division, the department of revenue, and the officials, officers, and employees of each from all further liability for payment of prize winnings.

If the winner received an annuitized prize funded through the Multi-State Lottery Association (MUSL) or any other multijurisdictional lottery organization in which the Iowa lottery participates as a member, the MUSL board or other organization board, as may be appropriate, in its sole discretion, upon the petition of the estate of the prizewinner, may accelerate the payment of all of the remaining lottery proceeds to the estate of the prizewinner. If the winner received an annuitized prize funded solely through the sales from the Iowa lottery, the lottery division, in its sole discretion, upon the petition of the estate of the prizewinner, may accelerate the payment of all of the remaining lottery proceeds to the estate of the prizewinner. If such a determination is made, then securities or cash held for the deceased prizewinner, that represents the present value of that portion of the future lottery payments that are to be accelerated, will be distributed to the estate. Valuation of the securities and determination of the present value of the accelerated lottery payments are at the sole discretion of the entity granting the petition.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.10(99G) Disability of prizewinner. The lottery division may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings that are or may become due a person under a disability. For this rule's purposes, a "disability" includes but is not limited to mental deficiency, and physical or mental incapacity.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.11(99G) Stolen or lost tickets. The lottery division has no responsibility for paying prizes attributable to stolen or lost tickets.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.12(99G) Effect of game rules. In purchasing a ticket, the player agrees to comply with Iowa Code chapter 99G, these rules, the game specific rules, lottery division instructions and procedures, and the final decisions of the lottery division. The lottery division's decisions and judgments in determining winning tickets, or any other dispute arising from the payment or awarding of prizes, is binding upon all participants in the lottery. If a dispute between the lottery division and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the lottery division may, solely at the lottery division's option, replace the ticket with an unplayed ticket of equivalent price from any game or refund the price of the ticket. This is the player's sole and exclusive remedy. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.13(99G) Disputed prizes. If there is a dispute, or it appears that a dispute may occur relative to the payment of any prize, the lottery division may refrain from making payment of the prize pending a final determination by the lottery division or by a court of competent jurisdiction as to the proper payment of the prize.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

701—1101.14(99G) Prize payment for prizes paid over a term exceeding ten years.

1101.14(1) A prizewinner who wins a prize that is payable over a term exceeding ten years may, not later than 60 days after the player became entitled to the prize, elect to have the prize paid in cash or by annuity consistent with 26 U.S.C. §451 (2019). If the payment election is not made by the prizewinner at the time of purchase or is not made within 60 days after the prizewinner becomes entitled to the prize, then the prize will be paid as an annuity prize. An election for an annuity payment made by a prizewinner before the ticket purchase or by system default or design may be changed to a cash payment at the election of the prizewinner until the expiration of 60 days after the prizewinner becomes entitled to the prize. The election to take the cash payment may be made at the time of the prize claim or within 60 days after the prizewinner becomes entitled to the prize, whichever is earlier.

An election made after the prizewinner becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed.

1101.14(2) In the event there is more than one prizewinner for a prize paid over a period exceeding ten years, the shares of the prize are determined by dividing the cash available in the prize pool equally among all the winners of the prize. Winners who elect a cash payment will be paid their share in a single cash payment. The annuitized option prize is determined by multiplying a winner's share of the prize pool by the annuity factor used by the lottery division. The lottery division's annuity factor is determined by the best price obtained through a competitive bid of qualified, preapproved brokers or insurance companies made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the prizewinner becomes entitled to the prize.

1101.14(3) The lottery division is not responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount of the prize value purchased from the time the player becomes eligible for the prize and the time the prizewinner claims the prize.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.31.

ARC 8349C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to licensing and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 1102, "Licensing," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99G.7, 99G.9, 99G.21, 99G.24, 99G.27, 99G.30, 99G.35, 252D.9, 252J.2 and 252J.8.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99G.7, 99G.9, 99G.21, 99G.24, 99G.27, 99G.30, 99G.35, 252D.9, 252J.2 and 252J.8.

Purpose and Summary

This proposed chapter provides generally applicable rules that govern the Iowa Lottery retail license application process, the conditions for license issuance, and the grounds for license suspension and revocation. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 12 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as Chapter 1102. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been made to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 10 to 11 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 1:30 to 2:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 1102:

CHAPTER 1102
LICENSING

701—1102.1(99G) Applicant defined. For purposes of determining whether an applicant is eligible for a license, the term "applicant" includes the owner of a sole proprietorship, all partners or participants in a partnership or joint venture, the officers of a fraternal organization, the officers and directors of a corporation, persons owning at least 10 percent or more of a corporation, persons owning at least 10 percent or more of a limited liability company, the manager or managers of a limited liability company, and any legal entity applying for a license.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.24.

701—1102.2(99G,252J,272D) Effect of certain state debts.

1102.2(1) The department will deny a license to any applicant who is an individual if the department has received a certificate of noncompliance from Iowa child support services with regard to

the individual until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

1102.2(2) The department will deny a license to any applicant defined by this chapter if the applicant is substantially delinquent in paying any tax due, or the interest or penalty on the tax due, administered by the department at the time of application or if the applicant has current or previous delinquent liabilities collected by the department. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any delinquent tax, penalty, or interest or if a partner has current or previous delinquent liabilities collected by the department. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest or if any officer having a substantial legal or equitable interest in the ownership of the corporation has current or previous delinquent liabilities collected by the department.

This rule is intended to implement Iowa Code sections 99G.7(1), 99G.9(2), 99G.21(2), 99G.24, 252J.8, and 272D.8.

701—1102.3(99G,252J) Factors relevant to license issuance.

1102.3(1) The department's licensing authority under Iowa Code chapter 99G is discretionary. The department may issue a license to any applicant to act as a licensed retailer who meets the eligibility criteria established by Iowa Code chapter 99G and these rules.

1102.3(2) In addition to the license eligibility criteria described in Iowa Code section 99G.24, the department will consider the following factors:

a. The background of the applicant in the community for honesty;

b. The financial responsibility;

c. The type of business owned or operated by the applicant to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity of the lottery;

d. The accuracy of the information supplied in the application for a license;

e. The applicant's indebtedness to the state of Iowa, local subdivisions of the state, or the United States government; and, if the applicant is an individual, the applicant's indebtedness for child support payments as indicated by a certificate of noncompliance from Iowa child support services;

f. Any other criteria or information the department deems relevant to determining if a license should be issued.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24(5), 252J.8 and 272D.8.

701—1102.4(99G) Financial responsibility. The department will use the following guidelines when determining whether an applicant seeking a license to sell lottery products or a retailer exhibits adequate financial responsibility.

1102.4(1) *Sole proprietorship.* The department will generally consider a sole proprietor to exhibit adequate financial responsibility if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

1102.4(2) *Partnership.* If the applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 1102.4(1) to be considered to exhibit adequate financial responsibility.

1102.4(3) *Fraternal or civic associations.* If the applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 1102.4(1) to be considered to exhibit adequate financial responsibility. If the fraternal association, civic organization, or other nonprofit entity has no credit history or the credit history is incomplete, then the officers of the fraternal association, civic organization, or other nonprofit entity must meet the requirements of subrule 1102.4(1) to be considered to exhibit adequate financial responsibility.

1102.4(4) *Corporations and limited liability companies in existence two years or more if a credit risk appraisal is available through a financial and credit reporting entity.* If the license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application and a credit risk appraisal is

available through a financial and credit reporting entity, the applicant must meet all of the following financial responsibility guidelines to be considered to exhibit adequate financial responsibility:

a. The applicant is paying 60 percent of its suppliers on time or within terms; and

b. The applicant possesses a credit risk appraisal provided by a financial and credit reporting entity that indicates the corporation's or limited liability company's financial condition is fair or better.

1102.4(5) *Corporations and limited liability companies in existence less than two years or if a credit risk appraisal is not available through a financial and credit reporting entity.* If a corporation has been in existence for less than two years from the date of the application or a credit risk appraisal is not available through a financial and credit reporting entity, the department will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years or a credit risk appraisal is not available through a financial and credit reporting entity, the department will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 1102.4(1) to be considered to exhibit adequate financial responsibility.

1102.4(6) *Additional considerations.* If information obtained by the department, when considered as a whole, indicates that the applicant, the retailer, or the applicant's or retailer's business practices are inconsistent with sound financial management or pose a risk to the operation or integrity of the lottery, the department may, in its discretion, determine that an applicant or retailer does not demonstrate the adequate financial responsibility for licensure notwithstanding the guidelines in subrules 1102.4(1) through 1102.4(5).

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), 99G.21(2), 99G.24, 99G.30, 252J.2, 252J.8, and 272D.8.

701—1102.5(99G) Bonds.

1102.5(1) *In general.* Any applicant or retailer whose credit history does not meet the guidelines described in subrules 1102.4(1) through 1102.4(5) must obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amounts generally described herein. The department may require any other applicant or retailer to obtain a bond if the department determines a bond is necessary to ensure the applicant or retailer remains in compliance with Iowa Code chapter 99G and these rules.

1102.5(2) *Bond amounts.* The amount of the bond will vary depending on the type of lottery products sold by the license applicant, the sales history of the retail location or the average volume of sales of lottery products at the location, or a combination of the above factors. The department's authority to require a bond is discretionary. When the department determines that a bond is necessary, the following minimum amounts will be required:

a. Sale of pull-tab tickets only, $2,500.

b. Sale of instant tickets and scratch tickets with or without pull-tab tickets, $5,000.

c. Sale of online games with or without instant tickets, scratch tickets, and pull-tab tickets, $10,000.

Additional bond amounts or a new bond may be required by the department at any time if the department determines that an existing bond becomes insufficient or the surety thereon becomes unsatisfactory.

1102.5(3) *Holding period for bond.* The department will hold the bond provided by a license applicant for a minimum time period of one year. Thereafter, the department will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery may release the bond.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), 99G.21(2), and 99G.24.

701—1102.6(99G,252J,272D) Lottery licenses.

1102.6(1) A lottery license authorizes the licensee to sell only the types of lottery products specified on the license. The department has discretion to license a qualified applicant to sell any one or any combination of the following lottery products: scratch tickets, instaplay tickets, pull-tab tickets, and computerized game tickets, if available. The department may condition the ability of a licensee to sell one or more types of lottery products on the applicant's agreement to sell any other lottery product.

1102.6(2) Any eligible applicant may apply for a license to act as a retailer by first filing with the department an application form together with any supplements deemed necessary by the department. Supplements may include but are not limited to authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the division to conduct site surveys.

1102.6(3) The application fee for a lottery retail license is $25. The application fee is nonrefundable.

1102.6(4) Retailers who are currently licensed may apply for a license modification to allow the sale of additional lottery products. A current retailer may be required to complete an additional application or application supplements.

1102.6(5) The department may waive the payment of any license fee to facilitate an experimental program or a research project.

1102.6(6) A limited number of retailers may be selected as licensees from applications received. The selection will be made based on criteria designed to produce the maximum amount of net revenue and serve public convenience. The department may refuse to accept license applications for a period of time if the department determines that the number of existing licensees is adequate to market any lottery product.

1102.6(7) The department will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold are considered denied for purposes of appeal.

If an application is denied because the department has received a certificate of noncompliance from Iowa child support services in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice issued under Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), 99G.21(2), 99G.24, 99G.30, 252J.2, 252J.8, and 272D.8.

701—1102.7(99G,252J) Provisional licenses.

1102.7(1) The department may issue a provisional license to an applicant for a lottery license after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional license expires at the time of issuance of the requested license or 90 days from the date the provisional license was issued, whichever occurs first, unless the provisional license is extended by the department.

1102.7(2) Notwithstanding subrule 1102.7(1), the department will deny a provisional license to any applicant who is an individual if the department has received a certificate of noncompliance from Iowa child support services with regard to the individual unless Iowa child support services furnishes the department with a withdrawal of the certificate of noncompliance. If an application is denied because the department has received a certificate of noncompliance from Iowa child support services in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice issued under Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24(3), 99G.27, 252J.2, and 252J.8.

701—1102.8(99G) Off-premises licenses. Any retailer may apply for an off-premises license to sell tickets in locations other than that specified on the existing license. The department must specifically approve the geographical area in which sales are to be made and the types of locations at which off-premises sales are to be made prior to issuance of an off-premises license. Additional instructions and restrictions may be specified by the department to govern off-premises sales. An off-premises license

expires at the time designated on the off-premises license. An off-premises license may be renewed at the department's discretion.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.30.

701—1102.9(99G) Duplicate licenses. Upon the loss, mutilation, or destruction of any license issued by the department, a retailer may apply for a duplicate permit. A statement signed by the retailer which details the circumstances under which the license was lost, mutilated, or destroyed may be required by the department.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24, and 99G.30.

701—1102.10(99G) Reporting changes in circumstances of the retailer. Every change of business structure of a licensed business, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the department prior to the change. Substantial changes in the ownership of a licensed business must also be reported to the department prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the department may require. All changes will be reviewed by the department to determine if the existing license should be continued.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), and 99G.27(1).

701—1102.11(99G) License not a vested right. The possession of a lottery retailer license issued by the department to act as a retailer in any capacity is a privilege personal to that licensee and is not a legal right. The possession of a lottery license issued by the department to act as a retailer in any capacity does not automatically entitle that licensee to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21(2).

701—1102.12(99G,252J,272D) Suspension or revocation of a license.

1102.12(1) In addition to the criteria for suspension or revocation described in Iowa Code section 99G.27, the department may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code chapter 99G or these rules.

b. Failing to file any return or report or to keep records required by the lottery division;

c. Failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments that are dishonored or electronic funds transfers that are not paid.

d. If public convenience is adequately served by other licensees.

e. A history of thefts or other forms of losses of tickets or revenue from the business.

f. Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control.

g. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

h. Making a misrepresentation of fact to the commission or department on any report, record, application form, or questionnaire that is submitted to the commission or department.

i. Denying the division or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

j. Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

k. Systematically pursuing economic gain in an occupational manner or context that is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery.

l. Failing to follow the instructions or security procedures of the division for the management of personnel, handling of tickets, or the conduct of any particular game or special event.

m. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket or to the general public with respect to the conduct of a particular game or special event.

n. For a licensee who is an individual, when the department receives a certificate of noncompliance from the child support recovery unit in regard to the licensee unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

o. Allowing activities on the licensed premises that could compromise the dignity of the state.

1102.12(2) The effective date of revocation or suspension of a license as specified in the notice issued under Iowa Code section 252J.8 is 60 days following service of the notice upon the licensee. The effective date for all other notices of revocation or suspension is 20 days following service upon a licensee.

1102.12(3) If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the department will revoke the retailer's license upon 15 days' notice served in conformance with rule 701—1102.11(99G,252J,272D).

1102.12(4) Upon suspicion that a retailer has sold a ticket to an underage player, the department will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code section 99G.30(3). In the event a retailer sells a ticket to an underage player and the department can substantiate the claim, the department will suspend the retailer's license for seven days. When a retailer sells a ticket to an underage player and the department can substantiate the claim a second time in a period of one year from the date of the first event, the department will suspend the retailer's license for a period of 30 days. When a retailer sells a ticket to an underage player and the department can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license will be suspended for one year.

1102.12(5) Upon revocation or suspension of a retailer's license of 30 days or longer, the retailer will surrender to the department, by a date designated by the department, the license, lottery identification card, and all other lottery property. The department will settle the retailer's account as if the retailer had terminated its relationship with the department voluntarily.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24, 99G.27, 99G.30(3), 99G.35, 252J.8, and 272D.8(2).

701—1102.13(99G,252J,272D) Methods of service.

1102.13(1) The notice issued under Iowa Code section 252J.8 will be served upon the licensee by certified mail restricted delivery, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

1102.13(2) Notice of a license revocation or a suspension for the reasons described in Iowa Code section 99G.27 or rule 701—1102.12(99G,252J,272D) will be served upon the licensee by certified mail restricted delivery, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel. The notice will set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. If requested by the licensee, a hearing on the suspension or revocation will be held within 180 days after the notice has been served.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 99G.24(7), 252J.8, and 272D.8.

701—1102.14(99G,252J,272D) Licensee's obligation. Licensees and license applicants must keep the lottery informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J. Licensees and applicants must also provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9 or 272D.9, any final court orders entered in such actions, and any withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 252J.8, and 272D.8.

701—1102.15(99G,252J,272D) Calculating the effective date. In the event a licensee or applicant files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the department will continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For purposes of determining the effective date of a revocation or suspension of a license, or a denial of the issuance or renewal of a license, the department will count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21(2), 252J.8, 252J.9, 272D.8, and 272D.9.

ARC 8350C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to responsibilities of retailers and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 1103, "Responsibilities of Retailers," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99G.9, 99G.25 and 99G.30.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99G.9, 99G.25 and 99G.30.

Purpose and Summary

This proposed chapter provides generally applicable rules that outline the responsibilities of retailers licensed by the Iowa Lottery to sell lottery products. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 13 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department of Revenue as Chapter 1103. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been made to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 10 to 11 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 1:30 to 2:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 1103:

CHAPTER 1103
RESPONSIBILITIES OF RETAILERS

701—1103.1(99G) Licensed retailers. All retailers shall be licensed in the manner provided in Iowa Code chapter 99G and these rules. Retailers shall abide by all applicable laws and administrative rules, the terms and conditions of the license, and all other directives and instructions issued by the lottery.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, 99G.25, 99G.27, 99G.30, and 99G.31.

701—1103.2(99G) Requirements for the sale of tickets.

1103.2(1) Retailers shall be knowledgeable about the lottery and lottery products and may be required to take training in the operation of lottery games. Retailers shall make the purchase of tickets convenient to the public.

1103.2(2) No retailer or any employee or member of a retailer shall attempt to identify a winning ticket prior to the sale of the ticket.

1103.2(3) Except as the lottery may allow in its discretion, retailers shall pay all prizes that the department requires retailers to pay during normal business hours at the location designated on the license.

1103.2(4) Retailers shall not purchase tickets previously sold by the retailer.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.30, and 99G.31.

701—1103.3(99G) Display and availability of rules and promotional materials provided by the lottery.

1103.3(1) Retailers shall display brochures, flyers, or similar items provided by the lottery that are designed to provide the rules of lottery games near the point at which tickets are sold.

1103.3(2) Retailers shall display point-of-sale material provided by the lottery in a manner that is readily seen by and available to the public. The lottery may require the removal of objectionable material or the discontinuance of objectionable advertising that may have an adverse impact on the lottery.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, and 99G.27.

701—1103.4(99G) Ownership of tickets and other property.

1103.4(1) All instant tickets and pull-tab tickets accepted by a licensed retailer are the property of the licensed retailer. Tickets that are erroneous or mutilated when received by a retailer may be returned to the department for credit. After confirmation of delivery, the retailer is responsible for the condition and security of the tickets and for any losses resulting from tickets that become lost, stolen, or damaged. The department may credit retailers for lost, stolen, or damaged tickets if the department determines that the best interests of the lottery will be served by issuing a credit.

1103.4(2) Unless otherwise indicated in writing, all department property provided to a licensed retailer for use in selling products, as opposed to property and tickets sold to a retailer, remains the property of the department. The retailer shall deliver department property to the department upon request.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), 99G.24, and 99G.27.

701—1103.5(99G) Retailer costs and compensation.

1103.5(1) Pull-tab tickets are available for purchase by a retailer for a price equal to the retail price of the tickets less the value of prizes that the retailer is obligated to pay and any discounts or commissions authorized by the lottery.

1103.5(2) Scratch tickets are available for purchase by a retailer at retail price, and the department will credit the retailer's account for validations and commissions.

1103.5(3) The department may impose a service fee on retailers to cover operational costs.

1103.5(4) The department, with commission approval, shall set the base amount of retailer compensation. The base amount of compensation shall be specified in the agreement between the retailer and the department. The department may increase the total amount of retailer compensation by implementing sales incentive programs.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.24.

701—1103.6(99G) Retailer payment methods. Retailers are required to pay for lottery tickets or shares by means of an electronic funds transfer from the retailer's account. Generally, an electronic funds transfer (EFT) from a retailer's account is the only permitted method of payment for lottery tickets or

shares purchased by a retailer. The department may allow a retailer to make payments by another method if the retailer can show that the EFT system imposes a significant hardship on the retailer or if the department determines that the retailer's payment history justifies use of an alternative payment method.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), and 99G.28.

701—1103.7(99G) Dishonored checks and electronic funds transfers. Any payment made to the lottery by an applicant for a license or by a licensed retailer either by a check that is dishonored or by an EFT that is not paid by the depository shall be grounds for immediate denial of the application for a license or for the suspension or revocation of an existing license. The department may assess a surcharge up to the maximum allowed by applicable state law for each dishonored check or unpaid EFT. The department may also alter the payment terms of a retailer's license and require a retailer to reimburse the lottery for costs that occur as a result of a dishonored check or unpaid EFT.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, and 99G.27.

701—1103.8(99G) Inspection of lottery materials and licensed premises. Retailers shall allow the department to enter upon the licensed premises in order to inspect lottery materials, tickets, equipment and the premises. All books and records pertaining to the retailer's lottery activities shall be available to the department for inspection and copying during the normal business hours of the retailer and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the retailer's lottery activities are subject to seizure by the department without prior notice.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, 99G.27, 99G.28, and 99G.35.

701—1103.9(99G) Individuals who may sell lottery tickets. The retailer is responsible for the conduct of its employees and members that is within the scope of the retailer's lottery license. If the retailer is a nonprofit organization, members of the organization may also sell lottery tickets if authorized by the organization.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.24, and 99G.30.

701—1103.10(99G) Ticket sales restrictions. The lottery reserves the right to limit or terminate the sale of computerized game tickets at any licensed retail location if such sales may compromise the operation and integrity of the lottery, reflect conduct prejudicial to the public confidence in the lottery or reflect activity of an illegal nature under local, state or federal laws.

1103.10(1) Plays may only be entered manually using the lottery terminal keypad or touch screen or by means of a play slip provided by the lottery and hand-marked by the player or by such other means approved by the lottery. Retailers are not permitted to connect any device to a lottery terminal to enter plays, except as approved by the department.

1103.10(2) A ticket or combination of tickets that would guarantee such purchaser a jackpot win may not directly and knowingly be sold to any person or entity.

1103.10(3) An offer to buy and an offer to sell a ticket are only permitted at a location and only by a method that is licensed by the department.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, 99G.24, and 99G.27.

701—1103.11(99G) Placement of lottery equipment. The department, in its sole discretion, will determine the need for, type of, and placement of any lottery equipment to be installed at licensee sales outlet locations. In the exercise of discretion, the department may consider any of the following:

1. The availability of equipment.
2. The suitability of the type of equipment for the specific retail outlet under consideration.
3. The location, equipment, business type, and proximity of other extant retail outlets compared with an outlet under consideration.
4. The sufficiency of existing licensed outlets to serve the public convenience.
5. Such minimum sales criteria as may be appropriate based on current market conditions.
6. The cost of equipment and potential return on investment.

7. Such other factors as the department may deem appropriate to the exercise of prudent business judgment in reaching a decision.

The decision of the department regarding placement of equipment is solely discretionary and final.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.7, 99G.12, and 99G.21.

ARC 8351C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to scratch ticket and instaplay ticket general rules and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 1104, "Scratch Ticket and InstaPlay Ticket General Rules," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99G.3, 99G.9, 99G.21 and 99G.31.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99G.3, 99G.9, 99G.21 and 99G.31.

Purpose and Summary

This proposed chapter provides generally applicable rules that govern all scratch ticket and InstaPlay ticket games offered by the Iowa Lottery. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 18 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as Chapter 1104. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been made to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 10 to 11 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 1:30 to 2:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 1104:

CHAPTER 1104
SCRATCH TICKET AND INSTAPLAY TICKET GENERAL RULES

701—1104.1(99G) Authorization of instant ticket games. The lottery commission authorizes the sale of scratch tickets and instaplay tickets that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code section 99G.9(2).

701—1104.2(99G) Definitions.

"Instaplay ticket" means a ticket printed on lottery terminal paper with play symbols that are not concealed by a removable covering.

"Play symbols" means the numbers or symbols appearing under the removable covering on a scratch ticket or on the face of an instaplay ticket.

"Scratch ticket," as used in this chapter, means the same as "instant ticket" as defined in Iowa Code section 99G.3(8).

"Validation number" means the characters or numbers found on a ticket or ticket stub used by the department to determine whether a ticket or ticket stub is authentic.

This rule is intended to implement Iowa Code sections 99G.3 and 99G.9(2).

701—1104.3(99G) Method of play. Winners of a prize may be determined by such activities as locating, matching, or adding the play symbols on the tickets or by any other play action approved by the lottery division. The exact method of determining a winning ticket will be determined by the lottery division and shall be set forth in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1104.4(99G) Prizes.

1104.4(1) The number and amount of prizes in any specific scratch ticket or instaplay ticket game will be determined by the lottery division and set forth in the game specific rules applicable to that game.

1104.4(2) At the lottery division's discretion, a scratch ticket game or an instaplay ticket game may include a special prize event. The number of prizes and the amount of each prize in the prize event will be determined by the lottery division. The dates and times, as well as the procedures for conducting any prize events, will be determined by the lottery division in the game specific rules. Finalists for prize events will be selected in the manner stated in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1104.5(99G) Annuity prizes. If a prize offered in a scratch ticket game or an instaplay ticket game is an annuity, the prize will consist of an initial prize payment followed by yearly installments as described in the game specific rules. If the current cash value of an annuity prize attributable to a single ticket or entry is less than $100,000, the lottery division may elect to pay the current cash value of the prize in one lump-sum payment.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1104.6(99G) Disclosure of odds. The overall probability of purchasing a winning ticket will be displayed on the lottery division's website and in game literature made available by the lottery division.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1104.7(99G) Claiming prizes.

1104.7(1) *Claim period.* Scratch ticket prizes must be claimed within 90 days of the announced end of the scratch ticket game. Instaplay ticket prizes must be claimed within 90 days of the date of sale of the instaplay ticket.

1104.7(2) *Prizes claimed at retailer.* The game specific rules shall specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the game specific rules. If a retailer can verify the claim, the retailer shall pay the prize. If a retailer cannot verify the claim, the player may claim the prize from another retailer or may submit the ticket and a completed claim form to the lottery division. If the claim is validated by the lottery division, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery division, the claim shall be denied and the player shall be promptly notified.

1104.7(3) *Prizes claimed at a lottery division office.* The game specific rules may specify prizes that may be claimed only from the lottery division. To claim a prize from the lottery division, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa lottery division's

main office as defined in rule 701—2.3(17A). If the claim is validated by the lottery, the prize or a check, warrant, or draft will be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding and less any applicable setoff withheld under Iowa Code section 99G.41. If the claim is not validated by the lottery, the claim is denied and the player will be promptly notified.

1104.7(4) *Variation by game specific rules.* The game specific rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any scratch ticket game or instaplay ticket game or special event.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1104.8(99G) Ticket validation requirements.

1104.8(1) To be a valid scratch ticket, a ticket must meet all of the following validation requirements. A ticket must:

a. Have been issued in an authorized manner as determined by the lottery division.

b. Not be altered, unreadable, reconstructed, or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen or appear on any list of omitted tickets on file with the lottery division.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have play symbols and captions as described in the game specific rules. All symbols, numbers, and codes must be present in their entirety, legible, right side up, and not reversed in any manner.

g. Have the appropriate bar code, pack-ticket number, retailer verification code, and security code.

h. Have a validation number that appears on the lottery division's official list of validation numbers of winning tickets. A ticket with that validation number shall not have been previously paid.

i. Pass all additional validation requirements stated in the game specific rules and any confidential validation requirements established by the lottery.

1104.8(2) To be a valid instaplay ticket, a ticket must meet all of the following validation requirements. A ticket must:

a. Have been issued in an authorized manner as determined by the lottery division.

b. Not be altered, unreadable, reconstructed, or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen, canceled, or appear on any list of omitted or test tickets on file with the lottery division.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have play symbols and captions as described in the game specific rules. All symbols, numbers, and codes must be present in their entirety, legible, right side up, and not reversed in any manner.

g. The information on the ticket or share must correspond precisely with the lottery division's computer record.

h. The ticket or share serial number must appear in its entirety and correspond, using a computer validation file, to the winning game play or plays printed on the ticket or share.

i. A ticket or share shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from which the ticket or share was purchased.

j. Pass all additional validation requirements stated in the game specific rules and any confidential validation requirements established by the lottery division.

1104.8(3) Any ticket not passing all applicable validation requirements is invalid and is ineligible for any prize. The lottery division determination that a ticket is invalid is binding on all participants in the lottery. The lottery division may choose to pay an amount equal to the prize that would have been won on an invalid ticket if the lottery division is able to determine the prize that would have been won by use of a symbol, number, color code, or other mechanism. The lottery division's decision as to whether to pay a player the sum equal to the prize on an invalid ticket is binding on all participants in the

lottery. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

If an invalid ticket is purchased by a player, the only responsibility or liability of the lottery division will be to replace the invalid ticket with an unplayed ticket from the same game or any other game or issue a refund of the sale price.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1104.9(99G) Official end of game. The lottery division will announce the official end of each scratch ticket game and each instaplay ticket game. Retailers may continue to sell tickets for each game up to the cutoff date specified by the lottery.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

ARC 8352C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to pull-tab ticket general rules and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 1105, "Pull-Tab Ticket General Rules," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99G.3, 99G.9, 99G.21 and 99G.31.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99G.3, 99G.9, 99G.21 and 99G.31.

Purpose and Summary

This proposed chapter provides generally applicable rules that govern all pull-tab ticket games offered by the Iowa Lottery. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 19 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as Chapter 1105. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been made to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
Department of Revenue
Hoover State Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.724.2924
Email: madelyn.cutler@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 10 to 11 a.m.	Room 430 Hoover State Office Building Des Moines, Iowa
December 4, 2024 1:30 to 2:30 p.m.	Room 430 Hoover State Office Building 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 1105:

CHAPTER 1105
PULL-TAB TICKET GENERAL RULES

701—1105.1(99G) Authorization of pull-tab games. The lottery commission authorizes the lottery to sell pull-tab tickets meeting the criteria of this chapter.

This rule is intended to implement Iowa Code section 99G.9(2).

701—1105.2(99G) Definition. As used in this chapter, the following definition is applicable.

"Pull-tab tickets" means the same as "pull-tab ticket" or "pull-tab" as defined in Iowa Code section 99G.3(15).

This rule is intended to implement Iowa Code sections 99G.3 and 99G.9(2).

701—1105.3(99G) Method of play. A winning ticket is determined by matching, aligning, adding, or locating symbols or numbers under the tabs.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1105.4(99G) Ticket validation requirements.

1105.4(1) *Winning ticket requirements.* Winning tickets are validated by use of a symbol, number, or color-coded marking. A ticket is not valid if it fails to meet any of the following requirements. The ticket must:

a. Have been issued by the Iowa lottery division in an authorized manner.

b. Not be altered, unreadable, reconstructed, or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen or appear on any list of omitted tickets on file with the lottery division.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have the exact play symbols and captions specified in the game specific rules.

g. Pass all validation tests, including confidential validation tests.

1105.4(2) *Lottery responsibility.* If a ticket is invalid when sold, it is not eligible to receive any prize and the purchaser's sole remedy is to submit the ticket to the lottery division's main office for a refund of the retail sale price. The lottery has no liability or responsibility for tickets invalidated after the time of sale.

The lottery division may choose to pay a sum equal to the prize on an invalid ticket if the lottery division is able to determine the prize that would have been won on the invalid ticket by use of a symbol, number, color code, or other mechanism. The lottery division's determination that a ticket is valid or invalid, that a ticket was valid when sold and was subsequently invalidated, and whether a sum equal to the prize on an invalid ticket will be paid are binding on all participants in the lottery. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.5(99G) Prizes. The number and the amount of prizes for any specific pull-tab ticket game will be determined by the lottery division and set forth by the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.6(99G) Disclosure of odds. The overall probability of purchasing a winning ticket shall be stated on the lottery division's website and in game literature made available by the lottery division.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1105.7(99G) Claiming prizes.

1105.7(1) *Claim period.* Prizes must be claimed within 90 days of the announced end of the pull-tab ticket game.

1105.7(2) *Prizes claimed at retailer.* The game specific rules specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the game specific rules. If a retailer can verify the claim, the retailer pays the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery division. If the claim is validated by the lottery division, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery division, the claim shall be denied and the player shall be promptly notified.

1105.7(3) *Prizes claimed at a lottery division office.* Game specific rules specify prizes that may be claimed only from the lottery division. To claim a prize from the lottery division, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Division main office as defined in rule 701—2.3(17A). If the claim is validated by the lottery division, the prize or a check, warrant, or draft will be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding and less any applicable setoff withheld under Iowa Code section 99G.41. If the claim is not validated by the lottery division, the claim is denied and the player will be promptly notified.

1105.7(4) *Variation by game specific rules.* Game specific rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any pull-tab game or special event.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.8(99G) Disputed claim. If a purchaser and a retailer cannot agree as to whether a prize should be paid on a ticket, the purchaser may submit the ticket to any lottery office. The lottery division's determination as to whether a prize should be awarded is binding on all participants in the lottery. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.9(99G) Lottery logo. All pull-tab tickets sold by the lottery division are to be conspicuously marked with the logo of the lottery.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1105.10(99G) End of game. The lottery division will announce the end of any pull-tab ticket game or games.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

ARC 8353C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to general rules of computerized games and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 1106, "Computerized Games—General Rules," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99G.3, 99G.7, 99G.9, 99G.21 and 99G.31.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99G.3, 99G.7, 99G.9, 99G.21 and 99G.31.

Purpose and Summary

This proposed chapter provides generally applicable rules that govern all computerized games offered by the Iowa Lottery. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment

in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 20 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as Chapter 1106. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

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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 rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Madelyn Cutler
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Public Hearing

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Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 1106:

CHAPTER 1106
COMPUTERIZED GAMES—GENERAL RULES

701—1106.1(99G) Authorization of computerized lottery games. The lottery commission authorizes the sale of computerized games to be played in compliance with the criteria set forth in this chapter.

This rule is intended to implement Iowa Code section 99G.9(2).

701—1106.2(99G) Computerized lottery definitions. As used in this chapter:

"Central computer" means a computer system designated to control, monitor, and communicate with lottery terminals and self-service kiosks and to record the transactions processed by that lottery equipment.

"Drawing" means the process used to randomly select winning numbers or entries.

"Easy pick" means the random selection by the terminal or self-service kiosk of a valid play for the game that was selected.

"Game" means any computerized game conducted by the lottery.

"Instant ticket vending machine" means a vending machine or self-service kiosk that dispenses printed paper lottery tickets, with or without a scratch-off area.

"Online vending machine" means a vending machine that prints and dispenses tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

"Play(s)" means the selection of an appropriate number of available variables that constitutes a valid entry in the game or the purchase of a ticket or share with a sequentially generated variable appearing on the face of the ticket or share that constitutes a valid entry in a pool exhaustion game.

"Play slip" means a card used by the player in marking a player's plays.

"Pool exhaustion game" means a game where a predetermined pool of plays is established.

"Predetermined pool drawing machine" means a computer or other device external to a lottery terminal, instant ticket vending machine, self-service kiosk or online vending machine, that predetermines winning and losing tickets or shares, assigns them to preprogrammed and prepackaged sequential electronic pool files and subsequently utilizes the files in production and distribution of electronic game cards and paper game tickets or shares produced in manufactured packs or through lottery terminals or vending machines.

"Terminal" means a device that is authorized by the lottery division to function with a central computer system for the purpose of issuing, entering, receiving, and processing lottery transactions.

"Vending machine" means a lottery ticket or share dispensing machine either with a mechanical operating mechanism or with computer components that perform accounting functions and activate the ticket or share dispensing mechanism.

"Winning numbers" means the selection of an appropriate number of the variables, randomly selected at each drawing, that are used to determine winning plays contained on a game ticket or share.

This rule is intended to implement Iowa Code sections 99G.3 and 99G.9(2).

701—1106.3(99G) Method of play. If mandated by the game specific rules, a player selects an appropriate number of the available game variables. A player may select each game variable by marking a play slip and submitting the play slip to a retailer, by asking a retailer to manually enter the game variables, or by purchasing an "easy pick" ticket from a retailer. Players may also purchase plays from player-activated terminals by use of a touch screen if player-activated terminals are available. A drawing is held in which an appropriate number of the game variables are drawn on a random basis.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.4(99G) Cancellation by a player. A ticket or share may be canceled by returning the ticket or share to the selling retailer provided that the ticket or share is returned to the retailer the same day it was purchased in time to permit canceling to be fully completed prior to the closing time for that drawing. In the event that a ticket or share is canceled, the player will be entitled to receive from the retailer a refund equal to the purchase price of the ticket or share.

Cancellations will not be allowed in certain games as outlined in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.5(99G) Prizes and odds. The amount of prizes and the odds of winning are set forth in the game specific rules. Game specific rules may allow alternative prize structures.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.6(99G) Payment of annuity jackpot prizes. The lottery division may offer cash prizes, annuitized installment prizes, and prizes with cash or annuity payment options available to the winners. If the jackpot prize or share of the jackpot prize will be paid as an annuity, it will consist of the initial payment followed by such number of yearly installments as may be provided in the game specific rules for the game unless the cash value of the annuity prize attributable to a single play is less than $100,000. If the cash value of the annuity prize attributable to a single play is under $100,000, the lottery division may elect to pay the cash value of the prize in one lump-sum prize payment. This rule does not apply to multistate or other multijurisdictional lottery games. Provision for payment of prizes for multistate and other multijurisdictional games shall be outlined in the game specific rules for such games.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.7(99G) Unclaimed prizes. Unclaimed jackpot prizes, shares of the jackpot prize, and other lottery prizes do not increase a prize simultaneously won by any other player in the game. Unclaimed jackpot shares are added to future jackpot prize pools at times determined by the lottery division. Other unclaimed prizes are added to future prize pools for any lottery game. This rule applies to such games offered in Iowa, except as may otherwise be provided in the game specific rules of a multistate lottery or other multijurisdictional lottery with which the Iowa lottery may be affiliated.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.8(99G) Price. The price of a play will be outlined in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.9(99G) Changes for special promotions. The lottery division may alter the price of the tickets or shares, features, or prizes of the game or drawings to accommodate special promotions. Alterations made by the lottery division shall be contained in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.7, 99G.9(2), and 99G.21.

701—1106.10(99G) Ticket or share ownership and prize entitlement.

1106.10(1) A ticket or share is owned by its physical possessor until a signature is placed on the back of a ticket in the area designated for signature. When a signature is placed on the back of the ticket or share in the designated space, the person whose signature appears in the designated space is the owner of the ticket or share and is entitled to any prize attributable to the ticket or share.

1106.10(2) Notwithstanding any name or names submitted on a claim form, the lottery division will make payment to the person whose signature appears on the back of the ticket or share in the designated space. If the signatures of more than one person appear in that space, the lottery division will make payment to the person identified on the winner's claim form to receive payment, which designation is made by all persons whose signatures appear on the reverse side of the ticket or share. In the event that all persons whose signatures appear in the appropriate space cannot identify one person to whom payment should be made, the lottery division may withhold payment until the proper payee is determined.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.11(99G) Ticket validation requirements.

1106.11(1) All claims for prizes are subject to validation by the lottery division. A valid ticket or share eligible to receive a prize will satisfy all of the following requirements.

a. The ticket or share was issued by the lottery division directly or through a retailer, via a terminal, in an authorized manner.

b. The information on the ticket or share corresponds precisely with the lottery division's computer record.

c. The ticket or share serial number appears in its entirety and corresponds, using a computer validation file, to the winning play or plays printed on the ticket or share.

d. A ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from which the ticket or share was purchased.

e. The ticket or share is not produced in error, counterfeit in whole or in part, altered, mutilated, unreadable, tampered with in any manner, incomplete, blank or partially blank, miscut, or defective.

f. The ticket or share is not stolen or canceled.

g. The ticket or share passes all additional validation requirements that may be stated in the game specific rules and other security criteria determined by the lottery division.

1106.11(2) In the event that a ticket or share fails to pass all of the validation criteria set forth in this rule, the game specific rules or as determined by the lottery division, the ticket or share is invalid and ineligible for any prize. The lottery division, in its sole discretion, may choose to pay a sum equal to the prize on an invalid ticket or share if the lottery division can determine the prize that would have been won by the ticket or share by use of a symbol, code number, color code, or other mechanism. The lottery division's decisions as to whether a ticket or share is invalid and whether a sum equal to the prize on an invalid ticket or share will be paid are binding on all participants in the lottery. If the lottery division determines that a ticket or share is not eligible to receive a prize or a sum equivalent to the prize amount, the lottery division may replace the invalid ticket or share with a ticket or share of equivalent sale price from any current lottery game or refund the purchase price of the ticket or share. Replacement of the ticket or share, or refund of the purchase price, are the claimant's sole and exclusive remedy. A player who wishes to challenge a determination by the lottery division under this subrule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.12(99G) All prizes for games not associated with another state's lottery must be claimed as directed within 90 calendar days of the drawing in which the prize was won unless otherwise specified in the game specific rules. All prizes for games associated with another state's lottery are to be claimed as directed within the game specific rules. For purposes of determining the claim period, the drawing date is not counted. If a prize is claimed by mail, the lottery division must actually receive the ticket or share and claim form within the claim period. Any prize not properly claimed within the specified period is forfeited. The claim period for a game may be altered by the lottery division in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.13(99G) Manner of claiming prizes.

1106.13(1) To receive payment for a prize or prizes on any single game ticket or share that total $600 or less, the winner may take the signed ticket or share directly to any lottery retailer authorized to

sell and validate the game, or to any lottery division office, or mail the signed ticket or share, along with a completed claim form, to the Iowa Lottery Division's main office as defined in rule 701—2.3(17A).

If there is any alteration, mutilation, tear, or other ambiguity on the ticket or share, the retailer is not authorized to make direct payment of a prize and a claim form, and the ticket or share is to be submitted to the lottery division.

1106.13(2) To receive payment for a prize or prizes on any single game ticket or share that total more than $600, the winner may submit the signed ticket or share and a completed claim form directly to any lottery division office. The winner may also mail the signed ticket or share and claim form to the Iowa Lottery Division's main office as defined in rule 701—2.3(17A).

1106.13(3) Claim forms are available at all computerized lottery division retailers and lottery offices. The lottery division or, at the lottery division's direction, a lottery retailer may require the person claiming a prize of any amount to fill out a claim form.

1106.13(4) If a prize is claimed by mail, the ticket or share and the claim form must actually be received by the lottery division within the claim period.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.14(99G) Presentation of ticket. No prize payments will be made unless the player submits a valid, uncanceled ticket or share. A play slip has no pecuniary or prize value and is not evidence of ticket purchase or of numbers selected.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.15(99G) One prize per play. The holder of a winning ticket or share may win only one prize per play in connection with the winning numbers drawn and is entitled only to the prize won by those numbers in the highest matching prize category.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.16(99G) Corrections. The lottery division reserves the right to correct and adjust, up or down, the amount of any prize or prizes, whether all or part of the prize or prizes has been paid, if it is determined that one or more players are entitled to a portion of a prize and were not included in the prize calculations or were included in the prize calculations by mistake.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.17(99G) Risk of error. The placing of plays is done at the player's own risk. It is solely the player's responsibility to verify the accuracy of plays and all other data printed on the ticket. In the event of any error, the player's only remedy is cancellation of the ticket or share according to the procedure specified in this chapter. The lottery division and lottery retailers have no other responsibility for tickets or shares printed in error.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1106.18(99G) Multidraw plays and advance plays. Multidraw plays and advance plays may be available.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.19(99G) Drawings. Drawings will be held as specified in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.20(99G) Cancellation or delay. The lottery division reserves the right to cancel or delay drawings or sales of tickets or shares in the event of technical difficulties, and on days of special importance or on days the drawings would be impractical or inappropriate.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.21(99G) Pool exhaustion game—method of play.

1106.21(1) Players may purchase tickets or shares for a specific game. Each ticket or share sold for a pool exhaustion game will be generated separately. Tickets or shares will be sold against the pool until the pool of plays is exhausted or until the game ends in accordance with the game specific rules.

1106.21(2) Each ticket or share will bear a sequentially generated variable on the face of the ticket or share.

1106.21(3) Drawings for the prizes for a specific game will randomly select a winner or winners from the tickets or shares actually sold. The drawing method is described in the game specific rules.

1106.21(4) Prizes are awarded as specified in the game specific rules.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1106.22(99G) Prize insurance fund.

1106.22(1) The lottery may provide that up to 10 percent of the funds designated for the jackpot prize level in the prize structure of the game specific rules for a game or that any prize funding not awarded by the conclusion of the relevant claim period for a fixed-prize game will be transferred to a prize insurance fund.

1106.22(2) The prize insurance fund may be used for any of the following purposes:

a. To pay prizes for any online game prize obligation if the amount available to fund an online game prize is insufficient;

b. To support a special promotion to retire an online game (e.g., a television show or a second-chance drawing);

c. To transfer amounts to a successor game to pay prize obligations for a different online game.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

ARC 8354C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to drawings and contests and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 1107, "Drawings and Contests," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99G.9, 99G.21 and 99G.31.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99G.9, 99G.21 and 99G.31.

Purpose and Summary

This proposed chapter provides generally applicable rules that govern all lottery drawings and contests. Because this chapter falls under the Iowa Lottery Authority's portion of the Iowa Administrative Code, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. In a separate rulemaking, 531—Chapter 21 is proposed to be rescinded. This rulemaking proposes to readopt the chapter under the Department as Chapter 1107. Additionally, this rulemaking is intended to make the changes required by Executive Order 10 to remove portions of the rules that the Department determined are unnecessary, outdated, or duplicative of statutory language.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 2024

No public comments on the Regulatory Analysis were received at the hearing or in writing. No changes have been made to the text after the Regulatory Analysis publication. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on October 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

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Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 1107:

CHAPTER 1107
DRAWINGS AND CONTESTS

701—1107.1(99G) Authorization of drawings and contests. The lottery commission authorizes drawings and contests that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code section 99G.9(2).

701—1107.2(99G) Definitions.

"Contest" means a lottery event that may involve nonwinning tickets in which entries are selected as winners and prizes are valued at a total of $5,000 or less.

"Drawing" or *"second-chance drawing"* means a lottery event involving a random selection of an entry or entries for a prize in which entrants may either use a nonwinning Iowa lottery ticket as an entry or, at the lottery division's discretion, may enter the drawing using points earned from entering tickets through the Internet or an entry through an alternative method for which a purchase is not necessary.

"Nonwinning ticket" means a ticket that did not win in the original game for which it was printed.

"Presentation" means entering the ticket into a drawing or contest as permitted by the rules of the drawing or the description of the contest.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1107.3(99G) Price for drawings or contests. There is no cost to enter a drawing or contest beyond the original ticket price already paid. At the lottery division's discretion, certain drawings may be designated as accepting entries with a designated number of points earned by entry of nonwinning tickets through the lottery division's customer loyalty program or by another lottery-approved method.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1107.4(99G) Method of play. Contest or drawing winners may be determined from a computer-generated list of all the entries submitted during the eligibility period or by another method approved by the lottery division. The secure drawing system generates a list of winning entry numbers based on the prize levels. Alternates are drawn as determined by the lottery division. Other methods of choosing a winning entry may be determined by the lottery division and, if utilized, will be set forth in the specific drawing rules or contest description. The lottery division will post written contest rules informally at any contest event.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1107.5(99G) Prizes.

1107.5(1) The number and amount of prizes for a drawing or contest shall be determined by the lottery division and set forth in the specific drawing rules or contest description.

1107.5(2) At the lottery division's discretion, a drawing or contest may include a special prize event. The number of prizes, the amount of each prize, the dates and times of the contests or drawings, as well as the procedures for conducting elimination drawings or prize events, are determined by the lottery division and set forth in the specific drawing rules or contest description. Finalists for prize events are selected in the manner stated in the specific drawing rules or contest description.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1107.6(99G) Disclosure of odds. Because odds will vary based on the number of entrants in each contest or drawing, odds are not posted.

This rule is intended to implement Iowa Code sections 99G.9(2) and 99G.21.

701—1107.7(99G) Claiming prizes. The specific drawing rules or contest description will set forth the manner in which prizes won should be claimed. If an individual prize is greater than $600 or at the lottery division's discretion, a player will fill out a claim form.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1107.8(99G) Entry validation requirements. A valid entry is a legally acquired nonwinning lottery ticket identified as an entry for the particular drawing or contest. At its discretion, the lottery division may include legally obtained winning and nonwinning Iowa lottery online tickets in drawings and contests.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1107.9(99G) Owner of a ticket. The lottery division pays prizes in an Internet-based drawing or contest only to persons who present the selected tickets by entering them into the drawing through the online entry form or other entry mechanism. Players should sign the original ticket to prevent entry of the ticket by another party into the drawings or contests. The signature on the ticket indicates the owner of the ticket. If no signature is present on the ticket, the owner of the ticket is the possessor of the ticket. If there is a question as to the ownership of a ticket, the lottery division will make a determination as to whether and to whom a prize will be awarded, and the lottery division's determination is binding on all participants in the drawing or contest. A player who wishes to challenge a determination by the lottery division under this rule may request a contested case proceeding as described in 701—Chapter 6.

This rule is intended to implement Iowa Code sections 99G.9(2), 99G.21, and 99G.31.

701—1107.10(99G) Official end of drawing or contest period. The lottery division announces the end of any drawing or contest period.

This rule is intended to implement Iowa Code sections 99G.9(2), and 99G.21.

ARC 8332C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rulemaking related to farm-to-market review board and providing an opportunity for public comment

The Transportation Department hereby proposes to rescind Chapter 101, "Farm-to-Market Review Board," 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 306.6A and 307.12(1)"j."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 306.6 and 306.6A.

Purpose and Summary

This rulemaking proposes to repromulgate Chapter 101 in compliance with Executive Order 10. Proposed Chapter 101 formalizes the process by which the Farm-to-Market Review Board, created by Iowa Code section 306.6, will administer its duties, including the designation of parts of the secondary road network as the farm-to-market road system.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 26, 2024

The Department received no comments.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 9, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

December 9, 2024 10 to 10:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 779 171 631
December 9, 2024 3 to 3:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 512 323 376

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George 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 761—Chapter 101 and adopt the following **new** chapter in lieu thereof:

CHAPTER 101
FARM-TO-MARKET REVIEW BOARD

761—101.1(306) Scope. This chapter formalizes the process by which the farm-to-market review board will administer its duties. The board reviews criteria for determining eligibility for inclusion of additional roads into the farm-to-market road system in accordance with Iowa Code sections 306.6 and 306.6A.

761—101.2(306) Definitions.

"Area service roads," "local roads," or *"local road system"* means those secondary roads that are not a part of the farm-to-market road system.

"Board" means the farm-to-market review board.

"Executive board" means the Iowa county engineers association executive board.

"Farm-to-market extensions" means extensions of the farm-to-market road system within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of these extensions of the system is to be included in the total mileage of the farm-to-market road system.

"Farm-to-market roads" or *"farm-to-market road system"* means those county jurisdiction intracounty and intercounty roads that serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market and area service roads and includes those secondary roads that are federal aid eligible. The farm-to-market road system is not to exceed 35,000 miles.

"President" means the president of the Iowa county engineers association.

761—101.3(306) Composition and membership of the board.

101.3(1) The board is composed of 12 county engineers selected by the Iowa county engineers association. Two members are selected from each district to serve staggered terms. After the first complete term rotation as shown below, the members serve six-year terms. Rotations should be staggered so that no more than one-sixth of the membership is rotated off the board in any one year. The rotation of board members should further provide that two members from one district will not be rotated off the board in the same year, and that their rotations will be varied by three years. Board rotation should be as follows and should be extended in future years in the same pattern:

Year	Rotation	
2021	District 1 Representative A	District 4 Representative A
2022	District 2 Representative A	District 5 Representative A
2023	District 3 Representative A	District 6 Representative A
2024	District 1 Representative B	District 4 Representative B
2025	District 2 Representative B	District 5 Representative B
2026	District 3 Representative B	District 6 Representative B

101.3(2) Members are nominated by their districts and approved by the executive board. A county engineer may serve multiple, consecutive terms if so nominated by the county engineer's district. If a county engineer is unable to complete a term for any reason, the president selects another county engineer within the district to serve the balance of the term.

101.3(3) The board selects from its membership a chair and a vice-chair to serve one-year terms. The chair serves at the pleasure of the board and may be elected to multiple terms as deemed appropriate by the board. The vice-chair presides at a meeting in the absence of the chair.

761—101.4(306) Collection of system modification requests and frequency of meetings.

101.4(1) The department of transportation will collect applications for modifications to the farm-to-market road system. The board chair schedules meetings of the board to review accumulated applications for farm-to-market road system modifications. Applications should be filed no less than 21 calendar days prior to each scheduled board meeting.

101.4(2) The board follows the provisions of Iowa Code chapter 21 with regard to open meetings. The chair posts a meeting agenda on the Iowa county engineers association service bureau website and sends copies of the agenda to all counties.

101.4(3) Minutes of each meeting are kept; the chair is responsible for the minutes. Meetings may be recorded to facilitate the preparation of meeting minutes, but any recordings made are not to be retained after the minutes have been completed.

761—101.5(306) Procedure for requesting modifications to the farm-to-market road system. To apply for a modification to the farm-to-market road system, a county files an application through the department of transportation.

101.5(1) The application includes the following:

a. A copy of a resolution of the county board of supervisors requesting the modification to the existing farm-to-market road system. Farm-to-market modifications may include proposed roads, redesignation of area service roads, or transfers of jurisdiction.

b. A report of the county engineer explaining and justifying the addition of new mileage to the farm-to-market road system or the change in the route or farm-to-market classification proposed by the county.

101.5(2) In the case of intercounty routes, joint applications may be filed. Resolutions are necessary of each county.

761—101.6(306) Voting and approval of requested modifications. Each member is a voting member and is eligible to vote at every meeting at which that member is in attendance. Attendance may include members being present at the meeting through a conference telephone call, Iowa communications network connection, or other electronic means deemed appropriate by the chair.

101.6(1) *Determination of a quorum.* A minimum of eight board members is necessary for a quorum. If a quorum is not present at a meeting, the meeting is rescheduled.

101.6(2) *Number of votes needed to approve or deny a modification.* For a requested modification to the farm-to-market road system to be approved, it needs to receive a minimum of seven affirmative votes; in other words, a majority of the entire board. A motion to deny a requested modification needs to only receive six votes for the denial to be approved.

761—101.7(306) Report of board decision to applicant county. Within 30 calendar days after a board meeting, the chair sends a formal response to each county whose request was acted upon by the board at the meeting. The response apprises each applicant of the decision of the board. If the application is denied, the board provides an explanation of the reasons for the denial.

761—101.8(306) Reapplication for modification. A county may reapply for a modification to the farm-to-market road system if its initial request is denied. The county again follows all provisions for requesting a modification and should be prepared to present additional information in support of the requested change. Any requested system modification that receives two denials is not to be resubmitted for consideration for a minimum of three years.

761—101.9(306) Judicial review. Any county that is aggrieved or adversely affected by a decision of the board may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

761—101.10(306) Adoption and modification of rules. The chair directs the board to review these rules annually. Board members may recommend changes to these rules.

761—101.11(306) Severability clause. If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication will 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 306.6 and 306.6A.

ARC 8333C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rulemaking related to county and city bridge construction funds and providing an opportunity for public comment

The Transportation Department hereby proposes to rescind Chapter 160, "County and City Bridge Construction Funds," 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 307.12(1)"j" and 312.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 312.2.

Purpose and Summary

This rulemaking proposes to repromulgate Chapter 160 in compliance with Executive Order 10. Proposed Chapter 160 implements the county and city bridge construction funding programs in accordance with Iowa Code section 312.2.

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 12, 2024

The Department received no comments.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 11, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

December 11, 2024 9 to 9:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 642 335 738
December 11, 2024 2 to 2:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 434 886 27

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George 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 761—Chapter 160 and adopt the following **new** chapter in lieu thereof:

SPECIAL HIGHWAY PROGRAMS

CHAPTER 160
COUNTY AND CITY BRIDGE CONSTRUCTION FUNDS

761—160.1(312) Purpose. The purpose of these rules is to establish requirements for the counties' and cities' bridge construction funds in accordance with Iowa Code section 312.2.

761—160.2(312) Contact information. Questions regarding this chapter may be directed to the Local Systems Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—160.3(312) Administration of funds. The department allocates the funds to counties and cities for bridge construction and reconstruction projects based on need, and the funds will be administered by the local systems bureau.

160.3(1) The county bridge construction fund is to be allocated for projects on secondary roads as determined by the department after consultation with county officials through their representative organizations.

160.3(2) The city bridge construction fund is to be allocated for projects on city streets as determined by the department after consultation with city officials through their representative organizations.

160.3(3) To be considered for funding, a proposed project needs to be on the appropriate eligibility list maintained by the department.

a. The department maintains a county bridge construction fund eligibility list and a city bridge construction fund eligibility list.

b. A local jurisdiction may propose a project by submitting a project application to the local systems bureau.

c. Unless otherwise agreed to by the city and county, a proposed project for a bridge located on the line dividing incorporated and unincorporated areas is to be placed on the eligibility list that corresponds to the jurisdiction submitting the application.

160.3(4) Prior to allocation, the department ranks the proposed projects within each eligibility list by a priority system based on needs, as developed under subrules 160.3(1) and 160.3(2). The priority system will include various items, such as but not limited to structural condition, traffic, and detour length. For each list, the department allocates funds, within the limits of funding availability, to those projects ranked as having the greatest needs.

These rules are intended to implement Iowa Code section 312.2.

ARC 8334C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rulemaking related to personalized and special registration plates and providing an opportunity for public comment

The Transportation Department hereby proposes to rescind Chapter 401, "Special Registration Plates," and to adopt a new Chapter 401, "Personalized and Special Registration Plates," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 307.12(1)"j," 321.34(1), 321.34(13), 321.34(14) and 321.166(2).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 321.20; 321.34 as amended by 2024 Iowa Acts, House File 2579; 321.40; 321.105; and 321.166 and chapters 17A and 321L.

Purpose and Summary

This rulemaking proposes to repromulgate Chapter 401 in compliance with Executive Order 10. This proposed chapter implements Iowa Code section 321.34, which authorizes the issuance of certain specialty license plates. The proposed chapter does the following:

- Outlines how individuals seeking certain specialty license plates that have specific eligibility requirements under Iowa Code section 321.34 can obtain the license plates. This ensures that special license plates are only issued to individuals who are eligible for the plates;
- Provides clarity about which specialty license plates can be personalized and which cannot;
- Creates requirements that must be met to issue a nonprofit organizational decal for placement on a decal license plate; and
- Outlines procedures regarding the surrender and reassignment of special license plates and establishes the appeal process if a specialty plate is revoked in order to prevent fraud by ensuring unneeded plates do not remain in circulation and to ensure members of the public have clear guidelines to follow so they are not subject to enforcement action regarding improper use of license plates.

The prior chapter had numerous statutory redundancies, inconsistent verbiage, and several unnecessary restrictions that have been corrected. Rather than having a separate rule for each type of special registration plate with specific requirements separated by plate type as in the prior chapter, the proposed chapter is streamlined by combining like content and eliminating redundant 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 12, 2024

The Department received no comments.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 4, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

December 4, 2024 9 to 9:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 326 633 131
December 4, 2024 3 to 3:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 187 373 482

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George 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 761—Chapter 401 and adopt the following **new** chapter in lieu thereof:

CHAPTER 401
PERSONALIZED AND SPECIAL REGISTRATION PLATES

761—401.1(307,321) Definitions.

"Current firefighter" means a member of a paid or volunteer fire department who has at least one year of service and is in good standing, as determined by the fire chief.

"Retired firefighter" means a former member of a paid or volunteer fire department who has a minimum of ten years' total service in good standing, as determined by the fire chief.

"Service director" means a service director as defined in rule 641—132.1(147A).

"Special registration plates" means registration plates issued under Iowa Code section 321.34 or 321.105 other than regular or sample plates.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"*321.34 and 321.105.

761—401.2(307,321,321L) Application and requirements for certain special registration plates.

401.2(1) *Plates available without application.* Except for the special registration plates listed in subrules 401.2(2) and 401.2(3) and collegiate plates issued under Iowa Code sections 321.34(7) and 321.34(7A), all special registration plates authorized under Iowa Code section 321.34 are available as letter-number designated plates at the county treasurer's office of the county of registration without separate application.

401.2(2) *Special registration plates requiring separate application.* The following special registration plates require that a separate application with any applicable supporting documentation be submitted to the department on Form 411260. Applications are to be submitted by mail to Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; by email to dot.plates@iowadot.us, or electronically at www.iowadot.gov/mvd/vehicleregistration/vehicleregistration/plates/plates. Form 411260 may be obtained by contacting the motor vehicle division using the information in this subrule, by phone at 515.237.3110, by fax at 515.237.3056, or at any county treasurer's office.

a. Amateur radio call letter plate applications under Iowa Code section 321.34(3) require the number of the amateur radio license issued by the Federal Communications Commission.

b. Medal of honor plate applications under Iowa Code section 321.34(8) require an official government document verifying the applicant's receipt of the medal of honor.

c. Ex-prisoner of war plate applications under Iowa Code section 321.34(8A) require a copy of an official government document verifying that the applicant was a prisoner of war or a signed statement from a person who has knowledge that the person was a prisoner of war.

d. Firefighter plates issued under Iowa Code section 321.34(10) require a certification signed by the fire chief of the paid or volunteer fire department confirming that the applicant is a current or retired firefighter member of the fire department. Renewal for a current firefighter requires a new certification be submitted to the county treasurer's office. Renewal for a retired firefighter does not require a new certification.

e. Emergency medical services plate applications under Iowa Code section 321.34(10A) require a signature from the applicant's service director certifying that the applicant is a current member of a paid or volunteer emergency medical services agency.

f. Legion of Merit plate applications under Iowa Code section 321.34(15) require a copy of the official government document verifying receipt of the Legion of Merit. An eligible applicant who wishes to receive such plates for more than one vehicle is subject to the regular annual registration fee for each additional vehicle.

g. National guard plate applications under Iowa Code section 321.31(16) require certification from the applicant's unit commander on unit letterhead confirming the applicant's eligibility.

h. Pearl Harbor plate applications under Iowa Code section 321.34(17) require a copy of an official government document verifying that the applicant was stationed at Pearl Harbor, Hawaii, as a member of the armed forces on December 7, 1941.

i. Purple heart, silver star, and bronze star plate applications under Iowa Code sections 321.34(18) and 321.34(20) require an official military order, the report of discharge, or DD Form 214 confirming the applicant's receipt of the award.

j. Gold star plate applications under Iowa Code section 321.34(24) require written approval from the Iowa department of veterans affairs confirming the lineage of applicant to the deceased veteran and documentation that the veteran is deceased due to military service.

k. U.S. armed forces retired special plates under Iowa Code section 321.34(19) require documentation that the U.S. armed forces recognizes the person as retired from the U.S. armed forces, in the form of the official military order confirming the applicant's retirement, report of discharge, or DD Form 214.

l. Distinguished service, navy, or air force cross plates under Iowa Code section 321.34(20A) require an official military order, the report of discharge, or DD Form 214 confirming the applicant's receipt of the award.

m. Soldier's, navy and marine corps, or airman's medal plates under Iowa Code section 321.34(20B) require an official military order, the report of discharge, or DD Form 214 confirming the applicant's receipt of the award.

n. U.S. veteran plate applications under Iowa Code section 321.34(27) require a certification from the Iowa department of veterans affairs that the applicant qualifies as an honorably discharged veteran.

o. Disabled veteran plate applications under Iowa Code section 321.166(6) require a certification from the U.S. Department of Veterans Affairs that the United States government has provided or has assisted in providing the motor vehicle to the disabled veteran. A separate certification may be required for any subsequently acquired vehicle or when the veteran moves to another county.

p. Notwithstanding any provision of this rule to the contrary, an applicant seeking any military or armed forces special registration plate may submit alternate documentation if approved by the Iowa office of the adjutant general or the Iowa department of veterans affairs.

401.2(3) *Persons with disabilities special registration plates.* Plates issued under Iowa Code section 321.34(14) are available from the department or county treasurer and require the application and statement of disability prescribed by 761—subrule 411.3(2), including certification that the applicant meets the eligibility requirements of Iowa Code section 321.34(14). If applicable, the application also requires certification of residency on Form 411120. In lieu of the statement of disability, a veteran may submit a certification of disability from the U.S. Department of Veteran's Affairs.

401.2(4) *Plates with minimum ordering requirements.* Applicants seeking a combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, combat medical badge, or civil war sesquicentennial plate under Iowa Code section 321.34(20C) or 321.34(25) are to apply to the department.

a. Applications for combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, or combat medical badge plates require a copy of an official government document verifying that the applicant received such award.

b. Applications for civil war sesquicentennial plates do not require additional documentation.

401.2(5) *Fees due.* The applicable statutory issuance fee for each special registration plate under Iowa Code section 321.34 is due at the time of application.

401.2(6) *Vehicles eligible.* Unless otherwise specified in Iowa Code section 321.34, special registration plates are available for motor vehicles subject to registration under Iowa Code section 321.109(1), autocycles, motor trucks, motor homes, multipurpose vehicles, motorcycles, trailers, and travel trailers.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.34 and 321.105 and chapter 321L.

761—401.3(321) Character limits. In addition to the character requirements of Iowa Code sections 321.34(5), 321.34(12), and 321.166, the following provisions apply to all personalized and special registration plates:

401.3(1) Plates will be issued with a minimum of two characters.

401.3(2) Plates with a processed emblem, and plates issued under Iowa Code section 321.34(13), are limited to five characters whether personalized or issued as a letter-number designated plate.

This rule is intended to implement Iowa Code sections 321.34 and 321.166.

761—401.4(17A,321) Nonprofit organization decal approval and issuance.

401.4(1) *Application.* An organization meeting the criteria of Iowa Code sections 321.34(13)*"a"* and 321.34(13)*"b"* must apply to the department for approval of the decal design and issuance on Form 411346. The department is to notify the organization of approval or denial of the proposed decal within 60 days of application receipt.

401.4(2) *Decal design.* In addition to satisfying the requirements of Iowa Code section 321.34(13)*"d,"* an approved decal will be limited to dimensions of 2.875″ in width and 3″ in height and designed to be placed in the space reserved for the decal on the nonprofit organizational decal plate. The department may consult with other organizations, law enforcement authorities, and the public regarding approval or denial of the decal design.

401.4(3) *Revocation.* If, following approval of the decal, the department determines a false application was submitted or that the decal or the issuing organization is in violation of Iowa Code section 321.34(13) or this chapter, the department shall revoke the organization's approval to issue the decal.

401.4(4) *Notice.* If the department denies or revokes the decal design, the department will send notice of the denial or revocation by certified mail to the organization at the address listed on the application. The revocation or denial takes effect 20 days from the date of mailing. The organization may contest the decision in accordance with 761—Chapter 13. The request will be deemed timely if it is delivered or postmarked on or before the effective date specified in the notice.

This rule is intended to implement Iowa Code chapter 17A and section 321.34.

761—401.5(307,321) Personalized plates.

401.5(1) Personalized plates under Iowa Code section 321.34(5) are available to order online through the department's website at www.iowadot.gov/mvd/personalizedplates/home.aspx. An applicant unable to order online may contact the motor vehicle division at the address or phone number listed in subrule 401.2(2) to apply in an alternate manner.

401.5(2) An application for a personalized plate will be rejected if the requested combination of characters is issued to another vehicle or is reserved for any other vehicle plate series under Iowa Code chapter 321.

401.5(3) The department shall not issue any combination of characters it determines is:

a. Denoting a government agency;

b. Sexual in connotation;

c. A term of vulgarity, contempt, prejudice, hostility, insult, or racial or ethnic degradation;

d. Recognized as a swear word;

e. A reference to an illegal substance;

f. A reference to a criminal act;

g. Offensive; or

h. A foreign word falling into any of these categories.

401.5(4) Personalized plates are not available for the plates listed in paragraphs 401.2(2)*"a"* through *"c,""f,"* and *"o."*

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.34 as amended by 2024 Iowa Acts, House File 2579, and 321.166.

761—401.6(307,321) Issuance of special registration plates.

401.6(1) Only a person who is an owner or lessee of a vehicle with current registration is eligible to receive special registration plates. The registration plates previously issued to the vehicle are to be surrendered to the county treasurer prior to issuance of new special registration plates.

401.6(2) Special registration plate fees are not eligible to be prorated.

401.6(3) Special registration plates are void if they are not assigned to a vehicle within 90 days after the date the county receives the plates, or if they are replacement plates issued as part of a periodic replacement cycle, within 90 days after the last day of the month of expiration of registration. If the plates are not picked up within the 90-day period, the plates are to be destroyed and a new application and a new issuance fee are to be submitted.

401.6(4) When an applicant provides proof to the department that a special registration plate has been lost or damaged, the applicant may obtain replacement plates containing the applicant's previous plate number upon payment of the statutory fee.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"*321.26, 321.34 and 321.42.

761—401.7(307,321) Renewal.

401.7(1) Registration plates under this chapter are to be renewed at the office of the applicable county treasurer. All applicable annual statutory fees for the special registration plate or personalized plate are due at the same time the regular annual registration fee is due and are in addition to the regular annual registration fee.

401.7(2) If renewal of a personalized registration plate is delinquent beyond the period authorized under Iowa Code section 321.40(1), a new application and new statutory issuance fee(s) are required. In addition, the department may issue the combination of characters on personalized plates to another applicant.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"*321.20, 321.34, 321.40 and 321.105.

761—401.8(307,321) Reassignment or surrender of special registration plates.

401.8(1) *Reassignment.*

a. A vehicle owner or lessee who has special registration plates assigned to a currently registered vehicle may request that the plates or the plate character sequence be reassigned to another currently registered vehicle owned or leased by that person or owned or leased by another person, provided the assignee is eligible for the special registration plates.

b. To reassign plates to a vehicle owned or leased by another person, a written request for reassignment signed by both the assignor and assignee must be submitted to the county treasurer of the assignee's county of residence. The special registration plates will be issued to the assignee by the county treasurer in exchange for the registration plates previously issued.

401.8(2) *Qualifying events requiring surrender or reassignment.* Special registration plates issued to a person are to be surrendered to the county treasurer in exchange for regular registration plates within 30 days of a qualifying event. Alternatively, a person may request reassignment of the plates within 30 days of a qualifying event. A qualifying event includes the following:

a. The person is no longer eligible for the plates.

b. The person has sold or transferred the vehicle to another person.

c. The person was the lessee of the vehicle and the lease was terminated.

d. The person died, except to the extent that Iowa Code section 321.34 permits another person to retain such plates on the vehicle.

401.8(3) *Fees due.* If the vehicle was exempt from the payment of regular registration fees due to the type of special registration plates issued, the vehicle becomes subject to the payment of regular registration fees on the first day of the month following the date of the event that made the person ineligible or the person's death. The regular registration fees will be prorated for the remaining unexpired months of the registration year.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"*321.34 and 321.40.

761—401.9(17A,307,321) Revocation of plates—appeal.

401.9(1) A special registration plate or personalized plate shall be revoked if the department determines it has been issued in conflict with the statutes or rules governing the plate's issuance. The department shall send the notice of revocation to a person's mailing address by certified mail, and the revocation takes effect 20 days from the date of mailing. Revoked plates must be surrendered to the county treasurer within ten days of the date of receipt of the notice.

401.9(2) The person may contest the decision of the department in accordance with 761—Chapter 13. The request will be deemed timely if it is delivered or postmarked on or before the effective date specified in the notice.

This rule is intended to implement Iowa Code chapter 17A and sections 307.12(1)*"j"* and 321.34.

761—401.10(307,321) Refund of fees. No refund of fees for special or personalized registration plates shall be allowed unless the plates were issued in error or in conflict with the statutes or rules governing their issuance.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.34.

ARC 8335C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rulemaking related to authorized emergency vehicle certificate of designation and providing an opportunity for public comment

The Transportation Department hereby proposes to rescind Chapter 451, "Emergency Vehicle Certificate," and to adopt a new Chapter 451, "Authorized Emergency Vehicle Certificate of Designation," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 307.12(1)"j," 321.16 and 321.451.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 307.12(1)"j," 321.2, 321.3, 321.13, 321.16, 321.231, 321.231A, 321.324A and 321.451.

Purpose and Summary

This rulemaking proposes to repromulgate Chapter 451 in compliance with Executive Order 10. Proposed Chapter 451 implements Iowa Code section 321.451 by outlining the procedures for certain persons to obtain a certificate of designation as an authorized emergency vehicle for certain persons' privately owned vehicles. An authorized emergency vehicle certificate allows its holder, for example, a fire chief or sheriff, to operate the holder's privately owned vehicle to the scene of an emergency, in parades or events, or to display certain flashing lights.

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 12, 2024

The Department received no comments.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 4, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

December 4, 2024 10 to 10:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 267 747 030
December 4, 2024 2 to 2:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 159 280 274

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George 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 761—Chapter 451 and adopt the following **new** chapter in lieu thereof:

CHAPTER 451
AUTHORIZED EMERGENCY VEHICLE CERTIFICATE OF DESIGNATION

761—451.1(307,321) Information. Information about certificates of designation for authorized emergency vehicles is available by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.237.3156; by email at dealer.programs@iowadot.us; or on the department's website at www.iowadot.gov.

This rule is intended to implement Iowa Code sections 307.12(1)*"j,"* 321.2 and 321.3.

761—451.2(307,321) Certificate application and expiration.

451.2(1) Application for a certificate of designation as an authorized emergency vehicle is to be submitted to the motor vehicle division in the form and manner prescribed by the department.

451.2(2) The certificate of designation expires on the thirty-first day of December five years from the year in which it was issued.

This rule is intended to implement Iowa Code sections 307.12(1)*"j"* and 321.451.

761—451.3(321) Towing and recovery vehicles. In addition to the provisions of Iowa Code sections 321.231(2), 321.231(4), 321.231A, 321.324A(4) and 321.451, a towing or recovery vehicle with a valid certificate of designation may only display illuminated emergency lights in one of the following circumstances:

451.3(1) When the vehicle is at the scene of an emergency, which includes an incident dangerous to the public or roadside operations where increased visibility will mitigate risk of traffic hazards.

451.3(2) When otherwise authorized by a law enforcement officer.

This rule is intended to implement Iowa Code sections 321.231, 321.231A, 321.324A(4) and 321.451.

761—451.4(17A,307,321) Denial or revocation.

451.4(1) The department shall deny an application if the applicant does not establish that the vehicle will be used as an authorized emergency vehicle or if the applicant does not meet the criteria for issuance of a certificate pursuant to Iowa Code section 321.451.

451.4(2) The department shall revoke a certificate of designation if the holder fails to comply with the applicable provisions of this chapter or Iowa Code section 321.231, 321.231A, 321.324A(4) or 321.451 or if the certificate holder is no longer eligible for the certificate.

451.4(3) When the department denies or revokes a certificate of designation, notice will be sent in accordance with Iowa Code section 321.16. The revocation or denial takes effect 20 days from the date mailed. A person who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request will be submitted in writing to the director of the motor vehicle division and deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice.

This rule is intended to implement Iowa Code chapter 17A and sections 307.12(1)*"j,"* 321.13, 321.16, 321.231, 321.231A, 321.324A(4) and 321.451.

ARC 8336C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rulemaking related to financial responsibility and providing an opportunity for public comment

The Transportation Department hereby proposes to rescind Chapter 640, "Financial Responsibility," 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 307.12(1)"j" and 321A.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 321A and sections 321.266, 321.269 and 321.493.

Purpose and Summary

This rulemaking proposes to repromulgate Chapter 640 in compliance with Executive Order 10. Proposed Chapter 640 implements Iowa Code section 321A.2 and explains the financial responsibility requirements following an accident involving an uninsured driver or vehicle and how vehicle operators and owners can satisfy the requirements or meet an exception.

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 13, 2024

The Department received no comments.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 5, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

December 5, 2024 9 to 9:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 449 594 470

December 5, 2024	Microsoft Teams link
1 to 1:30 p.m.	Or dial: 515.817.6093
	Conference ID: 190 667 211

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George 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 761—Chapter 640 and adopt the following **new** chapter in lieu thereof:

CHAPTER 640
FINANCIAL RESPONSIBILITY

761—640.1(321A) General.

640.1(1) *Definitions.* The definitions contained in Iowa Code section 321A.1 are hereby adopted. In addition:

"License" means "driver's license" as defined in Iowa Code section 321.1(20A) unless the context otherwise requires.

"Security" means an amount of money sufficient in the determination of the department to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against an operator or owner. Security is subject to the limitations and requirements of Iowa Code sections 321A.5 and 321A.9.

640.1(2) *Exceptions.* Except for accident reporting requirements, this chapter does not apply to the owners or operators of motor vehicles excepted by Iowa Code section 321A.33. To establish availability of an exception, a person required to show proof is to submit to the department a letter from the owner of the motor vehicle authorizing the person to use the motor vehicle.

640.1(3) *Submissions.* Except as otherwise provided in this chapter, required submissions are to be either mailed to the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; delivered in person to 6310 SE Convenience Blvd., Ankeny, Iowa; emailed to accident.support@iowadot.us; or sent by facsimile to 515.239.1837.

This rule is intended to implement Iowa Code sections 321A.1, 321A.2 and 321A.33.

761—640.2(17A,321A) Hearing and appeal process. A person who is aggrieved by an action of the department implementing Iowa Code sections 321A.4 through 321A.11 may contest the action in accordance with rule 761—615.38(17A,321). The administrative law judge in a contested case hearing may subpoena witnesses and conduct any investigation deemed necessary to:

640.2(1) Determine if the person is properly identified with the accident.

640.2(2) Determine if there is any reasonable possibility that judgment could be rendered against the person.

640.2(3) Determine if the person is entitled to any exceptions provided by law.

640.2(4) Determine if the security required following an accident is reasonable and make adjustments deemed necessary or proper.

This rule is intended to implement Iowa Code chapter 17A and section 321A.2.

761—640.3(321,321A) Accident reporting requirements. Accident reporting requirements are specified in Iowa Code section 321.266 and on Form 433002, "Iowa Accident Report Form," which is available from law enforcement officers, driver's license service centers, or the motor vehicle division at the address in subrule 640.1(3).

This rule is intended to implement Iowa Code sections 321.266, 321.269 and 321A.4.

761—640.4(321A) Security required following accident. Following an accident, security is required pursuant to Iowa Code section 321A.5. For the purposes of determining the 60-day time frame under Iowa Code section 321A.5(1), a "report of a motor vehicle accident" includes a new or amended law enforcement officer accident report submitted to the department under Iowa Code section 321.266(3); a new or amended driver accident report, Form 433002, submitted to the department under Iowa Code section 321.266(2); any supplemental report submitted to the department under Iowa Code section 321.267; proof of transfer of ownership of a vehicle involved in the accident that occurred prior to the date of the accident; proof of identity of a driver incorrectly identified in an initial accident report; or proof of loss submitted by an insurance carrier authorized to transact insurance business in Iowa or its authorized subrogation provider. Nothing in this rule is to be construed to extend the duration of a suspension issued under Iowa Code section 321A.5 beyond the period authorized in Iowa Code section 321A.7.

640.4(1) *Suspension.*

a. If the security requirements of Iowa Code section 321A.5 are not met, the department shall suspend all licenses of the driver and all registrations of the owner.

b. The suspension takes effect 30 days after a suspension notice is served pursuant to rule 761—615.37(321). The notice is to inform the person of the amount of security required. The duration of the suspension is provided in Iowa Code section 321A.7.

640.4(2) *Security—amounts and type.*

a. The amount of security required of the uninsured driver and owner is to be determined from reports of the drivers involved in the accident, reports of investigating officers, and supplemental information obtained from persons involved in the accident concerning amounts of damage and injury sustained. Form 431074, "Insurance Request Letter," may be mailed to parties to the accident for supplemental information. The security required may be reduced after the notice has been served if evidence of exact costs is submitted to the department. The amount of security shall not exceed the minimum limits of liability for death or injury specified in Iowa Code chapter 321A.

b. The security is to be deposited with the department at the address in subrule 640.1(3) in one of the following forms:

(1) Cash.

(2) Cashier's check, certified check, bank draft, or postal money order payable to: Treasurer, State of Iowa.

(3) Surety bond issued by a company authorized to transact insurance business in Iowa pursuant to Iowa Code section 321A.24.

640.4(3) *Security disposition.*

a. Security is held by the state treasurer and can be released only for payment of a judgment or as otherwise provided in Iowa Code section 321A.10; by a court, including by Form 431097, "Order for Release of Security"; or by Form 433010, "Assignment and Release."

b. The security can be refunded at any time as follows:

(1) When compliance as provided in subrule 640.4(5) is presented to the motor vehicle division at the address in subrule 640.1(3); or

(2) When, after one year has elapsed from the date of the accident, Form 433007, "Affidavit for Reinstatement or Refund of Security," is completed by the depositor; the form indicates that no action has been initiated or judgment rendered; and the form is submitted to the motor vehicle division. Upon receipt of the form, the motor vehicle division may confirm the facts contained therein with the district court of the county where the accident occurred or any other court of competent jurisdiction.

640.4(4) *Exceptions to requirement of security.* A person who qualifies for an exception under Iowa Code section 321A.6(3), 321A.6(4) or 321A.7(3) must submit proof to the department at the address in subrule 640.1(3) showing that the person qualifies for the applicable exception as follows:

a. General release from liability. A qualified person is to submit Form 431036, "General Release." The signature of the party giving the release is to be notarized or witnessed by a disinterested person. The release is to be accompanied by a power of attorney or subrogation authority if signed by a person other than the party sustaining damage or injury. If the party giving release is a minor, the release is to be signed by the parent or legal guardian of the minor. The department may accept an equivalent alternative form to prove a person's general release from liability.

b. Duly acknowledged written agreement release. A qualified person is to submit Form 181301, "Agreement." Complete information is to be provided on the form including the total amount of settlement agreed upon by the parties involved and a release of liability upon fulfillment of payments. The signatures of all parties to the agreement are to be notarized. The release is to be accompanied by a power of attorney or subrogation authority if signed by a person other than a party sustaining damage or injury. If the party giving release is a minor, the release is to be signed by the parent or legal guardian of the minor. This documentation demonstrates compliance only for a party who has agreed to make payment and whose signature appears on the agreement release. The department may accept an equivalent alternative form to prove that a person has executed a duly acknowledged written agreement.

c. Court-certified confession of judgment. A qualified person is to submit a court-certified copy of a confession of judgment, including the total sum to be paid, the payment schedule agreed to by the parties, the signature of both parties, and proof of loss if the judgment is to be paid to a subrogation authority.

d. Accord and satisfaction. A qualified person is to submit documentation that one party to an accident or the party's insurance carrier has accepted liability for the accident and has compensated the other party to the accident for damages and injuries. This documentation does not demonstrate compliance for a third party.

e. Covenant not to sue. A qualified person is to submit documentation of a covenant not to sue that is given to a party to an accident as compliance by another party to the accident when a release would damage any claim against a third party.

f. Proof of no-fault or no reasonable possibility of judgment. A qualified person is to submit proof that the person is not at fault for the accident or that there is no reasonable possibility of judgment being rendered against a person in any of the following ways:

(1) The investigating officer's report of the accident indicates the other driver caused the accident.

(2) The other driver admits causing the accident.

(3) Witness statements indicate the other driver caused the accident.

(4) The other driver is convicted of a violation that caused the accident.

g. Adjudication of nonliability. A qualified person is to submit a certified copy of a final court judgment that is rendered in a civil damage action resulting from the accident and that relieves the person of any obligation to pay damages.

h. Bankruptcy. A qualified person is to submit a copy of the decree for bankruptcy showing that all possible claims against the person arising from the accident have been scheduled in the bankruptcy decree.

i. Owner exception under Iowa Code section 321A.6(3). A qualified vehicle owner is to submit documentation that the vehicle was being operated at the time of an accident without the owner's permission, express or implied. This exception does not apply to a person who was driving the vehicle at the time of the accident. Acceptable documentation includes the following:

(1) A police report indicating the vehicle was stolen.

(2) Proof of the driver's conviction of operating the vehicle without the owner's consent at the time of the accident.

(3) A sworn affidavit that the vehicle was being operated without permission at the time of the accident.

(4) A witness affidavit that the driver had been denied use of the vehicle.

j. Owner exception for vehicle sale. A qualified vehicle owner is to submit documentation that the vehicle owner had sold the vehicle involved in the accident and the title had been reassigned to the new owner but that departmental records did not yet show that the title had been transferred when the accident occurred. This exception does not apply to a person who was driving the vehicle at the time of the accident. Acceptable documentation includes the following:

(1) Form 431125, "Affidavit of Seller," completed by both the buyer and seller with signatures notarized or attested to by a member of the department unless the seller certifies under penalty of perjury that the buyer's signature could not be obtained and provides evidence to the satisfaction of the department that supports this certification.

(2) A sworn affidavit by the seller and witnesses to the sale, if any, that the vehicle had been sold, including a description of the vehicle, the date of the sale, the monetary consideration, facts concerning the assignment of title and delivery of possession, and the names of witnesses to the sale, if any.

k. Owner exception for vehicle transfer. A qualified vehicle owner is to submit certified copies of any court order by which ownership of a vehicle was awarded to another party prior to the date of the accident. This exception does not apply to a person who was driving the vehicle at the time of the accident.

This rule is intended to implement Iowa Code sections 321A.4 through 321A.11 and 321A.31.

761—640.5(321A) Judgments. A suspension of license and registrations is required under Iowa Code section 321A.13 when the department receives from the clerk of court a certification of judgment that has remained unsatisfied for at least 60 days pursuant to Iowa Code section 321A.12. Form 431126, "Certification of Judgment," may be used by the clerk of court to report a certified judgment to the department.

640.5(1) *Suspension.* The suspension becomes effective on the date the suspension notice is served pursuant to rule 761—615.37(321). The notice is to inform the person that the privilege to operate and register motor vehicles in Iowa is suspended until the judgment is satisfied and proof of financial responsibility is shown. The duration of the suspension is provided in Iowa Code section 321A.14.

640.5(2) *Suspension—exceptions.* A person who qualifies for an exception under Iowa Code section 321A.13, 321A.14 or 321A.16 must submit proof to the department at the address in subrule 640.1(3) that the person qualifies for the applicable exception in one of the following ways:

a. Creditor's consent. To qualify for this exception, the judgment debtor must obtain written consent from the judgment creditor for issuance of the debtor's license and registrations while paying the judgment. If this consent is withdrawn, a new suspension is required in accordance with subrule 640.5(1).

b. Satisfaction of judgment. To qualify for this exception, the judgment debtor must submit a certificate of satisfaction or receipt for payment of the judgment from the clerk of court.

c. Bankruptcy. To qualify for this exception, the judgment debtor must submit a copy of the decree for bankruptcy that includes the judgment debt.

d. Court order for installment payments. To qualify for this exception, the judgment debtor must submit a court order authorizing payment of the judgment in installments. A new suspension, as provided in subrule 640.5(1), is required when the department receives notice of a default in the payments. The default suspension is to continue until the judgment is satisfied or a new court order authorizing payment of the judgment in installations is received.

e. Insurance coverage exception. To qualify for this exception, the judgment debtor who held effective liability insurance coverage at the time of the accident from which the judgment was rendered is to submit a copy of the insurance policy and a letter from the insurance carrier confirming that the insurance carrier was authorized to issue liability insurance, that the insurance carrier did provide coverage for the debtor in amounts required by the financial responsibility law, and the reason why the insurance carrier has not paid such judgment.

This rule is intended to implement Iowa Code sections 321A.12 through 321A.29 and 321A.31.

761—640.6(321A) Proof of financial responsibility. Proof of financial responsibility is required pursuant to Iowa Code sections 321A.13, 321A.14, 321A.16 and 321A.17. A person's driver's license or nonresident operating privilege remains suspended or revoked until the person has filed proof of financial responsibility with the department. In addition, a person's motor vehicle registrations remain suspended until the person has filed with the department proof of financial responsibility for all motor vehicles registered to that person.

640.6(1) *Duration of proof of financial responsibility.* Proof of financial responsibility is required for two years starting on the effective date of the person's last suspension or revocation that qualifies under Iowa Code section 321A.17.

640.6(2) *Methods of giving proof of financial responsibility.*

a. Proof of financial responsibility may be shown by a liability insurance certificate pursuant to Iowa Code section 321A.19 on Form SR-22, "AAMVA Uniform Financial Responsibility Form," in paper or electronic format approved by the department. The form may include an owner's or operator's policy and effective date and is to identify the policyholder by name, address, driver's license number and birth date; the vehicles covered are to be identified by year, make, model and vehicle identification number. The form is to be certified in accordance with the Iowa financial responsibility law by an insurance carrier authorized to transact insurance business in Iowa or by an insurance carrier authorized by power of attorney. The policy is to be canceled only as provided in Iowa Code section 321A.22. Certification of coverage for an owner's policy authorizes the policyholder to have registrations for the described vehicles. Certification of coverage for an operator's policy does not authorize registrations.

b. Proof of financial responsibility may be given for a person who is an operator in the employ of the owner of the motor vehicle, or who is a member of the immediate family or household of the owner pursuant to Iowa Code section 321A.26, if the owner's insurance carrier certifies for the person required to show proof of financial responsibility. In addition to the requirements in paragraph 640.6(2)*"a,"* the proof of financial responsibility is to identify both the policyholder and the person for whom proof of financial responsibility is given. This certification does not authorize the person required to give proof of financial responsibility to register a motor vehicle.

c. Proof of financial responsibility may be given for a person who is an operator in the employ of an owner of a fleet of motor vehicles if the owner's insurance carrier certifies for the person required to show proof of financial responsibility. Form SR-23, "AAMVA Uniform Financial Responsibility Form," is required in paper or electronic format approved by the department. The form is to identify the policyholder's name and address, policy number, policy dates and effective date. This certification does not authorize the person required to give proof of financial responsibility to register a motor vehicle.

d. Proof of financial responsibility may be given for a person who is an operator in the employ of an owner who has qualified as a self-insurer pursuant to Iowa Code section 321A.34. A certificate of self-insurance may be issued by the department to a person in whose name more than 25 vehicles are registered and who submits a financial statement that is found to be satisfactory to the department. Form SR-1, "Application for Self-Insurance," is to be completed and submitted to the department with a list of all the owner's motor vehicles registered in Iowa identified by make, year, model and vehicle identification number. When the application is approved, the department shall issue Form SR-2, "Self-Insurance Certificate." Failure to pay a judgment pursuant to Iowa Code section 321A.34 or failure to submit an annual financial statement is reasonable grounds for cancellation of the certificate.

640.6(3) *Proof of financial responsibility restriction.* When a person has filed satisfactory proof of financial responsibility in accordance with subrule 640.6(2), and applies for and is otherwise eligible for a driver's license, the department will issue the driver's license with the restriction code as described in 761—subrule 605.8(1).

640.6(4) *Terminating the suspension upon filing of proof of financial responsibility.* When proof of financial responsibility is provided under subrule 640.6(2) and the person is otherwise eligible for licensing or registration, the department will issue a notice terminating the suspension to the person whose privileges were suspended under Iowa Code section 321A.13, 321A.14, 321A.16 or 321A.17 or rule 761—640.5(321A) or 761—640.6(321A). The person's operating and registration privileges are restricted to the motor vehicles covered under the proof of financial responsibility filed by the applicant,

except that a person required to give proof of financial responsibility who holds proof of financial responsibility as an operator may operate a nonowned vehicle provided the owner of that vehicle has liability coverage required under Iowa Code chapter 321A.

640.6(5) *Cancellation of proof of financial responsibility.* A cancellation pursuant to Iowa Code section 321A.22 is to be certified by an authorized insurance carrier representative on Form SR-26, "AAMVA Uniform Financial Responsibility Form," in paper or electronic format approved by the department. The form is to include the name and driver's license number of the policy owner, number of the policy to be canceled and effective date of cancellation.

640.6(6) *Suspension when proof of financial responsibility is canceled.*

a. When a person's proof of financial responsibility is canceled, the person is to immediately refile proof of financial responsibility or surrender the license and registrations to the department.

b. If the person fails to refile proof of financial responsibility, a suspension notice is to be served in accordance with rule 761—615.37(321). The suspension takes effect the date the notice is served. The notice is to inform the person that the privilege to operate and register motor vehicles in Iowa is suspended until proof of financial responsibility is refiled.

640.6(7) *Terminating the proof of financial responsibility requirement.* A notice terminating the requirement to maintain proof of financial responsibility is to be issued to a person who has satisfied proof of financial responsibility requirements pursuant to Iowa Code section 321A.29. If the person's driver's license is still valid, the person may obtain a duplicate driver's license without the restriction under subrule 640.6(3).

640.6(8) *Electronic submission of proof of financial responsibility and cancellation of proof of financial responsibility.* An insurance carrier authorized to transact business in the state of Iowa is to electronically submit proof of financial responsibility and cancellation of proof of financial responsibility in a format approved by the department. No paper submissions of such proof will be accepted by the department from the insurance carrier.

This rule is intended to implement Iowa Code sections 321A.12 through 321A.29, 321A.31 and 321A.34.

761—640.7(321,321A) Transfer of suspended registration. A person whose motor vehicle registration privileges have been suspended may make a bona fide sale pursuant to Iowa Code sections 321.493 and 321A.30. The department will release the suspended registration to permit the registration of the motor vehicle by the purchaser when presented with either the seller's sworn statement on Form 411107, "Notice of Sale of Vehicle and Delivery of Title," or confirmation from the county treasurer that the sale has been made and release of the registration is necessary to complete the transfer of title.

This rule is intended to implement Iowa Code sections 321.493 and 321A.30.

ARC 8337C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rulemaking related to financial liability coverage and providing an opportunity for public comment

The Transportation Department hereby proposes to rescind Chapter 641, "Financial Liability Coverage Cards," and to adopt a new Chapter 641, "Financial Liability Coverage," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 307.12(1)"j" and 321.20B.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 321.1, 321.20B, 321A.24, 321A.25 and 321A.34.

Purpose and Summary

This rulemaking proposes to repromulgate Chapter 641 in compliance with Executive Order 10. Proposed Chapter 641 establishes requirements for financial liability coverage cards to provide uniformity and consistency for cards issued by insurers transacting business in Iowa.

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 13, 2024

The Department received no comments.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 5, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

December 5, 2024 11 to 11:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 948 096 839
December 5, 2024 3 to 3:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 435 599 040

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George 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 761—Chapter 641 and adopt the following **new** chapter in lieu thereof:

CHAPTER 641
FINANCIAL LIABILITY COVERAGE

761—641.1(321) Information and location. Information, assistance, and answers to questions relating to this chapter are available by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.244.9124; by email at driver.services@iowadot.us; or by facsimile at 515.239.1837.

761—641.2(321,321A) Definitions.

"Financial liability coverage" means the same as defined in Iowa Code section 321.1(24B).

"Fleet" means five or more motor vehicles covered under an insurance policy or one or more motor vehicles covered by a bond filed under Iowa Code section 321A.24, a security certificate issued under Iowa Code section 321A.25, or a self-insurance certificate issued under Iowa Code section 321A.34.

"Registration number" as used in Iowa Code sections 321.20B, 321A.24(1) and 321A.25(1) means vehicle identification number.

761—641.3(321,321A) Content of financial liability coverage card.

641.3(1) A financial liability coverage card issued by an insurance company for a motor vehicle that is not insured as a part of a fleet is to contain the following information in addition to the requirements stated in Iowa Code section 321.20B(2)*"a"*:

a. Policy number.

b. Effective date of coverage.

c. Year and make of the insured motor vehicle.

d. The statement, "Coverage provided by this policy meets the minimum liability limits prescribed by law," or a statement that is substantially similar.

e. The statement, "This card must be carried in paper or electronic format in the insured motor vehicle at all times," or a statement that is substantially similar.

641.3(2) A financial liability coverage card issued by an insurance company to the owner of a fleet of vehicles is to contain the following information pursuant to Iowa Code section 321.20B(2)*"b"*:

a. Name of insured.

b. Policy number.

c. Effective and expiration dates of coverage.

d. Either the vehicle identification number or the words "all owned vehicles" or the word "fleet."

e. The statement, "Coverage provided by this policy meets the minimum liability limit prescribed by law," or a statement that is substantially similar.

f. The statement, "This card must be carried in paper or electronic format in the insured motor vehicle at all times," or a statement that is substantially similar.

g. An emergency telephone number of either the insurer or the insurance agency.

761—641.4(321,321A) Responsibilities of insurer.

641.4(1) Each insurer issuing financial liability coverage in this state is to furnish a financial liability coverage card to the named insured for each motor vehicle insured for every new policy and every policy renewal issued.

641.4(2) The insurer is to file a true and correct sample copy of its financial liability coverage card with the department of insurance and financial services.

761—641.5(321) Acquisition of additional or replacement motor vehicles. A financial liability coverage card that indicates coverage for a replacement or additionally acquired motor vehicle may be used temporarily in a replacement motor vehicle for 30 days if ownership evidence as described in 761—subrule 400.19(3) is carried in the motor vehicle.

761—641.6(321) New policies. On new policy applications, a binder of liability coverage issued by an insurance agent authorized to conduct insurance business in this state is acceptable proof of financial liability coverage for a period of 30 days from the date of issuance of the binder.

These rules are intended to implement Iowa Code sections 321.1, 321.20B, 321A.24, 321A.25, and 321A.34.

ARC 8338C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rulemaking related to aeronautics programs administration and providing an opportunity for public comment

The Transportation Department hereby proposes to rescind Chapter 700, "Aeronautics Administration"; to adopt a new Chapter 700, "Aeronautics Programs Administration"; and to rescind Chapter 710, "Airport Improvement Program," Chapter 715, "Air Service Development Program," Chapter 716, "Commercial Service Vertical Infrastructure Program," and Chapter 717, "General Aviation Vertical Infrastructure Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 307.12(1)"j" and 328.12.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 8.57(5) and chapters 328, 330 and 330A.

Purpose and Summary

This rulemaking proposes to repromulgate Chapter 700 in compliance with Executive Order 10. Proposed Chapter 700 establishes the procedures for a governmental subdivision to apply for and use state or federal funds for the improvement of airports, air service, and air navigation facilities. The chapter implements Iowa Code chapters 328, 330, and 330A and section 8.57(5). The chapter name is changed from Aeronautics Administration to Aeronautics Programs Administration. The following chapters are being rescinded and their content combined into this repromulgated chapter:

- Chapter 700 (Aeronautics Administration);
- Chapter 710 (Airport Improvement Program);
- Chapter 715 (Air Service Development Program);
- Chapter 716 (Commercial Service Vertical Infrastructure Program); and
- Chapter 717 (General Aviation Vertical Infrastructure Program).

The consolidation of five chapters into one simplifies and significantly reduces the size of the Iowa Administrative Code, while creating consistencies and a better understanding of aviation program administration.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

The Department received no comments.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 4, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 4, 2024 11 to 11:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 830 920 715
December 4, 2024 2 to 2:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 904 864 183

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George 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 761—Chapter 700 and adopt the following **new** chapter in lieu thereof:

AERONAUTICS

CHAPTER 700
AERONAUTICS PROGRAMS ADMINISTRATION

761—700.1(328,330,330A) Purpose. These rules establish the procedures for a governmental subdivision to apply for state or federal funds for the improvement of airports, air service, and air navigation facilities.

761—700.2(328,330,330A) Definitions. The definitions in Iowa Code sections 328.1, 330.1, and 330A.2 apply to this chapter. In addition:

"FAA" means the Federal Aviation Administration.

"Sponsor" means the person or governmental subdivision that has the authority for improving, maintaining and operating an aviation facility.

"Vertical infrastructure" means the same as defined in Iowa Code section 8.57(5).

761—700.3(328,330,330A) Information and forms. Program information, forms, and application and submission instructions are available on the department's website at www.iowadot.gov/aviation. Requests for such materials or assistance may also be made by calling the modal transportation bureau at 515.239.1048. The mailing address is: Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—700.4(330) Federal airport improvement program.

700.4(1) *Federal preapplications.* Federal preapplications are submitted to the department.

700.4(2) *Applicant eligibility.* A governmental subdivision owning a public airport that is listed in the FAA's National Plan of Integrated Airport Systems (NPIAS) is eligible to apply for federal funds. The NPIAS published report is available at the FAA website: www.faa.gov/airports. An airport that receives federal primary commercial service entitlement funds is not required to submit preapplications.

700.4(3) *Project eligibility.* Projects are to meet the FAA eligibility guidelines for federal airport improvement projects. Federal airport improvement program guidelines are available at the FAA website: www.faa.gov/airports.

700.4(4) *Preapplication.*

a. The department will distribute preapplication instructions and forms annually to each eligible applicant.

b. The completed preapplication for federal airport improvement funds are submitted to the department according to the method and time frame specified in the annual application instructions.

700.4(5) *Project prioritization.*

a. The department will review each completed preapplication for project eligibility and consistency with the state aviation system plan. The department will prioritize projects based on the goals and objectives in the state aviation system plan.

b. The commission is responsible for approving the prioritization of the preapplications.

c. The department will submit the preapplications with priorities identified to the FAA, and the FAA will contact the applicant directly concerning all subsequent action on the preapplication.

761—700.5(328) State airport improvement program.

700.5(1) *Applicant eligibility.*

a. A governmental subdivision owning or establishing a public airport is eligible to apply to the department for state airport improvement funds.

b. Participation in air service development projects is limited to airports currently receiving scheduled airline or commuter air service options and are designated as commercial service airports in the Iowa aviation system plan. An airport that loses air service completely may remain eligible for participation in the two following and consecutive annual application cycles if 100 percent of the grant amounts are used according to conditions of the air service grant and solely toward efforts to reestablish air service for that affected airport.

700.5(2) *Eligible project activities.*

a. Statewide projects administered by the department include but are not limited to planning studies, aviation weather systems, airport markings, immediate safety enhancements, wildlife mitigations, windsocks, education, and outreach.

b. Airport projects may include but are not limited to runway, taxiway, and apron surfaces; lighting and navigational aids; obstruction removal; grading, drainage, and surfacing airfield surfaces and protection areas; signage, security access control and lighting; planning; and other airport enhancements. A project that involves airfield infrastructure is to comply with the airport master plan or airport layout plan as adopted by the governmental subdivision.

c. Air service development activities eligible for reimbursement include but are not limited to marketing, entry support, data collection, and items defined on the annual application.

700.5(3) *Funding.* The department establishes the maximum percentage of state share for eligible projects and may annually set a maximum dollar amount per award. Funding criteria are included in application instructions provided to airport sponsors.

700.5(4) *Application for funding.*

a. The department will make available the application instructions and forms to each public airport in Iowa. Applications are to be submitted to the department by the due date specified in the instructions.

b. Immediate safety enhancement project applications may be submitted at any time during the year to the department according to instructions that are part of the application form.

700.5(5) *Review and approval.* The department will review each completed application and evaluate the impact of the project on the aviation system considering the following factors: state system plan airport roles, goals and objectives; justification provided; ability to enhance aeronautical activity for the airport and system; local participation; and multijurisdictional support of the airport. The department will recommend projects to the commission for approval.

761—700.6(328) Commercial service vertical infrastructure program.

700.6(1) *Purpose.* The purpose of the commercial service vertical infrastructure program is to provide funding for vertical infrastructure improvements at Iowa's commercial service airports.

700.6(2) *Applicant eligibility.* Airports currently receiving scheduled airline or commuter air service and designated as commercial service airports in the Iowa aviation system plan are eligible to apply to the department for funding. An airport that loses air service completely may remain eligible for participation in the two following and consecutive annual application cycles if the airport is actively seeking reestablishment of air service.

700.6(3) *Eligible project activities.* Facilities eligible for reimbursement include but are not limited to terminal building, hangar, fuel facility, and maintenance facility construction or renovation. Activities may include associated design, land acquisition, grading and foundation work.

700.6(4) *Funding.* Unless otherwise appropriated, funds are distributed to commercial service airports using a 50/40/10 formula. Fifty percent of funds are allocated equally between each airport, forty percent are allocated based on the percentage of enplaned passengers at each airport versus the total number of enplaned passengers in the state, and ten percent are allocated based on the percentage of the air cargo tonnage at each airport versus the total tonnage in the state.

700.6(5) *Application for funding.* The department will make available application instructions and forms to eligible airports. Applications are to be submitted to the department by the due date specified in the instructions.

700.6(6) *Review and approval.* The department will review each completed application for eligibility and recommend projects and funding levels to the commission for approval.

761—700.7(328) General aviation vertical infrastructure program.

700.7(1) *Purpose.* The purpose of the general aviation vertical infrastructure program is to provide funding for vertical infrastructure improvements at Iowa's general aviation airports.

700.7(2) *Applicant eligibility.* A governmental subdivision owning or establishing a public airport is eligible to apply to the department for funding.

700.7(3) *Eligible project activities.* Facilities eligible for reimbursement include but are not limited to terminal building, hangar, fuel facility, and maintenance facility construction or renovation. Activities may include associated design, land acquisition, grading and foundation work.

700.7(4) *Funding.* The department establishes the maximum percentage of state share for eligible projects and may annually set a maximum dollar amount per award. Funding criteria are included in application instructions provided to airport sponsors.

700.7(5) *Application for funding.* The department will make available application instructions and forms to eligible airports. Applications are to be submitted to the department by the due date specified in the instructions.

700.7(6) *Review and approval.* The department will review each completed application and evaluate the impact of the project on the aviation system considering the following factors: state system plan airport roles, goals and objectives; justification provided; ability to enhance aeronautical activity for the airport and system; local participation; and multijurisdictional support of the airport. The department will recommend projects to the commission for approval.

761—700.8(328,330,330A) Project administration. After a project has been approved by the commission, the department will offer the award in an agreement that specifies responsibilities of the sponsor. The agreement is to specify the amount of state funds, the contract period, and the responsibilities for project planning, development, payment process, and reporting. The department may inspect the project for compliance with the agreement and may audit all project costs incurred. Payments to the airport sponsor for eligible project costs are made on a cost reimbursement basis. Project-related engineering fees are an eligible expense and are reimbursed in compliance with the agreement.

These rules are intended to implement Iowa Code section 8.57(5) and chapters 328, 330 and 330A.

ITEM 2. Rescind and reserve **761—Chapter 710**.

ITEM 3. Rescind and reserve **761—Chapter 715**.

ITEM 4. Rescind and reserve **761—Chapter 716**.

ITEM 5. Rescind and reserve **761—Chapter 717**.

ARC 8339C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rulemaking related to Iowa airport registration and providing an opportunity for public comment

The Transportation Department hereby proposes to rescind Chapter 720, "Iowa Airport Registration," 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 307.12(1)"j," 328.12 and 328.19 and 2016 Iowa Acts, chapter 1131, section 3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and sections 328.1, 328.12, 328.19 and 328.35 and 2016 Iowa Acts, chapter 1131, section 3.

Purpose and Summary

This rulemaking proposes to repromulgate Chapter 720 in compliance with Executive Order 10. Iowa Code section 328.19 requires airports open for use by the public to register and meet minimum safety standards promulgated by the Department. Proposed Chapter 720 promulgates airport registration rules and minimum safety standards. It also identifies airport closing requirements to ensure public safety and addresses repayment of financial assistance as required by previous legislation.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

The Department received no comments.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 5, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

December 5, 2024 10 to 10:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 457 007 91
December 5, 2024 2 to 2:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 544 572 847

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George 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 761—Chapter 720 and adopt the following **new** chapter in lieu thereof:

CHAPTER 720
IOWA AIRPORT REGISTRATION

761—720.1(328) Scope and contact information.

720.1(1) This chapter establishes airport registration and airport closing requirements for airports open for use by the public.

720.1(2) Questions regarding this chapter may be directed to the Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1468; or through the department's website at www.iowadot.gov/aviation.

761—720.2(328) Definitions. The definitions in Iowa Code section 328.1 apply to this chapter. In addition:

"Obstruction" means any structure, object of natural growth, or use of land that impedes the airspace required for the takeoff or landing of aircraft at an airport.

"Private use" means available for use by the owner or other persons authorized by the owner.

"Public use" means available for use by the public without prior approval from the owner or operator.

761—720.3(328) Public-use airport. Airport registration requirements apply to public-use airports.

720.3(1) *Registration.* An airport is to apply to the department when seeking a public-use airport certificate of registration. If following an inspection, the airport meets minimum safety standards, the department will issue the airport a public-use airport certificate of registration.

720.3(2) *Registration renewal.* Each public-use airport certificate of registration renews automatically each year unless the certificate is revoked. When an airport is to be inspected by the department, the airport will be provided with an airport registration application and will need to apply for registration renewal.

720.3(3) *Airport inspection.* Each registered public-use airport is subject to inspection by the department at any reasonable time, but the airport will be inspected no less than every three years. If the inspection by the department reveals an unsafe condition or a failure to meet the minimum safety standards, the department will record that fact and notify the airport in writing with necessary corrective actions. Failure to implement corrective actions may result in airport registration revocation or denial. Federal Aviation Administration (FAA) inspection of an airport certified under 14 CFR Part 139 may be accepted in lieu of an inspection by the department.

720.3(4) *Posting.* The airport certificate of registration is to be posted in a prominent place available to the public at the airport. If there are no buildings at the airport, the certificate is to be displayed at the office of the airport manager or caretaker. If a certificate of registration is revoked by the department, it must be removed from public view and destroyed.

761—720.4(328) Revocation or denial. The department may revoke or deny a certificate of registration pursuant to Iowa Code section 328.19.

761—720.5(328) Corrective action plan. If an airport is not in compliance with minimum safety standards, the airport may submit a proposed corrective action plan that identifies a time period up to six years to bring the airport into compliance. The plan must be reasonable and attainable. The plan is subject to approval by the department, and if approved, the department may issue a certificate of registration that can be revoked at any time if an unsafe condition develops.

761—720.6(328) Minimum safety standards. The minimum safety standards for a public-use airport are as follows:

720.6(1) *Runways.*

a. Width. The minimum usable runway width will be 50 feet.

b. Marking of paved runways. Marking of paved runways will be in accordance with FAA Circular 150/5340-1M (Standards for Airport Markings) as amended through May 10, 2019.

c. Marking of nonpaved runways. Marking of nonpaved runways will use high-visibility yellow airport marking cones no less than 36 inches in diameter and 24 inches tall.

(1) Runway edge marking cones are to be placed 200 feet apart outlining the length of the runway surface.

(2) Runway ends are to be marked using six marking cones placed perpendicular to the runway heading.

(3) Displaced thresholds are to be marked by adding three marking cones from each runway edge at the point of the threshold location along the length of the runway surface.

d. Surfaces. Runway surfaces will be free of foreign debris and surface deficiencies that could impede the ability of aircraft to land or take off.

e. Winter operations.

(1) During and following winter events, runways and other operational areas are to be cleared as quickly as practical.

(2) To the extent possible, snow pile height is to be minimized.

(3) Notices to Air Missions (NOTAMS) are to be issued with the FAA to alert aircraft operators when an airport is unusable or unsafe for aircraft operations. NOTAMS should identify the closure of an airport or affected runways and provide a reasonable estimate of when the airport will be cleared and reopened for public use.

(4) If an airport does not intend to conduct winter operations for a winter season, it will be noted in the FAA's Airport Master Record and Chart Supplement so pilots are aware snow removal and other winter operations will not occur.

f. Unusable and unsafe runways. When a runway has become temporarily unusable or unsafe for aircraft operations, the affected area will be marked by suitable flags, barriers or flares clearly showing the boundaries of the unsafe or unusable area.

(1) Affected runways are to be marked in accordance with guidelines in rule 761—720.7(328).

(2) NOTAMS are to be issued to close the airport or affected runways and provide a reasonable estimate of when the airport is to be reopened for public use.

g. Line of sight. Runway sight distance will provide an unobstructed line of sight from any point 5 feet above the runway surface to any point 5 feet above the runway surface for the entire length of the runway, or the sponsor shall note in the FAA's Airport Master Record and Chart Supplement, so pilots are aware of the line-of-sight obstruction.

720.6(2) *Approach zones.*

a. Approach surface. The approach zone of a runway extends from the runway end (or displaced threshold) and is longitudinally centered on the runway centerline for a horizontal distance of 1,000 feet. The width is 250 feet starting at the runway end and widens out to 450 feet at the farthest point from the runway.

b. Approach obstructions. Approaches are to remain free of obstructions above a glide path of a 20:1 ratio within the approach zone of each usable runway. If an obstruction exists in an approach zone that impedes the airspace required for the takeoff or landing of aircraft, the obstruction should be removed. If removal of the obstruction is not possible, the runway threshold is to be displaced. The runway length remaining between the displaced threshold and the departure end of the runway is the landing distance available.

c. Crops in approach zones. Crops are not considered an approach zone obstacle.

d. Consideration for vehicles and trains. When the approach zone to any runway crosses a road or railroad, the glide path on a 20:1 ratio shall pass at least 17 feet above an interstate highway, 15 feet above any other public roadway, 10 feet above a private road, and 23 feet above a railroad.

720.6(3) *Obstruction-free areas.*

a. General obstruction-free areas. The following areas of the airport will be free of obstructions with the exception of operational and frangible equipment that is essential for operation of the airport. For this subrule, obstructions include any object of natural growth, terrain, construction hazards, equipment, crops or grass taller than 8 inches, or other items that would provide a potential hazard to aircraft operations on the ground or in the air:

(1) Paved runways.

1. Within 125 feet of the centerline.
2. Within 200 feet of the runway end.

(2) Nonpaved runways.

1. Within 60 feet of the centerline.
2. Within 10 feet of runway edge markers along the entire length of the runway.

(3) Automated weather observing equipment.

1. Any airport property or easement located within a 100-foot radius.
2. Reserved.

b. Building obstruction-free areas. In no case may a building be constructed closer than 125 feet from a runway centerline of a paved runway or 50 feet from the edge of a nonpaved runway.

720.6(4) *Facilities.*

a. Wind indicator. The airport is to be equipped with an 18-inch diameter or larger windsock, blaze orange in color. If the airport is lighted for night operation, the windsock is to be lighted.

b. Fire extinguishers. At least one operational fire extinguisher capable of extinguishing all classes of fires is to be readily accessible to aircraft fueling or ramp areas.

c. Lighting. If an airport is published to have lighting for night operation:

(1) The system is to be operable.

(2) The airport is to be lighted from dusk to dawn or have an operable air-to-ground controller for the lighting system.

761—720.7(328) Airport closing.

720.7(1) *Notice.* When an airport ceases operation for any reason, the sponsor must notify the department, destroy the certificate of registration and mark the landing area to clearly indicate that the airport is closed to air traffic.

720.7(2) *Marking.* All marking indicating a usable runway is to be obliterated. The sponsor will place at a central location a yellow X in accordance with FAA Advisory Circular 150/5340-1M (Standards for Airport Markings) as amended through May 10, 2019.

720.7(3) *Temporary closing.* When conditions, not related to a winter event, require the temporary closing of a runway, the runway is to be marked on both ends with a yellow X in accordance with FAA Advisory Circular 150/5340-1M (Standards for Airport Markings) as amended through May 10, 2019.

720.7(4) *Repayment of financial assistance.* Within 30 days of closing an airport (other than temporary closing), the sponsor is to request from the department a review of contractual obligations that require repayment of financial assistance. The department will provide a determination detailing grant obligations that must be repaid. Any repayment of grants is to be made to the department in no more than five equal annual installments, beginning one year from the airport's closure date. If an alternative

future use of the airport facility is planned for a project that creates jobs and expands the economy, the sponsor may, within 30 days of the department's determination, request forgiveness of repayment. The request must include a plan detailing the alternative future use of the airport facility, an explanation of how the alternative future use creates jobs and expands the economy, a cost-benefit analysis from the sponsor, a commitment of private investment in the project equal to at least two times the amount of repayment due to the state, and a commitment from the sponsor, or associated political subdivision(s), to complete the alternative use project within five years. The department will review the request for forgiveness of repayment and approve or deny the request within 60 days of receipt.

761—720.8(17A) Hearing and appeal process. 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.

These rules are intended to implement Iowa Code chapter 17A and sections 328.1, 328.12, 328.19 and 328.35.

ARC 8344C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rulemaking related to aircraft registration and providing an opportunity for public comment

The Transportation Department hereby proposes to rescind Chapter 750, "Aircraft Registration," 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 307.12(1)"j" and 328.12.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 328.

Purpose and Summary

This rulemaking proposes to repromulgate Chapter 750 in compliance with Executive Order 10. Proposed Chapter 750 establishes procedures for the registration and collection of aircraft registration fees and use tax for civil aircraft in Iowa. Aircraft registration fees are deposited to the State Aviation Fund for use on safety, planning, and airport development projects as recommended by the Department and approved by the Iowa Transportation Commission.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

The Department received no comments.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 6, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 6, 2024 9 to 9:30 a.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 666 207 895
December 6, 2024 2 to 2:30 p.m.	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 154 133 939

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George 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 761—Chapter 750 and adopt the following **new** chapter in lieu thereof:

CHAPTER 750
AIRCRAFT REGISTRATION

761—750.1(328) General.

750.1(1) *Scope.* This chapter establishes the procedures for registration of civil aircraft pursuant to Iowa Code chapter 328.

750.1(2) *Contact.* Information, instructions, and forms are available from the modal transportation bureau or on the department's website at www.iowadot.gov/aviation. Application forms may also be obtained from aircraft dealers. The mailing address for aircraft registration is the Iowa Department of

Transportation, Modal Transportation Bureau, Aircraft Registration, 800 Lincoln Way, Ames, Iowa 50010.

750.1(3) *Definitions.* The definitions in Iowa Code section 328.1 apply to this chapter. In addition, the following definition is established for the purpose of Iowa Code section 328.21(8):

"Specified minimum level of aviation services to the general public" means the use of aircraft that provide nonagricultural aviation services, including aircraft rental, flight training, or passenger and cargo air carrier operations.

This rule is intended to implement Iowa Code chapter 328.

761—750.2(328) Registration. When an aircraft is registered in Iowa, the model year of the aircraft is used to determine the number of times the aircraft was previously registered, and a reduction of the registration fee is computed accordingly. "Model year," except where otherwise specified, means the year of original manufacture or the year certified by the manufacturer. For the purpose of registration, the model year advances one year each January 1.

This rule is intended to implement Iowa Code section 328.21.

761—750.3(328) First registration procedure.

750.3(1) *Registration requirement.* A civil aircraft that has an FAA-assigned N number is subject to registration in Iowa unless it is exempt by statute.

750.3(2) *Application.*

a. The owner of an unregistered aircraft is to submit to the department an application for aircraft registration on a form prescribed by the department.

b. The application is to include the registration fee and the required use tax or evidence of tax exemption.

c. Following review of the application, the department may request additional information or documents from the owner.

d. Upon receipt of a completed application, registration fee, and use tax or evidence of tax exemption, the department will issue to the applicant an aircraft registration certificate for the aircraft.

This rule is intended to implement Iowa Code sections 328.20, 328.21, 328.26, 328.27, 328.44 and 328.45.

761—750.4(328) Aircraft not airworthy. An aircraft that is not airworthy is not subject to registration fees if the owner submits with the registration application a written, signed explanation of the aircraft's condition and an estimate of the date when the aircraft will be airworthy. The department will mark the record of the aircraft until the owner notifies the department that the aircraft is airworthy or until the aircraft is no longer subject to registration in Iowa.

This rule is intended to implement Iowa Code section 328.21.

761—750.5(328) Renewal notice. Thirty days before the end of the registration year, the department will send a renewal notice to the owner of each registered aircraft. The renewal notice will include the registration fee due for the upcoming registration year and the descriptive data recorded for the aircraft.

This rule is intended to implement Iowa Code sections 328.20, 328.21, 328.26, 328.27, 328.37 and 328.56A.

761—750.6(328) Penalty on registration fees.

750.6(1) *Aircraft moved into Iowa.* The penalty on the registration fee accrues from the first day of the month following 30 days from the date the aircraft is moved into Iowa.

750.6(2) *When delinquency extends beyond the current year.* When the penalty on a delinquent registration fee extends beyond the current year, the penalty continues to accrue until paid. The penalty accrues only on the fee applicable at the time the delinquency accrued and is to apply to subsequent registration fees that have not been paid.

750.6(3) *Specific penalty date.* When a specific penalty date is provided by statute or rule, the penalty accrues from that date, even if the day is a Saturday, Sunday or holiday.

This rule is intended to implement Iowa Code sections 328.50 through 328.52.

761—750.7(328) Application for special certificate. When applying to the department for a special certificate, the applicant is to submit reasonable proof of bona fide status as a manufacturer, transporter or dealer. Manufacturer or dealer applicants are to verify that no aircraft have been held in a dealer special certificate inventory for a period of more than three years.

This rule is intended to implement Iowa Code sections 328.28 and 328.29.

761—750.8(328) Lien. The department has the authority to record a lien against the federal aircraft title and sue to collect unpaid fees and penalties.

This rule is intended to implement Iowa Code sections 328.47 through 328.49.

761—750.9(17A) Hearing and appeal process. 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.

This rule is intended to implement Iowa Code chapter 17A.

ARC 8357C

UTILITIES COMMISSION[199]

Notice of Intended Action

Proposing rulemaking related to hazardous liquid pipelines and underground storage and providing an opportunity for public comment

The Utilities Commission hereby proposes to rescind Chapter 13, "Hazardous Liquid Pipelines and Underground Storage," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 479 and 479B.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 479 and 479B.

Purpose and Summary

The Commission commenced this rulemaking under the provisions of Executive Order 10. The purpose of this proposed rulemaking is to explain the procedures governing hazardous liquid pipelines and hazardous underground storage facilities. From the current version of Chapter 13, the Commission is revising the chapter in accordance with Executive Order 10 (e.g., removing duplicative and unnecessary words). Further, the Commission is proposing changes to clarify that the chapter applies to both interstate and intrastate pipelines.

The Commission issued an order commencing this rulemaking on October 14, 2024. The order is available on the Commission's electronic filing system, efs.iowa.gov, under Docket No. RMU-2023-0013.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on June 12, 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

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, which must be received by the Commission no later than 4:30 p.m. on December 3, 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:

December 16, 2024 9 to 11 a.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa
December 30, 2024 9 to 11 a.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 199—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
HAZARDOUS LIQUID PIPELINES AND UNDERGROUND STORAGE

199—13.1(479,479B) General information.

13.1(1) *Purpose and authority.* The purpose of this chapter is to implement Iowa Code chapters 479 and 479B and to establish procedures and filing requirements for a permit to construct, maintain, and operate a hazardous liquid pipeline; for an amendment to an existing permit; and for renewal of an existing permit. This chapter also implements Iowa Code chapter 479B for permits for underground storage of hazardous liquids. The rules in this chapter relating to hazardous liquid pipelines and

underground storage of hazardous liquids are adopted by the Iowa utilities commission pursuant to Iowa Code chapters 479 and 479B.

13.1(2) *When a permit is required.* A hazardous liquid pipeline permit is needed for any hazardous liquid pipeline to be constructed in Iowa, regardless of length or operating pressure of the pipeline.

13.1(3) *Definitions.* The definitions listed in Iowa Code section 479B.2 are incorporated herein by reference. Words and terms not otherwise defined in this chapter or Iowa Code section 479B.2 will have their usual meaning. For the administration and interpretation of this chapter, the following words and terms will have the following meanings:

"Affected person" means any person with a legal right or interest in the property, including but not limited to a landowner, a contract purchaser of record, a person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

"Amendment of permit" means changes to the pipeline permit or pipeline that require the filing of a petition to amend an existing pipeline permit as described in rule 199—13.9(479,479B).

"Approximate right angle" means within 5 degrees of a 90-degree angle.

"CFR" means the Code of Federal Regulations, which contains the general administrative rules adopted by federal departments and agencies, in effect as of [effective date of these rules], unless a separate effective date is identified in a specific rule.

"County inspector" means a professional engineer licensed under Iowa Code chapter 542B, familiar with agricultural and environmental inspection requirements, who has been employed by a county board of supervisors to do an on-site inspection of a proposed pipeline for compliance with 199—Chapter 9 and Iowa Code chapters 479 and 479B.

"Multiple line crossing" means a point at which a proposed pipeline will either cross over or under an existing pipeline.

"Negotiating" means contact between a pipeline company and a person with authority to negotiate an easement or other interest in land that involves the location, damages, compensation, or other matter that is restricted by Iowa Code sections 479.5(5) and 479B.4(6). Contact for purposes of obtaining addresses and other contact information from a landowner or tenant is not considered negotiation.

"Permit" means a new, amended, or renewal permit issued by the commission.

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

"Pipeline" means any intrastate or interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids.

199—13.2(479,479B) Informational meetings. Informational meetings shall be held for any proposed pipeline project five miles or more in length, including both the current project and future anticipated extensions, that is to be operated at a pressure in excess of 150 pounds per square inch. A separate informational meeting shall be held in each county in which real property or property rights would be affected.

13.2(1) *Time frame for holding meeting.* Informational meetings shall be held not less than 30 days nor more than two years prior to the filing of the petition for pipeline permit.

13.2(2) *Facilities.* A pipeline company is responsible for all negotiations and compensation for a suitable facility to be used for each informational meeting, including but not limited to a building or facility that is in substantial compliance with the Americans with Disabilities Act Standards for Accessible Design, including both Title II regulations at 28 CFR part 36, subpart D, and the 2004 Americans with Disabilities Act Accessibility Guidelines at 36 CFR part 1191, appendices B and D, where such a building or facility is reasonably available.

13.2(3) *Location.* The informational meeting location shall be reasonably accessible to all persons who may be affected by the granting of a permit or who have an interest in the proposed pipeline.

13.2(4) *Commission approval.* A pipeline company proposing to schedule an informational meeting shall file a request to schedule the informational meeting with the commission and include a proposed date and time for the informational meeting, an alternate time and date, and a description of the

proposed project and map of the route, including the notification corridor. The pipeline company may be notified within ten days of the filing of the request whether the request is approved or alternate times and dates are required. Not less than 30 days prior to the informational meeting, the pipeline company shall file with the commission the location of the informational meeting. Not less than 14 days prior to the informational meeting, the pipeline company shall file with the commission a copy of its informational meeting presentation.

13.2(5) *Notices.* Notice by mailed and published notice of each informational meeting shall be given to persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and those persons in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements.

a. The notice shall include the information listed in Iowa Code sections 479.5(4)*"b"* and 479B.4(5)*"a,"* as well as the following:

(1) The possibility that the right-of-way may be acquired by condemnation if approved by the commission;

(2) The following statement: "Persons with disabilities requiring assistive services or devices to observe or participate should contact the commission at 515.725.7300 in advance of the scheduled date to request accommodations"; and

(3) A copy of the statement of damage claims described in paragraph 13.3(3)*"b,"* consistent with the Iowa Code.

b. The pipeline company shall cause a written copy of the meeting notice to be served, by certified United States mail with return receipt requested, on all persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and persons in possession of or residing on the property, whose addresses are known after a good-faith effort to obtain the addresses. The certified meeting notice shall be deposited in the United States mail not less than 30 days prior to the date of the meeting.

c. The pipeline company shall cause the meeting notice, including the map, to be published once in a newspaper of general circulation in each county where the pipeline is proposed to be located at least one week and not more than three weeks prior to the date of the meeting. Publication is considered as notice to affected persons listed on the tax assessment rolls as responsible for paying the real estate taxes imposed on the property and persons in possession of or residing on the property whose addresses are not known, provided a good-faith effort to obtain the address can be demonstrated by the pipeline company. The map used in the published notice should clearly delineate the pipeline route.

d. The pipeline company shall file, prior to the informational meeting, an affidavit that describes the good faith effort the pipeline company undertook to locate the addresses of all affected persons. The affidavit is to be signed by a corporate officer or an attorney representing the pipeline company.

13.2(6) *Personnel.* The pipeline company shall provide qualified personnel to present the following information at the informational meeting:

a. Service requirements and planning that have resulted in the proposed project.

b. When the pipeline is proposed to be constructed.

c. In general terms, the elements involved in pipeline construction.

d. In general terms, the rights the pipeline company will seek to acquire through easements.

e. Procedures to be followed in contacting the affected persons for specific negotiations in acquiring voluntary easements.

f. Methods and factors used in arriving at an offered price for voluntary easements, including the range of cash amount for each component.

g. Manner in which voluntary easement payments are made, including discussion of conditional easements, signing fees, and time of payment.

h. Other factors or damages not included in the easement for which compensation is made, including features of interest to affected persons but not limited to computation of amounts and manner of payment.

13.2(7) *Notice to county board of supervisors.* The pipeline company is responsible for sending notice of the request for an informational meeting to the county board of supervisors in each county

where the proposed pipeline is to be located. The pipeline company is to request from the board of supervisors the name of the county inspector, a professional engineer who will conduct the on-site inspection required by Iowa Code section 479B.20(2). The pipeline company will provide the name and contact information of the county inspector to the commission, landowners, and other affected persons at the meeting, if known.

199—13.3(479,479B) Petition for permit.

13.3(1) A petition for a permit shall be filed with the commission upon the form prescribed and shall include all required exhibits. The petition shall be attested to by an officer, official, or attorney with authority to represent the pipeline company. Exhibits shall be in the following form:

a. Exhibit A. A legal description showing, at minimum:

(1) The beginning and ending points of the proposed pipeline.

(2) The general direction of the proposed route through each quarter section of land to be crossed, including township and range.

(3) Whether the proposed pipeline will be located on private or public property, public highway, or railroad right-of-way.

(4) Other pertinent information.

(5) When the route is in or adjacent to the right-of-way of a named road or a railroad, the exhibit shall specifically identify the road or railroad by name.

b. Exhibit B. Maps showing the proposed routing of the pipeline. The maps may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile, and shall be legible when printed on paper no larger than 11 by 17 inches. Maps based on satellite imagery are preferred. An additional map of the entire route, if the route is located in more than one county or there is more than one map for a county, shall be filed in this exhibit and shall be legible when printed on paper no larger than 11 by 17 inches without regard to scale. The pipeline company shall include necessary data files with geographic identifiers that are readable by common Internet or software mapping applications (KMZ, shapefile, JSON, etc.) showing the proposed route of the pipeline. The following minimum information shall be provided on the maps:

(1) The route of the pipeline that is the subject of the petition, including the starting and ending points, and when paralleling a road or railroad, which side the pipeline is on. Multiple pipelines on the same right-of-way shall be indicated, and the distance between paralleling pipelines shall be shown.

(2) The name of the county, county lines, section lines, section numbers, township numbers, and range numbers.

(3) The location and identity of adjacent or crossed public roads, railroads, named streams or bodies of water, and other pertinent natural or man-made features influencing the route.

(4) The name and corporate limits of cities and the name and boundaries of any public lands or parks.

(5) Other pipelines and the identity of the owner.

(6) Any buildings or places of public assembly within six tenths of a mile of the pipeline.

c. Exhibit C. A showing of engineering specifications covering the engineering features, materials, and manner of construction of the proposed pipeline; its approximate length, diameter, and the name and location of each railroad and primary highway, if any; and such other information as may be deemed pertinent on forms prescribed by the commission, which are located on the commission's website. In addition, the maximum and normal operating pressure and maximum capacity of the proposed pipeline shall be provided.

d. Exhibit D. Satisfactory proof of solvency and financial ability to pay damages in the sum of $250,000 or more; or surety bond satisfactory to the commission in the penal sum of $250,000 with surety approved by the commission, conditioned that the pipeline company will pay any and all damages legally recovered against the pipeline company growing out of the construction and operation of its pipeline or hazardous liquid storage facilities in the state of Iowa; security satisfactory to the commission as a guarantee for the payment of damages in the sum of $250,000; or satisfactory proofs that the company has property subject to execution within this state, other than pipelines, of a value in excess of

$250,000. The commission may require additional surety or insurance policies to ensure the payment of damages resulting from the construction and operation of a hazardous liquid pipeline or hazardous liquid storage facility in a county.

e. Exhibit E.

(1) Consent or documentation of appropriate public highway authorities, or railroad companies, where the pipeline will be placed longitudinally on, over or under, or at other than an approximate right angle to railroad tracks or highway, when consent is obtained prior to filing of the petition, will be filed with the petition.

(2) If any consent is not obtained at the time the petition is filed, the pipeline company will file a statement that it will obtain all necessary consents or file other documentation of the right to commence construction prior to commencement of construction of the pipeline. A pipeline company may request commission approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline.

(3) Whether there are permits that will be required from other state agencies for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained will be included.

(4) Whether there are permits from federal agencies that will be required for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained will be included.

f. Exhibit F. This exhibit will contain the following information:

(1) A statement of the purpose of the project and a description of how the services rendered by the pipeline will promote the public convenience and necessity.

(2) A general statement covering each of the following topics:

1. The nature of the lands, waters, and public or private facilities to be crossed;
2. The possible use of alternative routes;
3. The relationship of the proposed pipeline to present and future land use and zoning ordinances; and
4. The inconvenience or undue injury that may result to property owners as a result of the proposed project.

(3) For an existing pipeline, the year of original construction and a description of any amendments or reportable changes since the permit or latest renewal permit was issued.

g. Exhibit G. If informational meetings were required, an affidavit that the meetings were held in each county affected by the proposed project and the time and place of each meeting. Copies of the mailed notice letter, the corridor map, and the published notice(s) of the informational meeting will be attached to the affidavit.

h. Exhibit H. This exhibit is required only if the petition requests the right of eminent domain. The extent of the eminent domain request may be uncertain at the time the petition is filed. The exhibit must be in final form prior to issuance of the official notice by the commission and approval of eminent domain notice. The exhibit will consist of a map of the route showing the location of each property for which the right of eminent domain is sought and the following information for each property:

(1) The legal description of the property.

(2) The legal description of the desired easement.

(3) A specific description of the easement rights being sought.

(4) The names and addresses of all affected persons for the property over which eminent domain is requested based upon a good faith effort to identify all affected persons.

(5) A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of pipelines or pipeline facilities within the proposed easement, the location of and distance to any building within 300 feet of the proposed pipeline, and any other features pertinent to the location of the pipeline to the rights being sought.

(6) An overview map showing the location of the property over which eminent domain is requested, with the property identified in accordance with 199—Chapter 9.

(7) An updated electronic file with geographic identifiers as required by paragraph 13.3(1)*"b"* to show the locations and boundaries of the property and the easements boundaries for which the pipeline company is seeking eminent domain.

i. Exhibit I. If pipeline construction on agricultural land as defined in 199—subrule 9.1(3) is proposed, a land restoration plan shall be prepared and filed as provided for in rule 199—9.2(479,479B). The name and contact information of each county inspector designated by county boards of supervisors pursuant to Iowa Code section 479B.20(2) shall be included in the land restoration plan, when known.

j. Underground storage. If permission is sought to construct, maintain, and operate facilities for underground storage of hazardous liquid, the petition will include maps showing the information described in Iowa Code section 479B.4(2), as well as a description of the public or private highways, grounds, waters, streams, pipelines, and private lands of any kind under which the storage is proposed, together with a map.

k. Exhibit K. The pipeline company shall file the additional information as follows:

(1) An affidavit describing the good faith effort the company has undertaken to identify all affected persons in the property for all parcels over which the pipeline is proposed to be located before easements were signed or eminent domain requested. The affidavit shall be signed by an attorney or officer representing the pipeline company.

(2) Whether any private easements will be required for the proposed pipeline and, if a private easement will be required, when the easement negotiations will be completed and whether all affected persons associated with the property have been notified.

(3) Whether there are permits that will be required from other state agencies for the construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained.

(4) Whether there are permits from federal agencies that will be required for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained.

(5) Whether there are any agreements or additional facilities that need to be constructed to transport or receive hazardous liquids.

(6) Projected date when construction of the pipeline will begin.

l. Exhibit L. Other exhibits. The commission may require filing of additional exhibits if further information on a particular project is deemed necessary.

13.3(2) Construction on an existing easement.

a. Petitions proposing new pipeline construction on an existing easement where the pipeline company has previously constructed a pipeline shall include a statement indicating whether any unresolved damage claims remain from the previous pipeline construction and, if so, include the name of each landowner or tenant, a legal description of the property involved, and the status of proceedings to settle the claim.

b. A petition for permit proposing a new pipeline construction on an existing easement where the pipeline company has previously constructed a pipeline will not be acted upon by the commission if a damage claim from the installation of the previous pipeline has not been resolved by negotiation, arbitration, or court action. The commission may take action on the petition if the damage claim is under litigation or arbitration.

13.3(3) Statement of damage claims.

a. A petition for permit proposing new pipeline construction will not be acted upon by the commission if the pipeline company does not file with the commission a written statement in compliance with Iowa Code sections 479.25, 479.45, 479.46, 479B.17, 479B.29, and 479B.30 as to how damages resulting from the construction of the pipeline will be determined and paid.

b. The statement shall contain the following information: the type of damages that will be compensated, how the amount of damages will be determined, the procedures by which disputes may be resolved, the manner of payment, and the procedures that the affected person is required to follow to obtain a determination of damages by a county compensation commission.

c. The statement may be amended as necessary to reflect changes in the law, company policy, or the needs of a specific project.

d. A copy of this statement shall be mailed with the notice of informational meeting as provided for in Iowa Code section 479B.4. If no informational meeting is required, a copy shall be provided to each affected person prior to entering into negotiations for payment of damages.

e. Nothing in this rule prevents a person from negotiating with the pipeline company for terms that are different, more specific, or in addition to the statement filed with the commission.

13.3(4) Negotiation of easements. The pipeline company is not prohibited from responding to inquiries concerning existing easements or from requesting and collecting tenant and affected person information, provided that the pipeline company is not "negotiating" as defined in subrule 13.1(3).

199—13.4(479,479B) Notice of hearing.

13.4(1) When a petition for permit is filed with the commission, the petition will be reviewed by the commission. Once the commission has completed its review of the proposed pipeline and petition, the petition may be set for hearing. This subrule does not apply to renewal petitions filed pursuant to rule 199—13.8(479,479B), which may not require a hearing.

13.4(2) The pipeline company will be furnished copies of the official notice of hearing, which the pipeline company shall cause to be published once each week for two consecutive weeks in a newspaper of general circulation in each county in or through which construction is proposed. The second publication cannot be less than 10 and no more than 30 days prior to the date of the hearing. Proof of publication will be filed with the commission prior to the hearing.

13.4(3) The published notice will include a map showing either the pipeline route or the area affected by underground hazardous liquid storage, or a telephone number and an address through which interested persons may obtain a copy of a map from the pipeline company at no charge. If a map other than that filed as Exhibit B will be published or provided, a copy will be filed with the petition.

13.4(4) If a petition for permit seeks the right of eminent domain, the pipeline company shall, in addition to the published notice of hearing, serve a copy of the notice of hearing on the landowners and any affected person with an interest in the property over which eminent domain is sought. A copy of the Exhibit H filed with the commission for the affected property will accompany the notice. Service shall be by certified United States mail, return receipt requested, addressed to the person's last-known address, and this notice shall be mailed no later than the first day of publication of the official notice of hearing on the petition. Not less than five days prior to the date of the hearing, the pipeline company will file with the commission a certificate of service showing all persons and addresses to which notice was sent by certified mail, the date of the mailing, and an affidavit that all affected persons were served.

13.4(5) If a petition does not seek the right of eminent domain, but all required interests in private property have not yet been obtained at the time the petition is filed, a copy of the notice of hearing shall be served upon any affected person with interests in the property. Service shall be by certified mail, addressed to the last-known address, and mailed no later than the first day of publication of the official notice. A copy of each letter of notification, or one copy of the letter accompanied by a written statement listing all persons to whom the notice was mailed, the date of mailing, and an affidavit that all affected persons were served, will be filed with the commission not less than five days prior to the hearing.

199—13.5(479,479B) Objections. Any person whose rights or interests may be affected by a proposed pipeline or underground storage facility may file a written objection with the commission consistent with Iowa Code sections 479.9 and 479B.7.

199—13.6(479,479B) Hearing. Hearings required under this chapter will comply with Iowa Code chapter 17A and sections 479.7 and 479B.6 and 199—Chapter 7.

199—13.7(479,479B) Pipeline permit.

13.7(1) A pipeline permit will be issued once an order granting the permit is final and the compliance requirements have been met. A pipeline company may request commission approval to delay obtaining consent to cross railroad rights-of-way until after the pipeline permit is issued.

13.7(2) The issuance of the permit authorizes construction on the route or location as approved by the commission, subject to deviation within the permanent route easement right-of-way. If a deviation

outside the permanent route easement right-of-way becomes necessary, construction of the line in that location shall be suspended and the pipeline company will follow the procedures for filing a petition for amendment of a permit, except that the pipeline company need only file Exhibits A, B, C, E, and F, as described in rule 199—13.3(479,479B), reflecting the proposed deviation. In case of any deviation from the approved permanent route easement, the pipeline company may only commence on an amended route approved by the commission after the pipeline company acquires the necessary easement. The right of eminent domain shall not be used to acquire any such easement except as specifically approved by the commission, and a hearing will not be required unless the commission determines a hearing is necessary to complete a review of the petition for amendment.

13.7(3) If the construction of facilities authorized by a permit is not commenced within two years of the date the permit is granted, or within two years after final disposition of judicial review of a permit or of condemnation proceedings, the permit may be forfeited unless the commission grants an extension of the permit filed prior to the expiration of the two-year period.

13.7(4) Upon completion of the proposed construction, maps accurately showing the final routing of the pipeline, in compliance with 199—Chapter 9, and revised Exhibits A, B, and C, will be filed with the commission.

13.7(5) The commission will set the term of the permit. The term of the permit may be less than but will not exceed 25 years from the date of issuance.

199—13.8(479,479B) Renewal permits.

13.8(1) A petition for renewal of an original or previously renewed pipeline permit may be filed at any time subsequent to issuance of the permit but no later than one year prior to expiration of the permit. The petition will be made on the forms prescribed by the commission. Instructions for the petition are included as part of the form, which is available on the commission's website. The petition shall include the name of the pipeline company requesting renewal of the permit, the pipeline company's principal office and place of business, a description of any amendment or reportable change since the permit or previous renewal permit was issued, and Exhibits A, B, C, and D, as described in rule 199—13.3(479,479B). The commission may request additional information be filed during the review of the renewal petition and exhibits. The petition shall be attested to by an officer, official, or attorney with authority to represent the pipeline company.

13.8(2) The procedure for a petition for permit will be followed with respect to publication of notice, objections, and assessment of costs.

13.8(3) If there are unresolved issues of fact or law, or if an objection is filed within 20 days of the second publication of the published notice, the commission may set the matter for hearing. If a hearing is not required, and the petition satisfies the requirements of this rule, a renewal permit will be issued upon the filing of the proof of publication as required by rule 199—13.4(479,479B).

13.8(4) The commission will set the term of a renewal permit. The term may be less than but will not exceed 25 years from the date of issuance. The same procedure will be followed in subsequent renewals.

199—13.9(479,479B) Amendment of permits.

13.9(1) An amendment of a pipeline permit by the commission is required in any of the following circumstances:

a. Construction of an additional pipeline paralleling all or part of an existing pipeline of the pipeline company with a valid permit.

b. Extension of an existing pipeline of the pipeline company outside of the permitted permanent route easement.

c. Relocation or replacement of an existing pipeline of the pipeline company that:

(1) Relocates the pipeline outside of the permitted permanent route easement approved by the commission; or

(2) Involves relocation or replacement requiring new or additional interests in property. If the relocation or replacement is for five miles or more of pipe to be operated in excess of 150 pounds per square inch gauge, an informational meeting, as provided in rule 199—13.2(479,479B), will be held.

d. Contiguous extension of an underground storage area of the pipeline company.

e. Modification of any condition or limitation placed on the construction or operation of the pipeline in the final order granting the pipeline permit or previous renewal of the permit.

13.9(2) Petition for amendment.

a. The petition for amendment shall include the docket number and issue date of the permit for which amendment is sought and clearly state the purpose of the petition. If the petition is for construction of additional pipeline facilities, or expansion of an underground storage area, the same exhibits as required for a petition for permit shall be attached.

b. The applicable procedures for petition for permit, including hearing, will be followed. Upon appropriate determination by the commission, an amendment to a permit may be issued. The amendment will be subject to the same conditions with respect to commencement of construction within two years and the filing of final routing maps as required for pipeline permits.

199—13.10(479,479B) Fees and expenses. The pipeline company will pay the actual unrecovered cost incurred by the commission attributable to the informational meeting, processing, investigation, hearing, inspection related to a petition requesting a pipeline permit, and any other activity of the commission related to a pipeline permit, pursuant to 199—Chapter 17.

199—13.11(479,479B) Land restoration. Pipelines shall be constructed in compliance with Iowa Code sections 479.29 and 479B.20 and 199—Chapter 9.

199—13.12(479,479B) Crossings of highways, railroads, and rivers.

13.12(1) Iowa Code chapters 479 and 479B give the commission primary authority over the routing of pipelines. However, highway and railroad authorities and environmental agencies may have a jurisdictional interest in the routing of the pipeline, including requirements that permits or other authorizations be obtained prior to construction for crossings of highway or railroad right-of-way, rivers, or other bodies of water.

13.12(2) Approval of other authorities need not be obtained prior to petitioning the commission for a pipeline permit. The pipeline company will file with the petition information that shows the pipeline company contacted the other necessary authorities in advance of filing the petition to determine what restrictions or conditions may be placed on the crossing by those authorities and to obtain information on any proposed reconstruction or relocation of existing facilities that may impact the routing of the pipeline. Approvals and any restrictions, conditions, or relocations of existing facilities are required to be filed with the commission prior to the grant of the permit. A pipeline company may request commission approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline.

13.12(3) Pipeline routes that include crossings of highway or railroad right-of-way at other than an approximate right angle, or longitudinally on the right-of-way, will not be constructed unless a showing of consent by the appropriate authority has been provided by the pipeline company as required in paragraph 13.3(1)*"e."*

199—13.13(479,479B) Reportable changes to pipelines under permit.

13.13(1) A pipeline company shall file prior notice with the commission of any of the following actions affecting a pipeline under permit:

a. Abandonment or removal from service. The pipeline company will also notify the landowners of the abandonment or removal of the pipeline from service.

b. Pressure test or increase in maximum allowable operating pressure.

c. Replacement of a pipeline or significant portion thereof that meets or exceeds the minimum strength criteria of the original pipe.

13.13(2) The notice shall include the docket and permit numbers of the pipeline; the location involved; a description of the proposed activity; anticipated dates of commencement and completion; revised maps and facility descriptions, where appropriate; and the name and telephone number of a person to contact for additional information.

199—13.14(479,479B) Sale or transfer of permit.

13.14(1) No permit shall be sold or transferred without written approval of the commission. A petition for approval of the sale or transfer shall be jointly filed by the buyer, or transferee, and the seller, or transferor, and shall include assurances that the buyer, or transferee, is authorized to transact business in the state of Iowa and is willing and able to construct, operate, and maintain the pipeline in accordance with these rules. If the sale, or transfer, is prior to completion of construction of the pipeline, the buyer, or transferee, shall demonstrate it has the financial ability to pay, for damages associated with construction or operation of the pipeline, up to $250,000 or any other amount the commission determined necessary when granting the permit.

13.14(2) The reassignment of a pipeline permit as part of a name change or a corporate restructuring, with no change in pipeline operating personnel or procedures, is considered a transfer for the purposes of this rule.

199—13.15(479,479B) Reports to federal agencies.

13.15(1) Upon submission of any incident, annual, or other report to the U.S. Department of Transportation pursuant to 49 CFR Part 195, a pipeline company shall file a copy of the report with the commission. The commission shall be advised of any telephonic incident report made by the pipeline company. The pipeline company will notify the commission, as soon as possible, of any incident by emailing the commission duty officer at dutyofficer@iuc.iowa.gov or, if email is not available, by calling the commission duty officer at 515.745.2332.

13.15(2) Pipeline companies operating in other states will provide the commission data for Iowa only.

199—13.16(479,479B) Termination of petition for pipeline permit proceedings. If a pipeline company fails to correct an identified deficiency within six months after written notification by the commission, or after such shorter period as the commission may specify in the written notification, to cure an incomplete or deficient permit petition, or a pipeline company fails to publish the official notice within 90 days after the official notice is provided by the commission, the commission may dismiss the petition.

These rules are intended to implement Iowa Code chapters 479 and 479B.

ARC 8346C

UTILITIES COMMISSION[199]

Notice of Intended Action

Proposing rulemaking related to location and construction of electric power generating facilities and providing an opportunity for public comment

The Utilities Commission hereby proposes to rescind Chapter 24, "Location and Construction of Electric Power Generating Facilities," 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 474.4 and 476A.12.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 476A.

Purpose and Summary

The Commission commenced this rulemaking under the provisions of Executive Order 10. The purpose of this proposed chapter is to set forth the procedures governing electric generation facility certificate proceedings. The Commission is proposing to rescind existing Chapter 24 and to repromulgate a new version with the removal of redundant, duplicative, and unnecessary language; the reduction of undue regulatory burdens; and the reduction of restrictive terms.

The Commission issued an order on October 3, 2024, commencing this rulemaking. The order is available in the Commission's electronic filing system, efs.iowa.gov, under Docket No. RMU-2023-0024.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on August 7, 2024. A public hearing was held on the following date(s):

- September 5, 2024

On September 5, 2024, the Commission held a technical conference to discuss the proposed Regulatory Analysis and the proposed new version of Chapter 24. The technical conference was attended by the Office of Consumer Advocate, a division of the Iowa Department of Justice; Interstate Power and Light Company; and MidAmerican Energy Company. Each of these stakeholders also filed written comments. Based on the written and oral comments received, the Commission modified Chapter 24 to produce this Notice of Intended Action.

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, which must be received by the Commission no later than 4:30 p.m. on December 3, 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:

January 15, 2025 2 to 4 p.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa

January 23, 2025 9 to 11 a.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 199—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
LOCATION AND CONSTRUCTION OF ELECTRIC POWER GENERATING FACILITIES

199—24.1(476A) Authority and purpose. The regulations contained herein are prescribed by the Iowa utilities commission pursuant to authority granted the commission in Iowa Code chapter 476A, relating to the location and construction of electric power generating facilities. The purpose of these regulations is to provide guidelines for proceedings for the determination whether the proposed construction of a major electric generation facility or significant alteration thereto should be issued a certificate before such construction may commence and to state the procedures for determining compliance by the applicant with permit and licensing requirements of state regulatory agencies.

199—24.2(476A) Definitions. As used in this chapter:

"Acid Rain Program" means the sulfur dioxide and nitrogen oxides air pollution control program established pursuant to Title IV of the Clean Air Act, 42 U.S.C. Section 7401, et seq., as amended by Pub. L. 101-549, November 15, 1990.

"Act" means Iowa Code chapter 476A.

"Agency" means an agency as defined in Iowa Code section 17A.2(1).

"Allowance" means an authorization, allocated by the federal Environmental Protection Agency under the Acid Rain Program, to emit up to one ton of sulfur dioxide, during or after a specified calendar year.

"Certificate" means a certificate as defined in Iowa Code section 476A.1.

"Contested case proceeding" means the contested case proceeding before the commission prescribed by Iowa Code section 476A.4.

"Facility" means a facility as defined in Iowa Code section 476A.1.

"Interested agency" means an agency, other than a regulatory agency, which the commission in its discretion determines to have a legitimate interest in the disposition of the application.

"Intervenor" means a person who received notice under paragraph 24.6(2)*"b,""c,""d," "e,"* or *"f"* and has filed with the commission a written notice of intervention, or a person granted permission to intervene by the commission after filing a petition pursuant to rule 199—7.13(17A,476).

"MW" means megawatts.

"Person" means a person as defined in Iowa Code section 4.1.

"Public utility" means a public utility as defined in Iowa Code section 476.1.

"Regulatory agency" means a regulatory agency as defined in Iowa Code section 476A.1.

"Significant alteration" means:

1. A change in the generic type of fuel used by the major electric generating facility; or

2. Any change in the location, construction, maintenance, or operation of equipment at an existing facility that increases the maximum generator nameplate capacity of the facility by at least 10 percent and at least 25 MW.

"Site" means the land on which the generating unit of the facility, and any cooling facilities, cooling water reservoirs, security exclusion areas, and other necessary components of the facility, are proposed to be located.

"Site impact area" means the area within the state of Iowa within a ten-mile radius of the intersection of the transverse centerline axis and longitudinal centerline axis of the generator or all such generators where the proposed facility includes multiple generators.

"Zoning authority" means any city or county zoning authority in whose jurisdictional area a proposed facility site or portion thereof is located.

199—24.3(476A) Form of application; place of filing.

24.3(1) *Form of application.* The information required by these rules to be included with an application shall be indexed and arranged in a sequential manner substantially similar to the outline form of the rules, with all material submitted categorized into the specific areas and sections set forth in the rules.

24.3(2) *Manner and place of filing.* An applicant shall file the application electronically unless otherwise permitted by the commission, and the commission will include on the service list for the application each regulatory agency listed on the application in addition to other agencies as the commission deems appropriate.

199—24.4(476A) Application for a certificate—contents. Each person or group of persons proposing to construct a facility or a significant alteration to a facility shall file an application for certificate with the commission unless otherwise provided by these rules. The applicant may file a partial application in conjunction with a request under rule 199—24.9(476A). An application shall substantially comply with the following informational requirements:

24.4(1) Section 1, entitled "General information," shall include the following information:

a. The legal name, address, telephone number, and email address of the applicant and all other participants of the proposed facility at the time of filing; the name of the person authorized to receive communications relating to the application on behalf of those persons; Iowa business address, if applicable; and principal place of business of the applicant.

b. The name and type of business of the applicant's and all other participants' parent companies and affiliates with the percentages of ownership.

c. A complete description of the current and proposed rights of ownership in the proposed facility and current or planned purchase power contracts with respect to the proposed facility.

d. A general site description including a legal description of the site location; a general map showing the site and its location with respect to state, county, and other political subdivisions; prominent features such as cities, lakes, rivers and parks within the site impact area; and a more detailed map showing the location of the facility perimeter, utility property, railroads and other transportation facilities, abutting and adjacent properties, cities, lakes, rivers, parks, other public facilities, cemeteries, and places of historical significance within one mile of the site boundary. The general site description should include a discussion of whether the proposed site is located in a flood plain.

e. A general description of the proposed facility including a description of the principal characteristics of the facility such as the capacity of the proposed facility in MW expressed by the contracted maximum generator nameplate MW rating, the portion (in MW) of the design capacity of the proposed facility that is proposed to be available for use by each participant; the number and type of generating units, primary fuel source for each such unit, total hours of operation anticipated seasonally and annually, and output in megawatt hours during these hours; expected capacity factors; a description of the general arrangement of major structures and equipment to provide the commission with an

understanding of the general layout of the facility; and a schedule for the facility's construction and utilization including the projected date significant site alteration is proposed to begin and the projected date the facility is to be placed into service. For this purpose, a group of several similar generating units operated together at the same location such that segregated records of energy output are not available shall be considered as a single unit.

f. A general description of all raw materials, including fuel, used by the proposed facility in producing electricity and of all wastes created in the production process, including the amount of annual expected sulfur dioxide emissions from the facility, with the applicant's plan for acquiring allowances sufficient to offset those emissions. The applicant shall describe all transportation facilities currently operating that will be available to serve the proposed facility during operations and any additional transportation facilities needed to deliver raw materials and to remove wastes.

g. Identification, general description and chronology of all financial and other contractual commitments undertaken or planned to be undertaken with respect to the proposed facility.

h. A general map and description of the primary transmission corridors and the approximate routing of the rights-of-way. An analysis of the existing transmission network's capability to reliably support the proposed additional generation interconnection to the network. The analysis must also show that the interconnection to the transmission system is consistent with standard utility practices and the proposed interconnection does not degrade the adequacy, reliability, or operating flexibility of the existing transmission system in the area. A system impact analysis performed by the operator of the transmission system with which the facility will be interconnected, as well as any analysis, in the applicant's possession, submitted to an area reliability council, concerning the impact of the facility on the area grid, shall satisfy the foregoing requirements. The impact analysis must include both local area and regional impacts.

i. The names and addresses of those owners and lessees of record of real property identified in paragraphs 24.6(2)*"d"* and *"e."*

j. The names and addresses of those owners and lessees of record of real property for whom the applicant seeks the use of eminent domain.

24.4(2) Section 2, entitled "Regulatory requirements," shall include the following:

a. All information related to the regulatory agency and zoning authority requirements for permits or licenses necessary to construct, operate, and maintain the facility.

b. A listing of every state agency from which any approval or authorization concerning the proposed facility is required and a listing of zoning authorities.

c. Information equivalent to the information required in the rules and application forms of such state regulatory agencies and zoning authorities, to the extent such information is ready to be filed.

24.4(3) Section 3, entitled "Community impact," shall include an identification and analysis of the effects the construction, operation, and maintenance of the proposed facility will have on the site impact area, including but not limited to the following:

a. A forecast of the permanent impact of the construction, operation, and maintenance of the proposed facility on commercial and industrial sectors, housing, land values, labor market, health facilities, sewage and water, fire and public protection, recreational facilities, schools and transportation facilities.

b. A forecast of any temporary impact placed upon housing, schools or other community facilities as a result of a temporary influx of workers during the construction of the proposed facility.

c. A forecast of the impact of the proposed facility on property taxes of affected taxing jurisdictions. The forecast shall include the effects on property taxes caused by all community development proximately related to the construction of the proposed facility.

d. A forecast of the impact on agricultural production and uses.

e. A forecast of the impact on open space areas and areas of significant wildlife habitat. Such forecast shall include identification and description of the impact of the proposed facility on terrestrial and aquatic plants and animals.

f. A forecast of the impact on transportation facilities.

g. A forecast of the impact on cultural resources including known archaeological, historical and architectural properties that are on, or eligible for, the National Register of Historic Places.

h. A forecast of the impact on landmarks of historic, religious, archaeological, scenic, natural or other cultural significance including the applicant's plans to coordinate with the office of the state archaeologist to reduce or obviate any adverse impact and the applicant's plans to coordinate with the department of homeland security and emergency management in the event of accidental release of contaminants from the proposed facility.

24.4(4) Section 4, entitled "Site selection methodology," shall include information related to the selection of the proposed site for the facility, including the following:

a. The general criteria used to select alternative sites and how these criteria were used to select the proposed site.

b. A discussion of the extent to which reliance upon eminent domain powers could be reduced by use of an alternative site, alternative generation method or alternative waste handling method.

199—24.5(476A) Initial commission review—application acceptance.

24.5(1) Upon the filing of the application or a portion of the application, the commission and the appropriate regulatory agencies shall determine whether the application is in substantial compliance with the requirements of rule 199—24.4(476A). If any significant deficiencies are determined to exist in the application, or such portion of the application, by either the commission or regulatory agency, the commission shall notify the applicant specifying such deficiencies within 45 days from the date of the filing of the application or such portion of the application.

24.5(2) The applicant shall have 30 days from notification of deficiencies to amend or request, for good cause, a reasonable extension of time to amend. In the event the applicant fails to amend within the time allowed or, after amendment, the application or portion thereof filed is not in substantial compliance with the requirements of rule 199—24.4(476A), the commission may reject the application or such portion thereof. Such rejection shall constitute final agency action but shall not preclude reapplication.

24.5(3) If the application or portion thereof, after amendment or otherwise, is in substantial compliance with the requirements of rule 199—24.4(476A), the commission shall, within 45 days of the filing of the application or portion thereof or amendment thereto, accept the application or portion thereof and set the time and place for hearing as provided in rule 199—24.6(476A); provided that upon acceptance of a partial application, the commission may order separate proceedings on particular phases of the application, pursuant to rule 199—24.9(476A), where such partial application permits a finding to be made with regard to any of the facility siting criteria contained in subrule 24.10(2).

199—24.6(476A) Procedural schedule.

24.6(1) Upon acceptance of the application, the commission shall establish a schedule for the certification proceeding which includes:

a. A hearing to be commenced in accordance with rule 199—24.8(476A), no earlier than 90 days nor later than 150 days from the date of acceptance, in the county in which the construction of the greater portion of the facility is being proposed.

b. Provision for the publication of notice of the schedule for the hearing held by the commission in the form provided in Iowa Code section 17A.12(2), which notice shall be published in a newspaper of general circulation in each county in which the proposed site is located once each week for two consecutive weeks with the second publication being no later than 30 days after acceptance of the application.

24.6(2) The commission shall serve notice or direct the applicant to serve notice of the acceptance of the application and proceeding schedule upon the following:

a. All regulatory agencies, including Iowa department of transportation and the Iowa department of natural resources.

b. Interested agencies as determined by the commission, including the office of the state archaeologist and the state historic preservation office of the state historical society of Iowa.

c. County and city zoning authorities from the area in which the proposed site is located.

d. All owners of record of real property located within one mile of the intersection of the transverse center-line axis and longitudinal center-line axis of the generator, or all such generator axis intersections where the proposed facility includes multiple generators, and all owners of record of real property located within 1,000 linear feet of the proposed boundary, but outside any such one-mile radius.

e. All lessees of record of real property of one acre or more located within the site boundary or within 1,000 linear feet outside of the proposed site boundary.

f. Owners and lessees of real property for which the applicant seeks the power of eminent domain.

g. Other interested persons as determined by the commission.

24.6(3) Status of notice recipient.

a. Those receiving notice under paragraph 24.6(2)*"a"* may participate in the proceeding as a party by filing an appearance.

b. Such notice provided under paragraph 24.6(2)*"b,""c,""d," "e,"* or *"f"* shall state that the recipient shall have the right to become an intervenor upon duly filing written notice of intervention.

199—24.7(476A) Informational meeting.

24.7(1) *Place of meeting.* Not less than 30 days prior to the filing of an application, the applicant shall hold an informational meeting in the county of the proposed site for the facility. In the event the proposed site is in more than one county, such meeting shall be in that county containing the greatest portion of the proposed facility site.

24.7(2) *Meeting facilities.* The applicant shall be responsible for all negotiations and compensation for a suitable facility to be used for the informational meeting, including but not limited to a building or facility that is in substantial compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines, Chapter 4, as effective on [the effective date of this rulemaking], where such a building or facility is reasonably available.

24.7(3) *Location.* The location of the meeting shall be reasonably accessible to all persons that may be affected by the granting of the certificate.

24.7(4) *Commission approval.* Commission approval shall be obtained for the proposed informational meeting date, time, and location.

24.7(5) *Personnel.* The applicant shall provide qualified personnel to speak for the applicant in matters relating to the following:

a. Utility planning that has resulted in the proposed construction.

b. When the facility or significant alteration will be constructed.

c. In general terms the physical construction, appearance and location of major structures with respect to proposed property lines.

d. In general terms the property rights that the applicant seeks including purchase, option to buy, and easement.

e. Procedures to be followed in contacting affected parties for specific negotiations in acquiring property rights.

f. Methods and factors used in arriving at offered compensation.

g. Manner in which payments are made including discussion of conditional easements, signing fees and time of payment.

h. Other factors or damages for which compensation is made.

i. If the undertaking is a joint effort, other participants shall be represented at the informational meeting by qualified personnel designated to speak for them.

24.7(6) *Conduct of the meeting.* A member of the commission, or a hearing examiner designated by the commission, will serve as the presiding officer at the meeting and present an agenda for such meeting, which shall include a summary of the legal rights of affected legal landowners. No formal record of the meeting is required. The meeting shall be considered an opportunity for interested members of the public to raise questions regarding the proposal and an opportunity for the applicant to respond.

24.7(7) *Notice.* At least one week prior to the time set for the informational meeting, the applicant shall cause to be published a notice of such meeting in a newspaper of general circulation in each county containing a portion of the proposed site impact area. The notice of the informational meeting shall

contain the following statement: Persons with disabilities requiring assistive services or devices to observe or participate should contact the commission at 515.725.7300 in advance of the scheduled date to request that appropriate arrangements be made. The applicant shall file proof of such notice in the commission's electronic filing system. Additional notice shall be made through press release to all newspapers of general circulation in each county containing a portion of the proposed site impact area and, as deemed appropriate by the commission, electronic media.

24.7(8) *Exception to informational meeting requirement.* An applicant is not required to request or hold an informational meeting if:

a. The applicant is seeking a generating certificate for a wind generating facility, a solar generating facility, an electric storage unit, or a combination thereof, and

b. The applicant has acquired all necessary property rights for the project.

199—24.8(476A) Hearing procedure.

24.8(1) *General.* The proceedings conducted by the commission pursuant to this chapter shall be treated in the same manner as a contested case pursuant to the provisions of Iowa Code chapter 17A. Except where contrary to express provisions below, the hearing procedure shall conform to the commission's rules of practice and procedure, 199—Chapter 7. The proceeding for the issuance of certificate may be consolidated with the contested case proceeding for determination of applicable ratemaking principles under Iowa Code section 476.53.

24.8(2) *Intervention.*

a. Notice of intervention. An agency not receiving notice pursuant to paragraph 24.6(2)*"b"* may become a party to the contested case proceeding by filing a notice of intervention. Such notice shall contain a statement of the jurisdiction or interest of the particular agency with respect to the proposed facility.

b. Petition to intervene. Any other person wishing to become a party to the contested case proceeding may request to intervene in the proceeding by filing a petition to intervene by the deadline set in the procedural schedule.

c. Commission discretion. The commission may, in its discretion, grant or deny such petition or may permit intervention by the petitioner limited to particular issues or to a particular phase or stage of the proceeding. The commission shall, in exercising its discretion, consider the substantiality of the petitioner's rights allegedly affected by the granting or denial of the application and whether granting the intervention will unduly delay the proceeding or have no probative value to the proceeding. The granting of any petition to intervene does not change or enlarge the issues specified in the commission's notice of hearing or any prehearing order of the commission unless the commission amends the same.

24.8(3) *Appearance.* If any regulatory agency fails to appear of record in the contested case proceeding conducted by the commission, the commission shall conclusively presume that the facility meets the regulatory agency's permit and licensing requirements.

24.8(4) *Application for rehearing.* All applications for rehearing will be made and processed in accordance with Iowa Code sections 17A.16(2) and 476.12 and rule 199—7.27(17A,476).

199—24.9(476A) Separate hearings on separate issues.

24.9(1) *By motion.* The commission, upon its own motion or on the motion of the applicant, may order separate phases on particular issues of the proceeding. Each phase shall be addressed to issues involved in applying one or more of the facility siting criteria set forth in subrule 24.10(2) and shall result in commission findings with respect thereto.

24.9(2) *By agreement.* In accordance with agreements made pursuant to Iowa Code chapter 28E, with regulatory agencies, the commission may establish separate phases of the hearing process to determine whether the proposed facility will conform to the permit and licensing requirements of the regulatory agencies.

24.9(3) *Procedure.* Each such hearing phase shall be conducted in conformance with the requirements of rule 199—24.8(476A) or other rules of practice and procedure designated in the applicable chapter 28E agreement.

199—24.10(476A) Certification decision.

24.10(1) *Issuance of decision.* Upon the close of the record in the proceeding, the commission shall expeditiously render a written decision with complete determinations as to the facility siting criteria or portion thereof under consideration, other necessary findings of fact or conclusions of law necessary to support the commission's decision.

24.10(2) *Facility siting criteria.* In rendering its certification decision, the commission shall consider the following criteria:

a. Whether the service and operations resulting from the construction of the facility are consistent with the legislative intent as expressed in Iowa Code section 476.53 and the economic development policy of the state as expressed in Iowa Code Title I, Subtitle 5, and will not be detrimental to the provision of adequate and reliable electric service, including whether the existing transmission network has the capability to reliably support the proposed additional generation interconnection to the network.

b. Whether the construction, maintenance, and operation of the proposed facility will be consistent with reasonable land use and environmental policies, and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives. Such determination shall include:

(1) Whether all adverse impacts attendant the construction, maintenance, and operation of the facility have been reduced to a reasonably acceptable level;

(2) Whether the proposed site represents a reasonable choice among available alternatives;

(3) Whether the proposed facility complies with applicable city, county, or airport zoning requirements and, if not, whether the location of the proposed facility at the proposed site is reasonably justified from an economic, technical, and social standpoint.

c. Whether the applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate and the Act.

d. Whether the proposed facility meets the permit and licensing requirements of regulatory agencies.

24.10(3) *Amendment.* If the commission finds that the application and record in the proceeding does not support affirmative findings with regard to these criteria, the commission will, in its order, specify any deficiencies determined to exist and the applicant may, within 30 days from the commission's order, amend or, for good cause, request a reasonable extension of time to amend the application, or to request reopening of the record to correct the deficiencies, or both.

24.10(4) *Denial.* In the event the applicant fails to amend in a timely fashion, or after amendment or reopening the record, or both, the commission remains unable to make an affirmative finding, the commission will deny the application. The applicant may request rehearing on such denial in accordance with Iowa Code sections 17A.16(2) and 476.12 and rule 199—7.27(17A,476).

24.10(5) *Application approval.* If the commission finds that the criteria support the issuance of a certificate, the commission will approve the application and, in accordance with rule 199—24.12(476A), prepare a certificate for the facility.

199—24.11(476A) Site preparation.

24.11(1) In the event no certificate has been issued after 90 days from the commencement of the hearing, the commission may permit the applicant to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this rule shall have no probative value to the commission's decision concerning the actual issuance of a certificate.

24.11(2) In the event the commission denies an application for a certificate or an amendment to a certificate, applicants who have received permission to begin site preparation, pursuant to subrule 24.11(1), shall restore the site, in accordance with the commission order denying the application.

199—24.12(476A) Issuance of a certificate.

24.12(1) *General.* The certificate shall authorize construction, maintenance, and operation of the facility on the site designated in the certificate according to the following:

a. The terms and conditions imposed by the commission and stated in the certificate.

b. The terms and conditions in licenses and permits issued by regulatory agencies before and during the proceeding.

c. The terms and conditions that have been specifically recommended by regulatory agencies in the proceeding and declared by those regulatory agencies or the commission as being necessary for the applicant to comply with requirements of licenses or permits then sought but not yet issued.

24.12(2) *Eminent domain.* The certificate shall give the applicant the power of eminent domain to the extent and under such conditions as the commission approves, prescribes, and finds necessary for the public convenience, use, and necessity, proceeding in the manner of works of internal improvement under Iowa Code chapter 6B.

24.12(3) *Certificate transfer.* A certificate may be transferred, subject to the approval of the commission, to a person who agrees to comply with the terms of the certificate including any amendments to the certificate. Certificates shall be transferable by operation of law to any receiver, trustee or similar assignee under a mortgage, deed of trust or similar instrument.

24.12(4) *Application withdrawal.* Pursuant to Iowa Code section 476.53, a rate-regulated utility shall have the option of withdrawing its application for issuance of a certificate.

199—24.13(476A) Exemptions from certification application; application for amendment for certificate: Contents.

24.13(1) Application for amendment.

a. Each person or group of persons proposing a significant alteration to any facility that was constructed pursuant to a certificate issued by the commission shall file an application for an amendment to a certificate in lieu of an application for a certificate.

b. Each person or group of persons proposing a significant alteration to any facility that was not constructed pursuant to a certificate issued by the commission must file an application for such certificate unless:

(1) The facility has not attained full commercial rating and has not operated in excess of 80 percent of its maximum nameplate megawatt rating for ten hours daily for 45 consecutive days; and

(2) The significant alteration requires no more land than was required for the facility, is within the scope of publicly announced plans for the facility's construction, and entails no additional contracts for major components than those let for the facility.

24.13(2) All applications for amendment to a certificate shall be filed in accordance with rule 199—24.3(476A) and shall include:

a. A complete identification and discussion of the nature of the amendment proposed; and

b. A complete enumeration of the effects the amendment has on the accuracy of the information contained in the application for a certificate filed pursuant to rule 199—24.4(476A).

24.13(3) Upon commission acceptance of the application, the commission shall establish a hearing schedule. Unless otherwise ordered by the commission, an informational meeting under rule 199—24.7(476A) is not required. Notice shall be in accordance with subrule 24.6(2).

24.13(4) In the consideration of an application for a certificate pursuant to paragraph 24.13(1)*"b"* or amendment to a certificate pursuant to paragraph 24.13(1)*"a,"* there shall be a rebuttable presumption that the decision criteria of subrule 24.10(2) are satisfied.

24.13(5) Amendment to a certificate. In determining whether an amendment to a certificate will be issued to the applicant, the commission will be guided by the criteria set forth in subrule 24.10(2) to the extent applicable and appropriate.

199—24.14(476A) Waiver.

24.14(1) The commission, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this chapter.

24.14(2) In addition to any other service requirements, an applicant requesting a waiver must serve a copy of the waiver on all owners or record of real property that adjoins the proposed facility site.

24.14(3) In determining whether the public interest would not be adversely affected, the commission may consider the following factors:

a. The purpose of the facility.
b. The type of facility.
c. Whether the facility is for the applicant's own needs.
d. The effect of the facility on existing transmission systems.
e. Any other relevant factors.

These rules are intended to implement Iowa Code chapter 476A.

ARC 8327C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Proposing rulemaking related to claims and benefits and providing an opportunity for public comment

The Iowa Workforce Development Department hereby proposes to rescind Chapter 24, "Claims and Benefits," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A and 84A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 84A.

Purpose and Summary

Chapter 24 provides administrative rules for individuals and employers regarding claims and receipt of unemployment insurance benefits pursuant to Iowa Code Chapter 96.

As part of the Department's review of rules under Executive Order 10, the Department identified several instances where the current chapter duplicates statutory language and uses restrictive terms. This text is removed from the proposed chapter.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 8, 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.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on December 3, 2024. Comments should be directed to:

Jeffrey Koncsol
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.725.5400

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

December 3, 2024 9 to 10 a.m.	Lobby Conference Room 1000 East Grand Avenue
December 3, 2024 1 to 2 p.m.	Microsoft Teams Join the meeting now Meeting ID: 299 616 517 725 Passcode: B8mCxb Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 798 439 149#

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 871—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
CLAIMS AND BENEFITS

871—24.1(96) Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms that are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(1) Reserved.

24.1(2) *Administrative office (state).* The state administrative office of the division of unemployment insurance services of the department of workforce development.

24.1(3) *Agent state.* The state in which a worker claims benefits against another (liable) state through the facilities of the state employment security agency.

24.1(4) *Applicant.* Any individual applying for work at a workforce development center.

24.1(5) *Average weekly wages.*

a. For an individual worker, the result obtained by dividing the individual's total wages in a specified period either by the total number of weeks in the period or by the number of weeks for which wages were payable to the individual during the period.

b. For a group of workers, the result obtained by dividing the total wages for one or more quarters by the number of weeks in the period, and then dividing by the average monthly employment during the period.

24.1(6) *Base period.* See Iowa Code section 96.1A(3).

24.1(7) *Base period employer and chargeable employer.* See Iowa Code section 96.3.

24.1(8) *Benefit eligibility conditions.* Statutory requirements that must be satisfied by an individual with respect to each week of unemployment before benefits can be received.

24.1(9) *Claim.* A request for benefit payment; also used to mean any notice filed by an individual to establish insured status or a notice filed by an individual to inform the administrative agency of the individual's unemployment.

a. A claim may be filed under any one or more of the following programs:

(1) The state program of unemployment insurance (UI),

(2) The federal program of unemployment compensation for federal employees (UCFE) established by Title V of the United States Code, and

(3) The federal program of unemployment compensation for ex-military personnel (UCX) established by Title V of the United States Code.

b. Unless otherwise specified, the term claim as used in the following definitions is applicable equally to each of the three programs.

(1) *Additional claim.* An application for determination of eligibility filed on an established claim that follows a period of employment.

(2) *Additional interstate claim.* A claim filed by an interstate claimant within the benefit year of a liable state in which insured status has already been established, after a break in the continuity of filing continued interstate claims, or to establish a new series of claims against that liable state from a new agent state.

(3) *Additional UI, UCFE, or UCX claim.* A notice filed at the beginning of a second or subsequent series of claims within a benefit year, when a break in job attachment has occurred since the last claim was filed, concerning which state procedures require that separation information be obtained.

(4) *Combined wage claim.* A claim filed according to an interstate agreement that allows workers who lack qualifying wages in any one state, or who qualify for less than maximum benefits in one or more states, to qualify or to increase benefits by combining wages from all states.

(5) *Compensable claim.* A request for benefit payment that certifies the completion of a week of total or partial unemployment to satisfy a claim benefit for a compensable week.

(6) *Contested claim.* A claim that has been protested by an employer, the department or an interested party regarding the claimant's right to benefits.

(7) *Continued claim.* A continued claim is a request for benefit payment. A continued claim is a compensable claim. It is an electronic, oral or written application that certifies to the completion of a week of total unemployment or partial employment to claim benefits for a compensable week.

(8) *Initial claim.* An application for a determination of eligibility for benefits which determination sets forth the weekly benefit amount and duration of benefits for a benefit year.

(9) *Initial interstate claim.* A new or an additional interstate claim.

(10) *Interstate claim.* A claim filed in one state (agent state) against another state (liable state).

(11) *Intrastate claim.* A claim filed in the state of residence against wages earned in that state or by an interstate commuter.

(12) *Mail claim.* Reserved.

(13) *New claim.* An application for the establishment of a benefit year.

(14) *New interstate claim.* The first interstate claim filed by a claimant against a liable state that serves as a request for determination of insured status.

(15) *New intrastate extended benefits claim.* The first intrastate claim filed for extended benefits in a new extended benefits period by a claimant in state having extended benefits provisions in its law. Each time such provisions become effective it is considered a new extended benefit period. Such first claims will include those that become effective, without any break in the benefit series, for the week following the week in which regular benefits are exhausted or are terminated by the end of the benefit year.

(16) *New UI, UCFE, or UCX claim.* A request for determination of insured status for purposes of establishing a new benefit year.

(17) *Reopened claim.* The first continued claim in a second or subsequent series of claims in a benefit year when no additional claim is reportable. An application for determination of eligibility for benefits and that certifies to the beginning date of a period of unemployment that falls within a benefit year previously established for which a continued claim or claims may be filed and which follows a break in a previously established claim, due to illness, disqualification, unavailability, or failure to report for any reason other than reemployment.

(18) *Second benefit year claim.* A new claim with an effective date for a second benefit year that is filed within 180 calendar days following the last week of the individual's previous benefit year. The individual is notified of the expiration of the previous benefit year.

(19) *Transitional claim.* Reserved.

(20) *Valid UI, UCFE or UCX claim.* A new claim on which a determination has been made that the individual has met the wage or employment requirements (and, under some laws, other eligibility conditions) to establish a benefit year.

24.1(10) *Claimant.*

a. An individual who has filed a request for determination of insured status or a new claim, or

b. An individual who has filed an initial claim unless the claim is found to be invalid or the benefit year has expired.

24.1(11) *Compensable week.* A week for which benefits have been claimed.

24.1(12) *Covered worker.* An individual who has earned wages in insured work.

24.1(13) *Department.* The department of workforce development, the chief executive officer of which is the director, who is appointed by the governor with the approval of two-thirds of the members of the senate. The director is responsible for administering Iowa Code chapter 96.

24.1(14) *Determination.*

a. Benefit determination. A decision with respect to a request for determination of insured status, a notice of unemployment, or a claim for benefits.

b. Initial determination. The first determination with respect to a claim or a request for determination of insured status.

c. Monetary determination. A determination as to whether an individual meets the employment requirements necessary for the receipt of benefits; and, if so, such individual's weekly benefit amount and maximum benefit amount.

d. Nonmonetary determination. A determination as to whether a claimant is barred from receiving benefits for reasons other than those affecting the claimant's insured status.

e. Redetermination. A determination made with respect to a claimant after reconsideration by the initial determining authority.

f. Status determination. A determination as to whether an employing unit is a subject employer and whether service performed for it constitutes employment as defined under a state employment security law.

24.1(15) *Disqualification provisions.* Those provisions of a state employment security law that set forth the conditions that bar an individual from receiving benefits for a specified period or cancel or reduce the individual's benefits or credits.

24.1(16) *Employment security law.* Iowa Code chapter 96.

24.1(17) *Fact-finding interview.* A discussion between interested parties and a department representative for the purpose of obtaining from the claimant a statement regarding a specific eligibility or disqualification issue.

24.1(18) *Insured unemployment.* Unemployment during a given week for which benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

24.1(19) *Insured work.* Employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act.

24.1(20) *Insured worker.* An individual who has had sufficient insured work in such individual's base period to meet the employment requirements for receipt of benefits under a state employment security law.

24.1(21) *Liable state.* Any state against which a worker claims benefits through the facilities of a workforce development center or the job service division of another (agent) state.

24.1(22) *Maximum benefit amount.* The maximum total amount of benefits an individual may receive during the individual's benefit year.

24.1(23) *Opening.* A single job for which a workforce development center has on file a request to select and refer an applicant or applicants.

24.1(24) *Partial benefits.* Benefits payable to an individual for a week of partial unemployment.

24.1(25) *Partial earnings allowance.* The amount of earnings that are disregarded in calculating a claimant's benefit for a week.

24.1(26) *Part-time worker.* See Iowa Code section 96.3.

24.1(27) *Placement.* An acceptance by an employer of a person for a job as a direct result of workforce development center activities, provided the employment office has completed all of the following four steps: receipt of an order, prior to referral; selection of the person to be referred without designation by the employer of any particular individual or group of individuals; referral; and verification from a reliable source, preferably the employer, that a person referred has been hired by the employer and has entered on the job.

24.1(28) *Qualifying wages.* The amount of wages a worker must have earned in insured work within a specified period in order to be an insured worker. See also benefit eligibility conditions.

24.1(29) *Referral.* The act of arranging to bring to the attention of an employer (or another workforce development center) the qualifications of an applicant who is available for a job opening on file for which the applicant has been selected by a workforce development center.

24.1(30) *Registration.* The process of applying for work through an office of the department of workforce development.

24.1(31) *Request for determination of insured status.* A request by an individual for a determination of insured status.

24.1(32) *Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoff. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quit. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separation. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

24.1(33) *Social security number.* The identification number assigned to an individual by the Social Security Administration under the Social Security Act.

24.1(34) *Taxable wages.* Wages subject to contribution under a state employment security law, or wages subject to tax under the federal Unemployment Tax Act.

24.1(35) *Total unemployment.* See week of unemployment.

24.1(36) *Verification.* The determination from a reliable source, preferably the employer, whether an applicant referred by a workforce development center has been hired by the employer and has entered on the job. In the case of applicants referred to seasonal agricultural openings, verification is considered

complete when it is confirmed that a referred worker has been hired, even though confirmation of the worker's entry on the job may be lacking.

24.1(37) *Wage credits.* Wages earned in insured work.

24.1(38) *Week of unemployment.* A week during which an individual performs no work and earns no wages, except as indicated and has earnings that do not exceed the earnings limit.

This rule is intended to implement Iowa Code sections 96.3(5), 96.3(7), 96.4(3), 96.5(5)*"c,"*96.6, 96.7(2)*"a"*(2), 96.11, 96.1A and 96.23.

871—24.2(96) Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Filing a benefit claim.

a. In order to establish a benefit year during which an individual may receive unemployment benefits, the individual, once separated from employment, must file an initial claim, verify their identity, and register for work. The claim may be filed electronically or by other means prescribed by the department. A claim filed in accordance with this rule is considered filed as of Sunday of the week in which the claim is filed.

b. When filing an initial claim for benefits, an individual must provide the following information to the department:

(1) The name and complete mailing address of the individual's last employing unit or employer.

(2) Work history for all employers within the individual's base period.

(3) The location of the last job.

(4) The last day of work.

(5) The reason for separation from work.

(6) Certification that the individual is unemployed.

(7) Certification that the individual registers for work.

(8) The individual's last occupation.

(9) Number, full name, social security number, date of birth, and relationship of any dependents claimed.

1. *"Spouse"* is defined as an individual who does not earn more than $120 in gross wages in one week. The reference week for this monetary determination is the gross wages earned by the spouse in the calendar week immediately preceding the claim's effective date.

2. *"Dependent"* means an individual who has been claimed for the preceding tax year on the claimant's income tax return. The same dependent may not be claimed on two separate monetarily eligible concurrent established benefit years. An individual may not claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

(10) The individual's social security number and alien registration number, if applicable.

(11) Such other information as requested by the department.

c. All claimants on an initial claim must state that they are registered for work and list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments are based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

(1) Group "3" claimants are those "temporarily unemployed" as defined in Iowa Code section 96.1A(37)*"c."* After a period of temporary unemployment, claimants in this group are reviewed for placement in group "5" or "6."

(2) Group "4" claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job. Group "4" claimants have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group "4" code does not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(3) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained, and weekly contact to check for available work is required. Loss of membership will result in an assignment to group "6."

(4) Group "6" claimants are those individuals who do not otherwise meet the qualification group code "3," "4," or "5." This group must complete and document re-employment activities, as established by the department.

(5) Group "7" claimants are workers who are employed on a reduced workweek with an employer who is under a department-approved voluntary shared work contract. This group pertains to those individuals who worked full- or part-time and will again work full- or part-time if the individuals' employment, although temporarily suspended, has not been terminated. Once the contract expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(6) Group "8" claimants are workers who are part of a federally declared emergency. Once the emergency period expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

d. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual must report as directed by the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department or to an account specified by the claimant.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

e. After the initial claim has been filed, the claimant will receive a notice of monetary eligibility. If the claimant is eligible for benefits, this notice will state the date on which the benefit year will begin, the amount per week, and the maximum amount for which the claimant is eligible.

f. No benefit payment is allowed until the individual claiming benefits has completed a continued claim online or as otherwise directed by the department.

(1) The claim must be submitted between 8 a.m. on the Sunday following the Saturday of the weekly reporting period and not later than close of business on the Friday following the weekly reporting period.

(2) An individual using the weekly continued claim system is to personally file the claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The claim must include the following:

1. That the individual continues the claim for benefits;
2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, and was able and available for work;
3. That the individual has performed a minimum of four work search activities and documented and reported each activity to the department.

- At least three of the four work search activities for the purpose of this paragraph shall consist of one of the following:
  - Applying for a potential job opening by submitting a resume or application through any of the following means:
    - Online.
    - In person.
    - Electronic mail.
    - Facsimile.

◇ Mail.

○ Completing a civil service examination.

● Additional work search activities for the purpose of this paragraph consist of any of the following:

○ Registering with a placement facility of a school or college.

○ Interviewing for a job virtually, in person, or at a job fair.

○ Attending an employment workshop organized or approved by the department, which may include completing an online or in-person job search workshop, job club, or job search networking meeting.

○ Attending a job fair sponsored or approved by the department.

○ Attending a scheduled career networking meeting with the department.

○ With the assistance and guidance of the department, completing a reemployment plan, which may include completing career direction research or work such as a job search plan or a targeted employer list.

○ Participating in job search counseling with a department career planner.

○ Attending an appointment with a core program partner authorized by the federal Workforce Innovation and Opportunity Act, Public Law 113-128.

○ Participating in online or in-person mock interviews organized or approved by the department.

○ Completing career-related assessment approved by the department and reviewed with a department career planner.

4. That the individual understands there are penalties for false statements in connection with the claim;

5. That the individual has reported any job offer received during the period covered by the claim;

6. That the individual understands the individual's responsibility to review the claim records to ensure there is no delay in filing the weekly claim to remain in continuous reporting status. Failure to file claims each week will require a claimant to submit a claim application to reactivate the claim;

7. Other information required by the department.

g. Effective starting date for the benefit year.

(1) Filing for benefits is effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may only be backdated prior to the first day of the calendar week in which the claimant does report and file a claim if the claimant filed an interstate claim against another state that has been determined as ineligible.

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating is not allowed at the change of a calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

h. An individual is entitled to partial benefits for partial unemployment as per Iowa code section 96.1A(37)*"b."* If the individual has been placed on reduced employment the individual may be entitled to partial benefits and should file a claim in accordance with the instructions pertaining to the partial claims procedure.

i. Any individual who is disqualified for benefits because of the individual's failure to report may appeal to the department for the right to establish good cause for failure to report because of extraordinary circumstances. A representative of the department may deny the request, and the decision may be appealed to an administrative law judge for a hearing and decision on the merits. If the petition is allowed, the petitioner will be allowed to file a claim for and receive full benefits for each week for which such claim is filed, if otherwise eligible.

24.2(2) Filing a claim for unemployment insurance benefits (not applicable to interstate claims).

a. A notice of claim filing, which includes the name and social security number of the individual claiming benefits, will be sent to each base period employer on record and the last employer if different than the base period employer unless the separation issue has previously been adjudicated.

b. Even though the claims taker may believe that the claimant cannot meet the eligibility conditions established by statute, the claims taker will in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim will be accepted without hesitance. The claimant may be required to provide adequate proof of identification such as a driver's license, proof of citizenship, car registration, union membership card or supply personally identifying information.

c. If a claim filed in a previous quarter was ineligible because of no wage records or lack of qualifying earnings, a benefit year has not been established and a new claim will be taken. A new claim should not be taken if the claimant previously filed an ineligible claim in the same quarter unless the claimant insists on filing after being advised of ineligibility. The claims taker will notify the claimant that another claim filed in the same quarter would also be ineligible because additional wage credits (if any) would not be available until a subsequent quarter. The claimant should be advised to file a new claim during the first full week of the next calendar quarter.

d. If the check of the files does not disclose a previous claim and the claimant states that a claim has not been filed during the past year, a new claim will be taken.

e. Partially unemployed claims.

(1) A partially unemployed individual will:

1. File a claim for benefits in the same manner as an initial claim for unemployment insurance.
2. Report all wages that are earned for each week benefits are claimed.

(2) A claimant in a continuous reporting status, employed with the same employer, may exceed the claimant's weekly benefit amount plus $15 for four consecutive weeks before the individual is required to file an additional claim for benefits.

f. If the check of the files does not disclose a monetarily valid claim in another state, a new claim will be taken.

24.2(3) Filing a claim for unemployment insurance benefits (interstate only).

a. All interstate claimants must file an Iowa claim.

b. When the department is acting as an agent for another state unemployment insurance agency with respect to the filing of an initial claim for benefits, the interstate claimant must complete and file an Initial Interstate Claim unless otherwise directed by the interstate handbook for interstate claims-taking provided by the Employment and Training Administration of the United States Department of Labor.

24.2(4) Cancellation of unemployment insurance claim.

a. An individual may direct a request for cancellation of an unemployment insurance claim to the benefits bureau of the unemployment insurance services division. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made. A notice with the result of the request will be sent.

b. A cancellation request that is the result of employer coercion or intimidation will be denied and the employer may be subjected to serious misdemeanor charges.

c. If a cancellation request is received within the ten-day protest period and before payment is made, the benefits bureau may upon review cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

d. Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance that was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) If the Iowa wages are erroneous and deleted, and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

e. If a claim is canceled and becomes final with no appeal being filed, a valid claim with Iowa as the paying state may not be reestablished with the same effective date.

f. If it is determined a claim has been filed under an incorrect social security number, the claim will be voided rather than canceled.

g. All unemployment insurance claims canceled will be clearly identified as such and the administrative record of the individual's file shall be destroyed three years after final action.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(4), 96.4(1), 96.4(3), 96.5(1) *"h,"*96.5(3), 96.6(1), 96.6(2), 96.15, 96.16, 96.1A and 96.20.

871—24.3(96) Social security number needed for filing. A claim will not become valid until the identity of the claimant has been verified by the department.

24.3(1) If the agency is unable to verify the claimant's identity in the claim application, the department will notify the claimant, who must provide approved documents, one of which must contain a social security number. The department will determine the approved documents required to verify identity. The list of approved documents can be found at the nearest local workforce center or online.

24.3(2) The claimant's identity will not be considered verified until approved documents have been provided. The claim will remain locked, and the claimant will remain ineligible for benefits, until the claimant provides approved documents.

24.3(3) Approved documents must be provided or postmarked by the due date provided on the notification. Once the approved documents are verified, the claim will be unlocked for all weeks following the most recent effective date of the claim application.

24.3(4) If a claimant provides approved documents after the due date, the claimant will be eligible, provided there are no other outstanding issues with the claim, as of the Sunday of the week the claimant's identity was verified.

This rule is intended to implement Iowa Code section 96.6.

871—24.4(96) Benefit rights information.

24.4(1) *Intrastate benefits.* Benefit rights information is available online to explain those provisions in the law and rules that govern the individual's monetary eligibility, rights and responsibilities under Iowa's unemployment insurance program.

24.4(2) *Interstate benefits.* Benefit rights information is not required for each individual who files an initial claim for interstate benefits. Claimants will be advised to contact the liable state that will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.

871—24.5(96) Mass separation—definition and procedure.

24.5(1) A mass separation is a layoff of all or a large number of workers, either permanently, indefinitely, or for a specific duration by one or more employers in the same area, at approximately the same time, and for the same common reason.

a. Special procedures for mass claim filing may be applied by the department, and the procedures may include taking claims at a designated site or utilizing an electronic mass claim entry form.

b. If outside facilities must be obtained for a mass layoff, the order of precedence for obtaining such facilities will be as follows:

(1) Interested employer involved.

(2) Bona fide union representing the workers.

(3) Public facility (e.g., courthouse, city hall).

24.5(2) To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. The workforce development center will coordinate between the affected parties. This information should include:

a. The number of workers to be separated.

b. The date of separation and, if staggered, the number on each date.

c. Reason for layoff.

d. Its probable duration.

e. If recall is anticipated, the date it will begin and, if staggered, the number to be recalled on each date.

f. If the layoff is for vacation or inventory purposes, the employer shall follow the vacation pay procedure in rule 871—24.12(96).

This rule is intended to implement Iowa Code section 96.6(1).

871—24.6(96) Reemployment services and eligibility assessment procedure.

24.6(1) The department will provide a program that consists of providing reemployment services.

24.6(2) Purpose. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

24.6(3) Reemployment services and eligibility assessment may include but are not limited to the following:

a. An assessment of the claimant's skillset, work history, and interest.

b. Employment counseling regarding reemployment approaches and plans.

c. Job search assistance and job placement services.

d. Labor market information.

e. Job search workshops or job clubs and referrals to employers.

f. Résumé preparation.

g. Other similar services.

24.6(4) As part of the initial intake procedure, each claimant is to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

24.6(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and class size limitations.

24.6(6) A claimant must participate in reemployment services when referred by the department unless the claimant has previously completed such training or services or demonstrates to the department of other good cause prior to the appointment or service.

a. Failure to participate without good cause will disqualify the claimant from receiving benefits until the claimant participates in the reemployment services or eligibility assessment.

b. Good cause for failure to participate is an important and significant reason that a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.

24.6(7) Eligibility assessment procedure.

a. Before an individual has claimed five weeks of intrastate benefits, the workforce development center will receive a computer-selected list of individuals claiming benefits within the target population for review.

b. No eligibility assessment will be performed on an individual unless monetary eligibility and nonmonetary eligibility are established.

c. Once selected for an initial or subsequent eligibility assessment, claimants are required to participate.

d. A Notice to Report will be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual does not respond, the department will issue an appropriate failure to report decision and lock the claim to prevent payment.

e. Selected claimants must participate in staff-assisted services for the initial assessment.

24.6(8) Conducting the first eligibility assessment interview.

a. All available evidence will be examined to detect potentially disqualifying issues.

b. The individual's need for advice, assistance or instructions will be determined and conveyed to the individual.

c. The interview will convey to the individual the requirements that must be satisfied to maintain eligibility.

d. This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment that otherwise would result in referral for adjudication.

e. The individual will be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.

f. The final objective of the interview is to determine whether a subsequent interview is needed. This determination is based on expected return to work date, job openings in the area, local labor market conditions, and other relevant factors.

This rule is intended to implement Iowa Code section 96.4(7).

871—24.7(96) Workers' compensation or indemnity insurance exclusion and substitution.

24.7(1) An individual who has received workers' compensation under Iowa Code chapter 85 during a healing period or temporary total disability benefits or indemnity insurance benefits for an extended period of time and who has insufficient wage credits in the base period may qualify for unemployment insurance benefits as explained in Iowa Code section 96.23.

24.7(2) An individual may receive workers' compensation during a healing period or temporary total disability benefits or indemnity insurance benefits until the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

24.7(3) The department shall make an initial determination of eligibility for unemployment insurance benefits as explained in Iowa Code section 96.23 using the following criteria for allowances and disqualifications.

a. Allowances. When the allowance criteria are met, the department will always exclude and substitute at least three quarters of the base period if the individual received workers' compensation or indemnity insurance benefits in:

(1) Four base period quarters with no earnings in at least two of the quarters and the individual lacks qualifying earnings; the department will exclude and substitute all four quarters of the base period.

(2) Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.

b. Disqualifications. The request for retroactive substitution of base period quarters will be denied if the individual received workers' compensation or indemnity insurance benefits in:

(1) At least three base period quarters but the individual is currently monetarily eligible with an established weekly and maximum benefit amount.

(2) At least three base period quarters and the individual has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.

(3) Less than three base period quarters.

24.7(4) The individual will be asked to complete the Affidavit and Questionnaire, which requests the following information:

a. Individual's name and social security number.

b. Name of employer responsible for the workers' compensation benefits or the indemnity insurance benefits.

c. Names of employers and periods worked for the period preceding the workers' compensation or the indemnity insurance pay period.

d. Name of the workers' compensation or indemnity insurance carrier or, if self-insured, the name of the employer.

e. Specify whether the wages determined to be in the individual's base period were or were not received for working in insured work during the base period.

24.7(5) The department will provide the individual with the monetary redetermination. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the indemnity insurance benefits will be notified and will be responsible for the charges on the redetermined claim that are solely due to wage credits considered to be in the individual's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or indemnity insurance benefits maintains the right to protest as provided in rule 871—17.8(96).

871—24.8(96) Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(1) Issuing a notice of the filing of an initial claim or a request for wage and separation information to employing units.

a. Notice of Claim and Request for Wage and Separation Information shall be:

(1) Addressed to the address or addresses as requested by the employing unit and agreed to by the department, to the business office of the employing unit where the records of the individual's employment are maintained, or to the employing unit's place of business where the individual claiming benefits was most recently employed; and

(2) Sent electronically via the United States Department of Labor State Information Data Exchange System (SIDES).

b. A notice of the filing of an initial claim or a request for wage and separation information will be sent to an owner, a partner, an executive officer, a departmental manager or other responsible employee of the employing unit or to an agent designated to represent the employing unit in unemployment insurance matters.

(1) An agent who has been authorized to represent an employing unit in unemployment insurance matters may be furnished information from the files of the department to the extent designated in the authorization and in the same manner and to the same extent that the information would be furnished to the employing unit.

(2) The appointment of an agent to act for the employing unit and to receive documents and reports in no way abrogates the right of department representatives to deal directly with the employing unit when it appears that this will best serve the interest of the parties.

24.8(2) Employing units' response to a notice of the filing of an initial claim or a request for wage and separation information and protesting benefit payment.

a. The employing unit that receives a Notice of Claim or Request for Wage and Separation Information must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts disclosing that

the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. If the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the department's next working day. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report will be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit will be deemed to have not been properly notified and the employing unit will again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions that, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation must be postmarked or received before or within ten days of the date that the Notice of Claim was mailed to the employer. If the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

(2) On the Notice of Separation, the employer must indicate the dates of the last day worked, the separation date and the reason the worker was separated.

24.8(3) Completing and signing of forms by an employing unit that may affect the benefit rights of an individual.

a. A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, is accomplished by properly completing the form or computerized format provided by the department.

b. The form must be signed by, or the computerized form completed by, an authorized agent, individual proprietor, partner, executive officer, department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment.

c. Failure to timely submit any notice or response requested by the department will result in the department basing its determination of the individual's rights to benefits on the information available.

24.8(4) Issuing determinations, redeterminations and decisions to employing units.

a. An employing unit that has filed a timely response or protest to the notice of the filing of an initial claim will be notified in writing of the determination as to the individual's rights to benefits. If an individual's employing unit has submitted timely information affecting the individual's rights to benefits, including facts disclosing that the individual voluntarily quit without good cause attributable to the employing unit or was discharged for misconduct in connection with employment, the employing unit will be notified in writing of the department's decision as to the cause of termination of the individual's employment.

b. Any notice of determination or decision must contain a statement establishing the employing unit's right of appeal.

c. Determinations regarding an individual's right to benefits, the cause of termination of the individual's employment, an employing unit's experience record and correspondence related thereto will be sent to:

(1) The address of the employing unit to which the notice of the filing of an initial claim was sent; or

(2) If the employing unit in its response or protest to the notice of the filing of an initial claim furnishes the address of an agent for the employing unit and requests that further documents and correspondence be sent to the agent, the department representative will comply, and the department has approved authorization (power of attorney) designating the agent to represent the employing unit.

871—24.9(96) Determination of benefit rights.

24.9(1) *Monetary determinations.* When an initial claim for benefits is filed, the department will send to the individual claiming benefits a notification consisting of a statement of the individual's weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual's benefit rights.

24.9(2) *Fact-finding.* Each interested party will be afforded the opportunity to provide information to the department regarding pending eligibility matters. A telephone fact-finding interview may be scheduled upon request of either interested party. Interested parties may request an in-person fact-finding interview as a reasonable accommodation under the federal Americans with Disabilities Act of 1990, as amended, or the Iowa Civil Rights Act of 1965, as amended. The department reserves the right to call any interested party in for an in-person fact-finding interview.

24.9(3) *Notice of benefit determination.*

a. This notice of benefit determination will be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potentially disqualifying issues relevant to the determination. If a claimant is ineligible, this notice will advise of the reason.

b. The department will promptly notify the claimant or any other party filing the request of its decision via a notice of benefit determination that specifies the claimant's appeal rights. Unless the claimant or any such other party entitled to notice, within ten days after such notification was sent to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final, and benefits will be paid or denied in accordance therewith.

24.9(4) *Reconsideration of determination.*

a. The department, upon receiving a timely written request for reconsideration or, on its own initiative and based on newly discovered facts it may have in its possession or may acquire, and that may affect the validity of the original determination, may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. In such case, an unemployment insurance representative will examine the facts or request and promptly issue a redetermination. The redetermination of the monetary record will constitute a final decision unless the individual files a written appeal to an administrative law judge within ten days of the date on the redetermination specifying the grounds of objection.

b. For the purposes of this subrule, the appeal period is extended to the next working day of the department if the tenth day falls on a Saturday, Sunday, or holiday.

24.9(5) *Nonmonetary determinations.*

a. When a protest of an initial claim for benefits is filed, the department will mail to the individual claiming benefits, and the most recent or any other base period employing unit, an Unemployment Insurance Decision, which affects the individual's right to benefits.

b. When an issue could result in a decision detrimental to an interested party, the interested party will be afforded the opportunity to present facts and evidence that may include an informational fact-finding interview scheduled by the department. An interested party, at the party's expense and with the party's equipment, may record (video or audio) the proceedings. All participants will be informed of the recording of the interview, which must not be disruptive or distracting.

c. Interested parties are afforded review, reconsideration, and appeal rights in the same manner as those provided for monetary determinations as established in subrule 24.9(4).

871—24.10(96) Employer and employer representative participation in fact-finding interviews.

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6(2), means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand

information who may be contacted, if necessary, for rebuttal. A party may also participate by providing written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.24(7). Written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

24.10(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6(2), as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator will notify the employer's representative in writing after each such appeal.

24.10(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6(2) has engaged in a continuous pattern of nonparticipation, the division administrator will suspend the representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on any subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

24.10(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6(2), means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)*"b."*

871—24.11(96) Deductible and nondeductible payments.

24.11(1) *Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits will be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay that is deductible in the manner prescribed in rule 871—24.12(96) will be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer. The individual claiming benefits is required to designate the last day paid that may indicate payments made under this rule. The employer is required to designate on the Notice of Claim response the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, the unemployment insurance representative will determine the days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) will be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.14(96). If the claimant received vacation pay under rule 871—24.12(96), the procedure established in Iowa Code section 96.5(7)*"c"* will govern. The maximum number of days the vacation pay will be applied is five workdays following the separation date. The first day the vacation pay can be applied is the first workday after the separation. The amount of any payment under subrule 24.13(3) will be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

24.11(2) *Deductible payments from benefits.* The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment provided in rule 871—24.14(96):

a. *Holiday pay.* However, if the employer does not pay holiday pay, the individual may request an underpayment adjustment from the department.

b. *Commissions.* The commission payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

c. *Incentive pay.* Incentive pay is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

d. *Strike pay.* Strike pay is only deductible when it is a payment received for services rendered and the individual is otherwise eligible for benefits.

e. *Remuneration other than cash.* The cash value of all remuneration payable in any medium other than cash, e.g. board, rent, housing, lodging, meals, or similar advantage, is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

f. *Stand-by pay.* When an individual is paid to hold oneself in readiness for a call to specific work for an employer but is not called, since the work is given to another, the payment is stand-by pay that is deductible from benefits when earned by the individual during the period in which the individual is claiming benefits.

g. *Tips or gratuity.* Tips or gratuity are only deductible when based on service performed by the individual during the period in which the individual is claiming benefits.

24.11(3) *Fully deductible payments from benefits.* The following payments are considered as wages, but are fully deductible from benefits on a dollar-for-dollar basis:

a. Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.

b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It is treated as vacation and fully deductible in the manner prescribed in rule 871—24.12(96).

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

d. Workers' compensation, temporary disability only. The payment is fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.

e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced if the base period employer has made 100 percent of the contributions to the plan that is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

24.11(4) *Nondeductible payments from benefits.* The following payments are not considered as wages and are not deductible from benefits:

a. Self-employment income. However, the individual must meet the benefit eligibility requirements of Iowa Code section 96.4(3).

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

c. Remuneration for work performed by the individual claiming benefits in exchange for county relief in the form of groceries, rent, etc.

d. Payment for unused sick leave.

e. National guard duty pay. This includes reserve unit drill pay for any branch of the armed services.

f. Supplemental unemployment benefit plans approved by the department. See 871—paragraph 16.3(1)*"e"* for criteria and employer procedure for obtaining department approval.

g. Pension to the blind.

h. Payment for terminal leave. Any payment received by military personnel for unused leave upon discharge.

i. Compensation for military service-connected disability from the department of veterans affairs.

j. Payments to the surviving spouse of a regular or disability pension based on the work of the deceased spouse.

k. Deferred wage compensation. Remuneration received by the individual for wages earned in a period prior to the individual's claim for benefits will not be deductible during the period in which the individual is claiming benefits.

l. Witness and jury fees. These fees are reimbursement for expenses and are not considered as wages.

m. Supplemental security income. This payment is nondeductible because it is financed by income taxes and not social security taxes and is based on need factors such as age, mental or physical disability, and personal income, and not on previous employment.

n. Federal social security benefit and social security disability payments.

o. Payments conditional upon the release of any rights.

p. Payments requiring the individual to work through a specific day to be eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.5, 96.5(5), 96.11(1), and 96.1A.

871—24.12(96) Vacation pay.

24.12(1) If the employer properly notifies the department that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted, not to exceed five workdays. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.12(96), the term "vacation pay" includes paid time off and annual leave payments.

24.12(2) If the employer fails to properly notify the department regarding the application of vacation pay to a specific vacation period, the vacation pay will be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff during the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

24.12(3) Unless otherwise specified by the employer, the amount of the vacation pay will be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

This rule is intended to implement Iowa Code section 96.5(7).

871—24.13(96) Vacation pay procedure.

24.13(1) The Notice of Claim, Request for Federal Wage and Separation Information, and Request for Wage and Separation Information on Federal Employment Additional Claim, which are returned by the employer for the purpose of notification of vacation pay, will be used as notification to the department that vacation pay is applicable. Upon receipt of these forms, the department will:

a. Compare the amount of vacation reported by the employer with the computer record. If there are any discrepancies that would affect the claimant's eligibility for unemployment insurance benefits for any week claimed, the claimant will be afforded the opportunity to present facts and evidence. The department may then allow the employer to present additional facts and evidence. If the employer is afforded an opportunity to provide additional facts and evidence, the unemployment insurance representative will likewise afford the claimant the opportunity to present additional facts and evidence.

b. Consider all information submitted by the interested parties and issue to the employer and claimant the appropriate decision concerning the vacation pay. The department will then check the current status of the claim to ascertain if any weeks have been reported.

c. If the record shows that the claimant has not reported or claimed for some or all of the weeks indicated for the vacation period, take no further action on the weeks not claimed.

24.13(2) The claimant is instructed to only report vacation pay applicable to the five workdays following the last date worked and that vacation pay designated by the employer in excess of the vacation pay the claimant reported may result in an overpayment of benefits.

This rule is intended to implement Iowa Code section 96.5(7).

871—24.14(96) Wage-earnings limitation. Partial unemployment is defined in Iowa Code section 96.1A(37)*"b."* If an individual is partially unemployed, the formula for wage deduction is a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.1A.

871—24.15(96) Benefit eligibility conditions. To be eligible to receive benefits, the individual bears the burden of establishing, and the department must find, that the individual is able to work, available for work, and earnestly and actively seeking work.

24.15(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

24.15(2) *Available for work.* The availability requirement is satisfied when an individual is genuinely attached to the labor market (e.g. the individual is willing, able, and ready to accept suitable work that the individual does not have good cause to refuse). Under unemployment insurance laws, it is the availability of an individual who is tested, and the labor market is therefore described in terms of the individual. A labor market for an individual means a market for the type of service the individual offers in the geographical area in which the individual offers the service. It does not mean that job vacancies must exist. It means only that the type of services that an individual is offering is generally performed in the geographical area in which the individual is offering the services.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

b. Intermittent employment. An individual cannot limit employability to only temporary or intermittent work until recalled by a regular employer.

c. Jury duty. The individual is considered available for work while serving on jury duty because time spent in jury service is not a personal service performed under a contract of hire in an employment situation but rather a public duty required by law. Jury duty does not render the individual as employed and ineligible for benefits even though it may involve the individual full-time.

d. Work release program while incarcerated. For those individuals incarcerated in jail, the work release program usually does not meet the availability requirements of Iowa Code section 96.4(3), but the department will review any situation concerning an incarcerated individual who can meet the requirements of Iowa Code section 96.4(3).

e. Available for part of week. Each case is decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

f. On-call workers.

(1) Substitute workers (e.g., post office clerks, railroad extra board workers) who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and is determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. A substitute teacher is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits from on-call work, such as a banquet worker, railway worker, or substitute school teacher, is not considered an unemployed individual within the meaning of Iowa Code section 96.1A(37)*"a"* and *"b."* An individual who is willing to accept only on-call work is not considered to be available for work.

g. Leave of absence. A leave of absence negotiated with the consent of both employer and employee is deemed a period of voluntary unemployment for the employee who is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee, the individual is considered laid off and eligible for benefits.

(2) If the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

h. Effect of religious convictions on Sabbath day work. An individual is considered as available for work if the precepts of the individual's religion prohibit work on the Sabbath. An individual who refuses to work on the Sabbath designated by the individual's religion because of conscientious observance of the Sabbath as a matter of religious conviction is also deemed to have good cause for refusing the work.

i. Available for work. To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed. As an individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to seek work in some other occupation in which job openings exist. If that does not seem likely to result in employment, the individual may be required to accept counseling for possible retraining or a change in occupation.

j. Reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed limitations that leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

k. Corporate officers. To be considered available, the corporate officer must meet the same tests of availability as are met by other individuals.

l. Lawfully authorized work. An individual who is not lawfully authorized to work within the United States is considered unavailable for work.

24.15(3) *Earnestly and actively seeking work.* Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts that might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is

not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual will be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The department makes determinations on a case-by-case basis. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if the department finds each constitutes a reasonable means of securing work by the individual:

(1) Applying with employers reasonably expected to have suitable openings.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Applying or testing for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work that appear suitable to the individual if the response is made in writing, in person, or electronically.

(5) Any other action that the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility that charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

b. Number of employer contacts. "Earnestly and actively" may be interpreted in different manners, depending on the estimate of employment opportunities in an area. The number of employer contacts appropriate in an area of limited opportunities might be totally unacceptable in another area. The number of required contacts is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary. Reemployment activities must be recorded as directed by the department.

c. Exceptions.

(1) Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession, or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession, or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient, except when all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program. Mere registration at a union or reporting to a union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and individuals complete reemployment activities.

(2) The requirement for seeking work is waived if all of the following conditions apply:

1. The individual is attached to a regular job or industry.

2. The individual is a high-skilled worker. For purposes of this numbered paragraph, "high-skilled worker" means a worker whose job or position requires licensing, credentials, or specialized training.

3. The individual is on a short-term temporary layoff. For purposes of this numbered paragraph, "short-term temporary layoff" means a layoff period of 16 weeks or less due to seasonal weather conditions that impacts the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

4. The individual otherwise qualifies for unemployment insurance benefits.

d. Week-to-week disqualification. Disqualification due to failure to conduct reemployment activities is made on a week-to-week basis and is not permanent.

e. Seniority rights. An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to individuals receiving extended benefits or similar federal program benefits.

f. Search for work.

(1) The group code is used to determine which individuals are required to make personal applications for work. Other factors, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(2) Individuals receiving partial benefits are exempt from making personal applications for work in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors that may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

g. Job search assistance. Attendance at job search assistance classes, including reemployment services, that are sponsored by the department may be counted as one of the individual's reemployment activities for that week.

This rule is intended to implement Iowa Code section 96.4(3).

871—24.16(96) Availability disqualifications. The following are reasons for disqualifying a claimant for being unavailable for work:

24.16(1) An individual who is ill and presently not able to work due to illness.

24.16(2) An individual presently in the hospital. If there is a change in status, the individual is to renew the claim at once if unemployed.

24.16(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work.

24.16(4) If the individual loses the means of transportation from the residence to the area of usual employment. However, an individual will not be disqualified for restricting employability to the geographic area of usual employment. More information is contained in subrule 24.20(7).

24.16(5) Full-time students devoting the major portion of their time and efforts to their studies except for students available to the same degree and to the same extent as when they accrued wage credits.

24.16(6) If an individual has a medical report on file submitted by a physician or a physician assistant, stating the individual is not presently able to work.

24.16(7) Where an individual devotes time and effort to becoming self-employed.

24.16(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

24.16(9) The claimant requested and was granted a leave of absence.

24.16(10) Failure to report as directed to the department in response to a notice sent to the claimant.

24.16(11) If a claimant is in jail or prison.

24.16(12) If an individual cannot be contacted by the department for referral to possible employment.

24.16(13) Where a claimant has demanded a wage in excess of the wages most commonly paid for suitable work the individual is seeking in the locality.

24.16(14) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

24.16(15) Where work is unduly limited because the claimant is not willing to work the number of hours necessary in the claimant's occupation.

24.16(16) Where availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

24.16(17) Where availability for work is unduly limited because the claimant is not willing to accept work in the claimant's usual occupation and has failed to establish what other types of work that can and will be performed at the wages most commonly paid in the claimant's locality.

24.16(18) Where availability for work is unduly limited because the claimant is waiting to be recalled by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

24.16(19) Where a claimant does not want to earn wages that may adversely affect receipt of social security.

24.16(20) Where availability is unduly limited because claimant is working to such a degree that removes the claimant from the labor market.

24.16(21) Reserved.

24.16(22) If the claimant is out of town for personal reasons for the major portion of the workweek and is not fulfilling reemployment requirements.

24.16(23) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

24.16(24) Failure to report any effort to find employment.

24.16(25) Failure to make an adequate work search after having been previously warned and instructed to expand the work search.

24.16(26) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.16(27) Failure to attend the major portion of the scheduled workweek for department-approved training.

24.16(28) Where the claimant spent the major portion of the period traveling while relocating.

24.16(29) The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.1A(37)*"c"* are met.

24.16(30) Where the claimant left employment prior to a scheduled layoff when claimant could have remained in employment. No disqualification may be imposed in accordance with Iowa Code section 96.5(1)*"g"* for the period subsequent to the date of the scheduled layoff if such claimant is otherwise eligible. The claimant will be disqualified for the period between the last day worked and the date of the scheduled layoff because of voluntary unemployment.

24.16(31) Where the claimant is not able to work due to personal injury.

24.16(32) Where the claimant is not able to work, is under the care of a medical practitioner, and has not been released as being able to work.

24.16(33) An individual who follows a course of action designed to discourage prospective employers from hiring the individual will be deemed to have failed to make an effort to secure work.

24.16(34) Where the work search has been deliberately falsified for the purpose of obtaining benefits, the recommended penalty is:

a. First offense—denial of benefits for six weeks.

b. Second offense—denial of benefits for nine weeks.

c. Third offense—total disqualification for the remainder of the benefit year and the department may consider filing fraud charges.

The penalties are a mere guide and not a substitute for the subjective judgment of the department.

24.16(35) Where claimant became temporarily unemployed but was unavailable for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499 and Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.1A and 96.29.

871—24.17(96) Failure to accept work and failure to apply for suitable work. A claimant's failure to accept work and failure to apply for suitable work will be removed when the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.17(1) *Bona fide offer of work.*

a. In deciding whether or not a claimant failed to accept or apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter is deemed to be sufficient as a personal contact.

b. Upon notification of a job opening for a claimant, a representative of the department will notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant will be disqualified until such time as the claimant contacts the department.

24.17(2) *Job within claimant's capabilities.*

a. To be suitable, the job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training the claimant does not already possess. As the period of unemployment lengthens, work that might originally have been unsuitable may become suitable.

b. A refusal of suitable work occurs when a claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department. The claimant will be disqualified for failure to apply for or accept an offer to work until such time as the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.17(3) *Each case decided on its own merits.* The department will investigate and determine whether the work was suitable and whether the claimant had good cause for refusal. Each case will be determined on its own merits as established by the facts. Good cause for refusing suitable work may nevertheless disqualify a claimant as being unavailable for work.

24.17(4) *Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3).* Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant will not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

24.17(5) *Bumping rights to a job.* A claimant who fails to exercise seniority rights to bump a less senior employee is eligible for benefits and the provision pertaining to the search for work is waived during a period of regular unemployment insurance benefits. This waiver of the search for work does not apply to a claimant who is receiving extended benefits.

24.17(6) *Claimant physically unable to perform job.* A medical practitioner must submit certification to support the claimant's statement that work offered is unsuitable because of the claimant's physical condition.

24.17(7) *Gainfully employed outside of area where job is offered.* Two reasons that generally constitute good cause for not accepting an offer of work are if the claimant is gainfully employed elsewhere or the claimant does not reside in the area where the job is offered.

24.17(8) *Refusal disqualification jurisdiction.* Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa Code section 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

24.17(9) *Distance to new job.* Without a prior specific agreement between the employer and employee, the employee's refusal to follow the employer to a distant new job site may not be reason for a refusal disqualification.

24.17(10) *Bulletin board notice of work.* A bulletin board notice for employees to work during a plant shutdown does not constitute an offer of work by the company.

24.17(11) *Claimant discourages prospective employers.* When a claimant willfully follows a course of action designed to discourage a prospective employer from hiring such claimant, the claimant will be deemed to have refused suitable work.

24.17(12) *Claimant moved to another state.* A claimant who moves to another state will not be subject to disqualification for refusal to return to a previously held job.

24.17(13) *Employment offer from former employer.*

a. A claimant will be disqualified for refusing work with a former employer if the work offered is reasonably suitable, comparable, and within the purview of the claimant's usual occupation. The provisions of Iowa Code section 96.5(3)*"b"* control the determination of suitability of work.

b. An employment offer will not be considered suitable if the claimant had previously quit the former employer and the conditions that caused the claimant to quit are still in existence.

24.17(14) *Suitable work.* In determining what constitutes suitable work, the department will consider, among other relevant factors, the following:

a. Any risk to the health, safety and morals of the individual.

b. The individual's physical fitness.

c. Prior training.

d. Length of unemployment.

e. Prospects for securing local work by the individual.

f. The individual's customary occupation.

g. Distance from the available work.

h. Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.

i. Whether the work offered meets the percentage criteria established for suitable work that is determined by the number of weeks that have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

j. Whether the position offered is due directly to a strike, lockout, or other labor dispute.

k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.

l. Whether employment is contingent on joining or resigning from a labor organization.

24.17(15) *Disabled accessibility to job.* A job offer is not suitable if a disabled individual has no access to a building or its facilities.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(2), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.11(1), 96.16, 96.1A, and 96.29.

871—24.18(96) Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits, but the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code sections 96.5(1)*"a"* through *"i"* and 96.5(10). The following reasons for a voluntary quit are be presumed to be without good cause attributable to the employer:

24.18(1) Claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

24.18(2) Claimant moved to a different locality.

24.18(3) Claimant left to seek other employment but did not secure employment.

24.18(4) Claimant was absent for three days without giving notice to employer in violation of company rule.

24.18(5) Claimant left due to an inability to work with other employees.

24.18(6) Claimant failed to return to work upon the termination of a labor dispute.

24.18(7) Claimant left to enter military service, either voluntarily or by conscription. While in military service such claimant is considered to be on leave from employment. Voluntary quit in this context will occur when upon release from military service the claimant does not return to the claimant's employer to apply for employment within 90 days, provided the claimant provides evidence to the employer of satisfactory completion of the military service and further provided that the claimant is still qualified to perform the duties of the position.

24.18(8) Claimant left employment to accompany a spouse to a new locality. No disqualification will be imposed when Iowa Code section 96.5(1)*"b"* is applicable.

24.18(9) Claimant left to get married.

24.18(10) Claimant left without notice during a mutually agreed upon trial period of employment.

24.18(11) Claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

24.18(12) Claimant becomes incarcerated.

24.18(13) Claimant left because of lack of child care.

24.18(14) Claimant left because of a dislike of the shift worked.

24.18(15) Claimant left to enter self-employment.

24.18(16) Claimant left for compelling personal reasons and the period of absence exceeded ten working days.

24.18(17) Claimant left because of dissatisfaction with the work environment.

24.18(18) Claimant left because of a personality conflict with the supervisor.

24.18(19) Claimant left voluntarily due to family responsibilities or serious family needs.

24.18(20) Claimant left employment to accept retirement when such claimant could have continued working.

24.18(21) Claimant left to take a vacation.

24.18(22) Claimant left to go to school.

24.18(23) Claimant left rather than perform the assigned work as instructed.

24.18(24) Claimant left after being reprimanded.

24.18(25) Claimant left in anticipation of a layoff in the near future, but work was still available at the time claimant left.

24.18(26) Claimant left due to the commuting distance to the job and was aware of the distance when hired.

24.18(27) Claimant left work to keep from earning enough wages during the year to adversely affect receipt of social security.

24.18(28) Claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required.

24.18(29) Claimant left because claimant felt that the job performance was not to the satisfaction of the employer provided the employer had not requested claimant leave and continued work was available.

24.18(30) Claimant left because work was irregular due to weather conditions that were not unusual in claimant's type of employment.

24.18(31) Claimant left because of illness or injury that was not caused or aggravated by the employment or pregnancy and failed to:

a. Obtain the advice of a licensed and practicing physician or physician assistant;

b. Obtain certification of release for work from a licensed and practicing physician or physician assistant;

c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician or physician assistant; or

d. Fully recover so that the claimant could perform all of the duties of the job.

24.18(32) Where claimant maintained that the claimant left due to an illness or injury that was caused or aggravated by the employment but the employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

24.18(33) Where claimant gives the employer notice of an intention to resign and the employer accepted such resignation. This rule also applies to a claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

24.18(34) Where claimant gave the employer an advance notice of resignation, causing the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation. Benefits will be denied effective the proposed date of resignation.

24.18(35) Where claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.6(2), 96.16, and 96.1A.

871—24.19(96) Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. In addition to the reasons established in Iowa Code section 96.5(1), the following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.19(1) An employer's willful breach of contract of hire is not a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and may involve changes in working hours, shifts, remuneration, location of employment, or drastic modification in type of work. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

24.19(2) Claimant left due to unsafe working conditions.

24.19(3) Claimant left due to unlawful working conditions.

24.19(4) Claimant left due to intolerable or detrimental working conditions.

24.19(5) Claimant was laid off by the employer for being pregnant; however, availability must still be determined.

24.19(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. For purposes of Iowa Code section 96.5(1)*"d,"* recovery is defined as the ability of the claimant to perform all the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment that caused or aggravated the illness, injury, allergy, or disease to the employee that made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph, an individual must present competent evidence showing adequate health reasons to justify termination, before quitting have informed the employer of the work-related health problem and informed the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work that is not injurious to the claimant's health and for which the claimant must remain available.

24.19(7) For purposes of Iowa Code section 96.5(1)*"c,"* immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or

daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family are related by blood or by marriage.

24.19(8) For purposes of Iowa Code section 96.5(1)*"e,"* family is defined as wife, husband, children, parents, grandparents, grandchildren, foster children, brothers, brothers-in-law, sisters, sisters-in-law, aunts, uncles or corresponding relatives of the classified employee's spouse or other relatives of the classified employee or spouse residing in the classified employee's immediate household.

24.19(9) A claimant who underwent a mandatory retirement as of a certain age because of company policy or in accordance with an agreement between the employer and union.

24.19(10) The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

24.19(11) When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee is eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

24.19(12) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date is deemed to be unavailable for work until the future separation date designated by the employer. After the employer-designated date, the separation will be considered a layoff.

24.19(13) For purposes of Iowa Code section 96.5(1)*"g,"* good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business, blinding snowstorm, telephone lines down, employer closed for vacation, hospitalization of the claimant, and other substantial reasons.

Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications.

24.19(14) For purposes of Iowa Code section 96.5(1)*"f,"* working days means the normal days in which the employer is open for business.

24.19(15) Separation due to incarceration.

a. The claimant is eligible for benefits if the department finds that all of the following conditions have been met:

(1) The employer was notified by the claimant prior to the absence;

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the claimant was found not guilty of all criminal charges relating to the incarceration;

(3) The claimant reported back to the employer within two working days of the release from incarceration and offered services to the employer; and

(4) The employer rejected the offer of services.

b. If the claimant fails to satisfy the requirements of subparagraph 24.19(17)*"a"*(1), the claimant is considered to have voluntarily quit the employment if the claimant was absent for three working days or more under subrule 24.18(4). If the absence was two days or less, the separation is considered a discharge under rule 871—24.24(96). If all of the conditions of subparagraphs 24.19(17)*"a"*(2), 24.19(17)*"a"*(3) and 24.19(17)*"a"*(4) are not satisfied, the separation is considered a discharge under rule 871—24.24(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Irving v. Employment Appeal Board*, 883 N.W.2d 179.

24.19(16) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work is not construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable will shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 871—24.17(96) are controlling in the determination of suitability of work. However, this subrule does not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) that denies benefits that are based on

service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee is considered to have voluntarily quit employment.

24.19(17) The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

24.19(18) When a claimant was compelled to resign when given the choice of resigning or being discharged, it is not considered a voluntary leaving.

24.19(19) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. This subrule does not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) that denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees are considered to have voluntarily quit employment.

24.19(20) The claimant left work because the type of work was misrepresented at the time of acceptance of the work assignment.

24.19(21) A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service is entitled to a leave of absence during the period of such duty. The employer will restore the person to the position held prior to such leave of absence, or employ the person in a similar position provided that the person provides evidence to the employer of satisfactory completion of the training or duty and further provided that the person remains qualified to perform the duties of the position.

24.19(22) The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account will immediately become chargeable for the benefits paid that are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification will be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.1A.

871—24.20(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and who has not requalified for benefits following the voluntary quit of part-time employment, but is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, will not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer that was voluntarily quit will be notified that benefit payments will not be made that are based on the wages paid by the part-time employer, and benefit charges will not be assessed against the part-time employer's account. However, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment will be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer will be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)*"g."*

871—24.21(96) Voluntary quit requalifications and previously adjudicated voluntary quit issues.

24.21(1) A claimant is eligible for benefits even though having voluntarily left employment, if after leaving the employment, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.21(2) The claimant is eligible for benefits even though having been previously disqualified from benefits due to voluntary quit, if, after the disqualification, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.21(3) The claimant will be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be insured work and does not include self-employment.

24.21(4) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

24.21(5) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the administrative law judge and such decision has become final.

24.21(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the employment appeal board and such decision has become final.

This rule is intended to implement Iowa Code section 96.5(1)*"a."*

871—24.22(96) Business closing.

24.22(1) Whenever an employer at which the individual was last employed and is laid off goes out of business, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period, which may increase the maximum benefit amount up to 26 times the weekly benefit amount or one-half of the total base period wages, whichever is less. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because the employer goes out of business within the same benefit year. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the claim for benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

24.22(2) Going out of business is when an employer closes its door and ceases to function as a business. An employer is not considered to have gone out of business if it sells or otherwise transfers the business to another employer that continues to operate the business.

24.22(3) When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business, the representative completes a verification of business closing form and refers it to the field audit section for verification. Upon return of the form from the field audit section, a representative will issue the appropriate decisions to all claimants who requested that their unemployment insurance claim be redetermined as a business closing.

This rule is intended to implement Iowa Code section 96.3(5).

871—24.23(96) Subsequent benefit year condition.

24.23(1) The claimant must have been paid benefits on a previous claim.

24.23(2) Qualifications for a second benefit year are established in Iowa Code section 96.4(4)*"c."* Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes.

24.23(3) Employment for a railroad under the Railroad Unemployment Insurance Act is insured work.

24.23(4) Disqualification for lack of eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work will be removed upon verification that the claimant worked in and received wages for insured work totaling eight times the claimant's weekly benefit amount from the previous benefit year during or after the previous benefit year.

This rule is intended to implement Iowa Code section 96.4(4).

871—24.24(96) Discharge for misconduct.

24.24(1) *Definition.*

a. "Misconduct" is defined in Iowa Code section 96.5(2)*"d."*

b. Back pay awards are not considered when calculating wages for qualification under Iowa Code section 96.5(2)*"a."*

24.24(2) *Gross misconduct.*

a. "Gross misconduct" is defined in Iowa Code section 96.5(2)*"c."*

b. An indictable offense means a common law or statutory offense presented on indictment or on county attorney's information, and includes all felonies and all indictable misdemeanors punishable by a fine of more than $500 or by imprisonment in the county jail for more than 30 days.

c. If gross misconduct is established, the department will cancel the individual's wage credits earned, prior to the date of discharge, from all employers regardless of when the act occurred during the benefit year.

24.24(3) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence are not sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct is resolved.

24.24(4) *Trial period.* A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work are not issues of misconduct.

24.24(5) *False work application.* It is an act of misconduct when a willfully and deliberately false statement, made on a work application, may or does result in endangering the health, safety or morals of the applicant or others, result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy.

24.24(6) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the claimant's duty to the employer and is considered misconduct except for illness or other reasonable grounds so long as properly reported to the employer.

24.24(7) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

24.24(8) *Suspension or disciplinary layoff.* Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cosper vs. Iowa Department of Job Service and Blue Cross of Iowa*.

871—24.25(96) Labor disputes.

24.25(1) *Definition.* As used in sections 96.5(3)*"b"*(1) and 96.5(4), the term "labor dispute" shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual is disqualified for benefits if unemployment is due to a labor dispute.

24.25(2) *Initial requirements—workforce development center.*

a. As soon as a workforce development center has knowledge of a labor dispute or work stoppage in its administrative area, a Labor Dispute Report will be sent to the administrative office of the department advising of the labor dispute or work stoppage.

b. If the labor dispute or work stoppage is terminated before the report is transmitted, the information concerning the termination of the dispute and the date of the worker's return to work must also be entered on the Labor Dispute Report.

c. When the labor dispute or work stoppage is terminated after the filing of the initial Form 68-0535, the department must be notified of the termination and return to work dates.

d. In those instances where an association represents a group of employers, the report will contain the names and addresses of the employers who are involved in the labor dispute, as well as the name and address of the association and the name of the association official who can furnish information about the work stoppage.

e. In taking initial claims in which there is a labor dispute, the workforce development center will process an initial application for unemployment, Application for Job Placement Assistance and/or Job Insurance, in the normal manner, which will include the union name and local union number.

f. If there is a work stoppage at the premises of an employer and it is a known fact that there has not been a union and that at present there is no union representation nor any attempt by a union to organize the workers of the plant, a statement will be taken from each individual claiming benefits. Each individual's statement would become a part of the evidence submitted to the administrative office of the department of workforce development.

g. Statements from each individual claiming benefits are not required on the labor dispute issue whenever there is union representation even though some of the individuals may not be union members.

h. When there is a termination of the work stoppage, or if the issues have not been resolved and all workers returned to work, a report must be made to the legal counsel, unemployment insurance services division. The report will include the:

(1) Date on which an agreement was reached on the issues that caused the work stoppage.

(2) Date on which the workers returned to work, or a schedule as to how the workers will return to work.

i. The requirements in subrules 24.25(1) and 24.25(2) will cover the establishment and termination reports of the work stoppage and give the information necessary for the benefits bureau to investigate the work stoppage when claims are filed on which a protest is made that the claimant is involved in a work stoppage.

j. During the period of a labor dispute, the claims involved in the labor dispute are processed as though no separation from the employer had occurred. Therefore, if an individual is still unemployed after the termination of the labor dispute, such individual has either been laid off, voluntarily left, or has been discharged from employment, and an additional claim will be taken if the individual continues in claim status.

k. When the employer or the union requests advice and information pertaining to what action should be taken in regard to the labor dispute, the workforce development center, at that time, should obtain all the information possible from the requester for inclusion in the labor dispute report to the unemployment insurance services division.

l. The employer will receive separate notices of claim filing for each claimant and shall make any protest in the appropriate section on the Notice of Claim. The employer will receive a copy of the decision that may be appealed.

m. The employer will use the Notice of Separation or Refusal of Work to report separations from work by employees for reasons of voluntary leaving, misconduct and job refusal, but not labor disputes.

24.25(3) *Initial determination.* In any case in which the payment or denial of benefits will be determined by the provisions of Iowa Code section 96.5(4), the representative of the unemployment insurance services division will promptly review the evidence submitted and issue a decision to interested parties, who have ten days from the date of mailing the decision to the last known address of record to appeal the decision.

871—24.26(96) Labor dispute—policy.

24.26(1) Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

24.26(2) The relationship between employer and employee continues during the period of the labor dispute unless severed by the employer or employee.

a. If the relationship is severed by the employer, Iowa Code section 96.5(2) governs.

b. If the relationship is severed by the employee, Iowa Code section 96.5(1) governs.

24.26(3) An individual who is unemployed because of a labor dispute and accepts employment elsewhere during the period of the labor dispute must return to the previous employer when said labor dispute is settled or be subject to a determination on the issue of voluntary leaving.

24.26(4) Any individual unemployed because of failure or refusal to cross a picket line during a labor dispute is considered as involved in such labor dispute.

24.26(5) Appeals of the department's initial determination of a labor dispute issue are heard by an administrative law judge, whose decision may be appealed to the employment appeal board.

24.26(6) An individual not involved in or participating in a labor dispute who failed to report to work because of a picket line shall be deemed to have voluntarily left employment. However, if the individual was subjected to hostility or violence in an attempt to cross a picket line, then the individual will be held to have involuntarily left employment.

a. The division presumes that any strike or lockout is being conducted in a lawful manner unless there is evidence to the contrary. The division presumes that any picketing is being conducted in a peaceful manner and that ingress or egress to the employer's facility is not being unlawfully impeded.

b. If an injunction request for actual or threatened violence, unlawful impedance of ingress or egress, or other unlawful conduct is denied due to such conduct not being established, the division presumes that the picket line is peaceful absent evidence to the contrary.

c. If an injunction is obtained, the division presumes the picket line is peaceful as of the date the injunction is issued unless evidence is introduced that proves the contrary proposition.

24.26(7) A lockout is not a labor dispute if the claimant is willing to continue working under the preexisting terms and conditions of the expired collective bargaining agreement for a reasonable period of time while a new collective bargaining agreement is negotiated. A lockout is a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get more desirable terms for the employer.

a. The test for determining whether a stoppage of work is a lockout or labor dispute is to determine the final cause and the party ultimately responsible for the work stoppage. If the employees have offered to continue working for a reasonable period of time under the preexisting terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations and the employer refuses to maintain the status quo by extending the expired contract, the resulting work stoppage constitutes a lockout, and the claimants are not disqualified because of a labor dispute.

b. A cessation of employment by the employer is not a lockout if:

(1) The stoppage of work is in the same facility or another facility of the employer and the claimant is directly involved in the labor dispute and the collective bargaining negotiations will directly affect the claimant's condition of employment, or

(2) The claimant or the recognized collective bargaining agent declines an offer from the employer to extend the expired collective bargaining agreement while negotiations continue for a reasonable period of time taking into consideration the nature of the employer's business, or

(3) The employer can demonstrate that its refusal to allow employees to continue working under the terms and conditions of the expired collective bargaining agreement is due to a compelling reason of such degree that the extension of the contract would be unreasonable under the circumstances.

24.26(8) A labor dispute involves a stoppage of work at the plant or establishment. If there is no stoppage of work, the individual who leaves employment is deemed to have voluntarily quit.

24.26(9) When individuals, not as a group, union, or under union direction or suggestion but individually, left their work voluntarily in protest against the discharge of a fellow employee by their employer, in an unauthorized strike, it is held to be a voluntary quit.

24.26(10) Employment offered by an employer involved in a labor dispute or an employer who becomes involved in a labor dispute prior to acceptance by the claimant is considered:

a. Not suitable if the offer is made to a person who would be a new employee or a former employee who was laid off before the labor dispute and the vacancy was created by the strike, lockout, or other labor dispute.

b. Suitable if the offer was made to a former employee who was previously laid off, provided the position offered is not vacant because of the strike, lockout, or other labor dispute and the provisions of section 96.5(4) will apply.

c. Suitable if the offer is made to a new employee who was not previously laid off by the same employer, and the vacancy was not created by a labor dispute.

24.26(11) Other employment accepted during periods of labor disputes does not free the claimant from the labor dispute section of the Iowa employment security law unless the claimant severs the relationship with the employer and obtains bona fide employment elsewhere.

This rule is intended to implement Iowa Code sections 96.5(3) and 96.5(4).

871—24.27(96) Date of submission and extension of time for payments and notices.

24.27(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division will be considered received by and filed with the division:

a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.27(1)*"a"* and *"b,"* on the date it is received by the division.

24.27(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period will be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division will designate personnel who are to decide whether an extension of time will be granted.

c. No submission will be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division will issue an appealable decision to the interested party.

24.27(3) Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division will be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last-known address. The date mailed is presumed to be the date of the document, unless otherwise indicated by the facts.

24.27(4) Electronic delivery. Any notice, report form, determination, decision, or other document sent by the division via the U.S. Department of Labor state information data exchange system is considered as having been given to the party to whom it is directed on the date it is submitted on the system. The date submitted is presumed to be the date of the document, unless otherwise indicated by the facts.

871—24.28(96) Interstate benefits.

24.28(1) An interstate claimant is an individual who claims benefits under the unemployment insurance law of one or more liable states. Interstate benefits are payable under the plan approved by the national association of state workforce agencies to unemployed individuals who do not reside in the state(s) in which wage credits were earned.

24.28(2) The division shall determine unemployment benefit claims for interstate claimants in accordance with applicable state and federal law.

871—24.29(96) Payment of benefits to interstate claimants.

24.29(1) Section 96.20 of the employment security law of Iowa authorizes the department to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both. In conformity with this section, the department of workforce development prescribes:

a. Applicability. This regulation shall govern the department in its administrative cooperation with other states.

b. Definitions. In addition to terms defined in 17.1, the following definitions apply to this rule unless the context clearly requires otherwise:

(1) "Interstate benefit payment plan." The plan approved by the national association of state workforce agencies under which benefits shall be payable to unemployed individuals who do not reside in the state (or states) in which benefit credits have been accumulated.

(2) "Interstate claimant." This is an individual who claims benefits under the unemployment insurance law of one or more liable states. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such a claimant in a specified area.

(3) "State." This includes the District of Columbia, Puerto Rico, the Virgin Islands and Canada.

c. Registration for work.

(1) Each interstate claimant will be registered for work as legally required by the agent state. This registration will be deemed to meet the registration requirements of the liable state.

(2) Each agent state will report to the respective liable state whether each interstate claimant meets the registration requirements of the agent state.

d. Benefit rights of interstate claimants.

(1) If a claimant files a claim against any state, and it is determined that the claimant has available benefit credits in that state, then claims will be filed only against that state as long as benefit credits are available there. Thereafter, the claimant may file claims against any other state having available benefit credits.

(2) For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction. The department will respect the prior adjudication of a liable state if the department is made aware of the decision and will apply the Iowa requalification criteria, unless the claimant has requalified pursuant to the liable state's requalification criteria.

(3) The effective date of an interstate claim is the Sunday of the week the claim was filed, unless proof is obtained from another state that the claimant should have filed in Iowa.

e. Claim for benefits. Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms or by using the procedures provided by the liable state and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

f. Determination of claims.

(1) In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim unless the liable state has a procedure for taking out-of-state claims.

g. Appellate procedure.

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to

have been made and communicated to the liable state on the date when it is received by any qualified representative of the agent state.

24.29(2) Extended benefits interstate claims. When extended benefits are in effect and a claimant is filing for extended benefits, an eligible individual shall be limited to a maximum of two weeks of the extended benefit entitlement if the individual moves from this state, before or during an extended benefit period triggered by this state's "on" indicator, to another state in which an extended benefit period is not in effect.

This rule is intended to implement Iowa Code sections 96.6(1) and 96.29(3).

871—24.30(96) Combined wage claim.

24.30(1) Purpose of plan. The combined wage program enables an unemployed worker with covered employment or wages in more than one state to combine all employment and wages in one state to qualify for benefits or to receive increased benefits.

a. Each state will cooperate with every other state by implementing these uniform combined wage procedures, rules and regulations.

b. The benefit year, base period, qualifying wages, benefit rate, and duration of benefits under the unemployment compensation law of the agent state is applicable to a combined wage claimant.

c. The rights of the individual under the combined wage claim plan are determined by the paying state after the combining of all wages available from the liable states; however, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. The department will respect the prior adjudication of the transferring state if the department is aware of the decision and will apply the Iowa requalification criteria, unless the individual has requalified pursuant to the liable state's requalification criteria.

d. All other provisions of the unemployment compensation laws and rules of the state agency of the paying state will be applied to the combined wage claim.

e. The paying state is the state in which the claim is filed unless the individual does not qualify after the transfer has been completed or the claimant is a commuter, meaning that the person travels on a daily or regular basis from the state of residence to a separate state where the person works.

24.30(2) Exception to combining wage credits. Wages and employment are not transferable to the paying state if:

a. Any employment and wages have been transferred to any other paying state and not returned unused,

b. Wages have been used by the transferring state as the basis of a monetary determination that established a benefit year, and

c. Any employment and wages have been canceled or are unavailable due to a transferring state determination made prior to the request for transfer.

24.30(3) The claimant will be told that if there was a previous election to file a combined wage claim, the claimant may withdraw the combined wage claim any time, up to the date the paying state's monetary determination becomes final. However, if the claimant withdraws a combined wage claim and benefits have been paid, the claimant will be required to repay any such benefits. This repayment may be done electronically, by cash, by check, by money order, or by an authorization to the state(s) from which such claimant next claims benefits to reimburse the combined wage paying state for any benefits that said claimant will be paid.

871—24.31(96) Department-approved training. Department-approved training allows claimants to return to the labor market after attending vocational training while being paid unemployment insurance benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. It includes technical, skill-based, or job readiness training intended for pursuing a career. Upon departmental approval, the claimant is exempt from the work search requirement for continued benefit eligibility benefits. To be eligible for department-

approved training programs and to maintain continuing participation therein, the individual must meet the following requirements:

24.31(1) The claimant applies to the department demonstrating:

a. The educational establishment at which the claimant would receive training;

b. The estimated time required for such training;

c. The date the training will be complete or the degree obtained;

d. The occupation the training is allowing the claimant to maintain or pursue; and

e. The training plan, indicating the requirements needed to complete the certification or degree.

24.31(2) A claimant may receive unemployment insurance while attending a training course approved by the department if:

a. The educational establishment is a college, university or technical training institution;

b. The training is completed 104 weeks or less from the start date; and

c. The individual is enrolled and attending as a full-time student, as defined by the institution.

While attending the approved training course, the claimant need not be available for work or actively seeking work, except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training, to continue eligibility for unemployment insurance, the claimant may place no restriction on employability. The claimant must be able to work, available for work, and actively searching for work. The claimant may be subject to disqualification for any refusal of work without good cause after completing training.

24.31(3) The claimant must show satisfactory attendance and progress in the training course to be considered for a subsequent approval.

871—24.32(96) Training extension benefits.

24.32(1) Training extension benefits provide continued benefit eligibility, allowing an individual to pursue a training program for entry into a high-demand or high-technology occupation. Training extension benefits are available to an individual who voluntarily quit with good cause attributable to the employer or who was laid off or from full-time employment in a declining occupation or who was involuntarily separated from full-time employment due to a permanent reduction of operations.

24.32(2) The weekly benefit amount is pursuant to the same terms and conditions as regular unemployment benefits and the benefits are for a maximum of 26 times the weekly benefit amount of the claim that resulted in eligibility. Contributory and reimbursable employers will be relieved of charges for training extension benefits.

24.32(3) Enrollment must be full-time, as defined by the training institution, and courses must be designed to prepare the individual for a high-demand or high-technology occupation. The department will make available on its website and at workforce centers a list of high-demand, high-technology, and declining occupations.

a. High-technology occupations include life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, environmental technology, and technologically advanced green jobs. A high-technology occupation is one that requires a high degree of training in the sciences, engineering, or other advanced learning area and that has work opportunities available in the labor market area or the state of Iowa.

b. A high-demand occupation means an occupation in a labor market area or the state of Iowa as a whole in which the department determines that work opportunities are available.

c. A declining occupation has a lack of sufficient current demand in the individual's labor market area or the state of Iowa for the occupational skills possessed by the individual, and the lack of employment opportunities is expected to continue for an extended period of time.

d. A declining occupation includes an occupation for which there is a seasonal variation in demand in the labor market or the state of Iowa, and the individual has no other skill for which there is a current demand.

e. A declining or high-demand occupation will be determined by using Iowa labor market information for each region in the state.

24.32(4) The application for training benefits must be received within 30 days after state or federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program for training extension benefit eligibility to continue.

24.32(5) Training benefits will cease to be available if the training is completed, the individual quits the training course, the individual exhausts the training extension maximum benefit amount, or the individual fails to make satisfactory progress. Benefits will cease no later than the end of the benefit year in which the individual became eligible for the benefits. Individuals must file and receive benefits under any federal or state unemployment insurance benefit program until the benefits have been exhausted in order to maintain eligibility for training extension benefits.

This rule is intended to implement Iowa Code section 96.3(5).

871—24.33(96) Retention of DHS referral form.

871—24.34(96) Trade Act of 1974. Unemployment benefits payable to claimants under the Trade Act of 1974 (P.L. 93-618) are determined in accordance with the rules of the United States department of labor as published in the Code of Federal Regulations, Chapter 29, Parts 70 and 91. The Trade Act of 1974 is designed to pay unemployment benefits to workers who become unemployed due to foreign production of goods replacing domestic production.

871—24.35(96) Extended benefits.

24.35(1) *Purpose.* Extended benefits are defined by Iowa Code section 96.1A(20).

24.35(2) *Determination of when extended benefits are paid.*

a. When paid. The state "on" indicator, as defined by Iowa Code section 96.1A(29), determines when extended benefits are paid in this state.

b. When not paid. The state "off" indicator, as defined by Iowa Code section 96.1A(28), determines when extended benefits are not paid in this state.

c. Period of payment. The extended benefit period is defined in Iowa Code section 96.1A(19).

d. Rate of insured unemployment. See Iowa Code section 96.1A(31).

24.35(3) *Notice of the beginning and ending of an extended benefit period.*

a. Notice to individuals. The department will notify individuals of:

(1) The beginning of an extended benefit period. The notice of potential entitlement to extended benefits is sent to each individual who has exhausted all rights to regular benefits either prior to the beginning of, or during, the extended benefit period and who has a benefit year that will not end prior to the beginning of the extended benefit.

(2) The ending of an extended benefit period. The notice of termination of entitlement to extended benefits is sent to each individual who is currently filing a claim for extended benefits.

b. Reserved.

24.35(4) *Amount and duration of extended benefits.*

a. Eligibility period. The eligibility period is defined in Iowa Code section 96.29(6).

b. Applicable benefit year. The applicable benefit year includes the period of one year from the date that an individual files a valid claim for benefits and any weeks following this one-year period in which the individual's eligibility period for extended benefits has not expired and the individual is not able to establish a second benefit year for regular benefits.

24.35(5) *Eligibility requirements for extended benefits.* The individual is required to actively seek, apply for or accept suitable work as per the current extended benefits proclamation.

24.35(6) Overpayment of extended benefits.

871—24.36(96) Disaster benefits. Unemployment benefits payable under the Disaster Relief Act of 1974, will be determined in accordance with the rules of the United States Department of Labor and published in the Code of Federal Regulations, Title 20, Chapter V, Parts 625 and 650.

871—24.37(96) UCFE claims. Benefits under the Federal Employer's Compensation Act. Unemployment benefits for civilian federal employees are determined in accordance with the applicable

state law and rules as well as the rules of the United States Department of Labor published in the Code of Federal Regulations, Title 20, Chapter V, Parts 609, 615, 616, and 650. These benefits are payable under the Federal Employees Compensation Account, 5 U.S.C. 8509, and are based on wages earned by civilians in covered federal employment.

871—24.38(96) UCX claims.

24.38(1) Unemployment benefits for ex-military personnel, in addition to being determined in accordance with applicable Iowa law and rules, will be determined in substantial compliance with the rules and guidelines of the United States Department of Labor published in the Code of Federal Regulations, Title 20, Chapter V, Parts 614 and 650.

24.38(2) These benefits are payable under the Ex-Service Member's Unemployment Compensation Act of 1958, 5 U.S.C. 8521-8525.

871—24.39(96) Temporary extended unemployment compensation.

24.39(1) Overpayments will be offset up to and including 100 percent of the federal extended unemployment compensation benefit payment.

24.39(2) Waiver of overpayments.

a. Individuals who have received amounts of extended unemployment compensation to which they were not entitled are required to repay the amounts of such extended unemployment compensation except that the state repayment may be waived if the department determines that:

(1) The payment of such extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors are considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and that was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors are considered:

(1) Whether the overpayment was the result of a decision on appeal;

(2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and

(3) Whether recovery of the overpayment will cause financial hardship to the individual.

This rule is intended to implement Iowa Code sections 96.11 and 96.29.

871—24.40(96) School definitions.

24.40(1) Educational institution is defined in Iowa Code section 96.1A(12).

24.40(2) Educational service is defined in Iowa Code section 96.4(5)*"d."*

24.40(3) Employment definitions.

a. Professional employees including educational service agency employees means persons who are employed in an instructional, research or principal administrative capacity as explained below:

(1) Instructional: Services performed for an educational institution that consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services that consist of directing or supervising the instructional activities of others; or services that consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(2) Research: Services performed for an educational institution that consist of careful and systematic study and investigation in a field of science and knowledge, undertaken to establish facts or principles. The work performed is in a predominantly intellectual field or artistic endeavor that is varied in character and requiring the constant exercise of discretion and judgment in performance. The work further requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

(3) Principal administrative: Services performed for an educational institution that consist of managing the educational institution or one of its major divisions or departments. Such services include the responsibility for establishing and administering policies, rules, and regulations that have major impact on the overall operations and functions of the educational institutions or one of its major divisions or departments. Work and activities are performed under general direction and broad objectives and missions, with the authority to determine goals and the techniques and methods of operations of the educational institution or one of its major divisions or departments. The duties performed by the individual rather than the title held should determine whether the prohibition applies.

b. Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in an instructional, research, or principal administrative capacity.

24.40(4) Institution of higher education is defined in Iowa Code section 96.1A(25).

24.40(5) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

24.40(6) School duration period.

a. "Academic year" is defined as that period of time that school personnel are obligated by contract to render services to the educational institution during the school year.

b. "Term" is defined as either of the two periods into which the yearly period of instruction is normally divided, commonly referred to as a semester. If the educational institution operates on a quarterly basis, then term means the same as a quarter period. If the educational institution operates on a trimester basis, then term means the same as a trimester period or any other division in a school year during which instruction is regularly given to students.

c. Twelve-month employment. School employees who perform services for educational institutions 12 months of a calendar year or years.

24.40(7) The term "established and customary" vacation period or holiday recess involved in this provision includes those scheduled at Christmas and in the spring, when those vacation periods or recesses occur within a term.

24.40(8) Between terms or academic years denial means any week of unemployment that begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such terms or academic years.

871—24.41(96) Determining eligibility of school claims after employer protest.

24.41(1) Claim filed. When a claim has been filed by an employee of an educational institution, the department sends a Notice of Claim to the educational institution. To protest the claim, the educational institution returns the notice to the department, including a statement as to whether or not the individual who filed a claim had been given reasonable assurance for the ensuing academic year or term. The statement should include the date and method of such notification. A copy of the notification may be attached to the Notice of Claim.

24.41(2) If the statement from the school indicates that there is no reasonable assurance of the employee returning to work for the ensuing academic year or term, the claim will be allowed, subject to meeting all other eligibility requirements. However, if an educational institution submits a statement or the claimant furnishes information concerning a reasonable assurance of school employment, the employee is subject to a denial of benefits. If the fact-finding results in a disqualification, the effective starting date of the disqualification is determined as follows:

a. No earlier than the effective starting date of the claim. If the job offer was prior to the beginning date of the claim and the claimant refuses the offer, the issue is adjudicated as a voluntary quit.

b. The Sunday of the week in which the job was offered under any of the following conditions:

(1) The employer protest was made within ten-day protest period.

(2) The department was notified within ten days of the date of the offer.

(3) The claimant was in a reporting status on a claim for unemployment insurance at the time the offer was made and the claimant failed to notify the department of the offer.

c. The Sunday of the week in which the claimant or employer notified this department of the offer unless the offer was prior to the week that the department was notified of the offer and the claimant was in reporting status on a claim for unemployment insurance at that time. In this situation, the effective starting date of disqualification will be the Sunday of the week in which the job offer was made.

d. The Sunday of the week in which the employer notified the department of the offer to the claimant. A refusal to accept the offer of employment is adjudicated as a voluntary quit section.

24.41(3) Professional employee. Unemployment insurance payments that are based on school employment shall not be paid to a professional employee for any week of unemployment that begins between two successive academic years, between regular terms, or during a period of paid sabbatical leave if the individual has a contract or reasonable assurance to perform services in any such capacity for any educational institution for both such academic years or terms. However, unemployment insurance payments may be made that are based on non-school-related wage credits pursuant to subrule 24.41(6).

24.41(4) Nonprofessional employee.

a. Unemployment insurance payments that are based on school employment may not be paid to a nonprofessional employee for any week of unemployment that begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.41(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to paragraph 24.2(1)*"e."*

24.41(5) An educational institution employee who performs services on a 12-month, year-round basis whose employment is terminated through layoff or reduction in force prior to the completion of the 12-month period, is eligible for benefits and may not be disqualified under the provisions of Iowa Code section 96.4(5). An offer of reemployment to the 12-month, year-round employee for the succeeding academic year or term will be adjudicated under Iowa Code section 96.5(3) regarding offers of suitable work and no disqualification may be imposed prior to the week in which the employment is scheduled to commence.

24.41(6) Benefits based on services performed in an educational institution for periods between academic years or terms that are denied to an individual will result in the denial of the use of such wage credits. However, if sufficient non-school wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

24.41(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes, then the between terms denial established by Iowa Code

section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

a. A nonprofit organization that has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs that have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

b. A head start program that is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

24.41(8) Wages earned and payment deferred. Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a "when earned" basis rather than on a "when paid" basis. Deferred wages currently paid that are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9)*"b"* and paragraph 24.13(2)*"o."*

24.41(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments may not be paid to any individual for any week that commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. The provision of subrule 24.52(6) could also apply in this situation.

24.41(10) Substitute teachers.

a. Substitute teachers are professional employees and subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subparagraph 24.15(2)*"i"*(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not deemed unemployed persons pursuant to subparagraph 24.15(2)*"i"*(3).

d. Substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subparagraph 24.15(2)*"i"*(3) if they are:

(1) Able and available for work,

(2) Making an earnest and active search for work each week,

(3) Placing no restrictions on their employability, and

(4) Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.19(19).

24.41(11) Declination of new contract or reasonable assurance.

a. The school employee who is not employed on a 12-month, year-round basis and who fails or refuses to accept a contract or reasonable assurance of employment in the succeeding academic term or year will have the separation adjudicated as a voluntary quit.

b. This subrule also applies to substitute teachers who fail or refuse to accept a contract or reasonable assurance of employment in the succeeding academic term or year pursuant to subrules 24.19(19) and 24.19(22).

24.41(12) School employees who are not offered a contract or reasonable assurance of employment in the succeeding academic term or year are eligible for benefits if all other eligibility conditions are met. However, school employees who subsequently receive a contract or reasonable assurance of employment for the following term or year will be disqualified under the "between terms denial" provision.

24.41(13) Continuing supplemental (part-time) school employment after loss of non-school employment. All employers, including employers of part-time workers, are notified of the filing of a claim. The school employer who continues to furnish part-time employment to the claimant may make a protest on the basis that the individual is still employed at the part-time employment and request removal of any charges to the part-time employer account pursuant to Iowa Code section 96.7(3)*"a"*(2).

871—24.42(96) Noncovered school-related employment.

24.42(1) See rule 871—23.20(96). However, wages earned by an individual who is a full-time employee for a school whose academic pursuit is incidental to the full-time employment may be used for claim and benefit purposes.

24.42(2) See rule 871—23.21(96).

871—24.43(96) Church school coverage. Schools affiliated with a church, as per 871—subrule 16.27(7), are exempt from coverage but may volunteer coverage by request to the department. Schools not affiliated with a church are covered employers with insured work.

871—24.44(96) Athletes—disqualifications. "Athletes," as used in Iowa Code section 96.5(9), applies to professional athletes. A professional athlete is an individual whose occupation is participating in athletic or sporting events for wages. A semiprofessional athlete is within the scope of Iowa Code section 96.5(9), if such sports services are performed for compensation in covered wages. Auxiliary personnel, such as coaches, trainers, etc., are not considered professional athletes.

24.44(1) As used in Iowa Code section 96.5(9), "services performed by an individual, substantially all of which consist of participating in sports or athletic events" means all services performed by an individual in any subject employment during the individual's base year if such individual was engaged in remunerative sports or athletic events for 90 percent or more of the total time spent in subject employment during such base year.

24.44(2) As used in Iowa Code section 96.5(9), "participating in sports or athletic events" means any services performed in an athletic activity by an individual as:

a. A regular player or team member.

b. An alternate player or team member.

c. An individual in training to become a regular player or team member.

d. An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

24.44(3) The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons are determined by the department after considering custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

24.44(4) For the purposes of Iowa Code section 96.5(9), a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

a. The individual has an express or implied multiyear contract that extends into the subsequent sport season, or,

b. The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and

c. There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season, and

d. The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

24.44(5) Benefits that will be paid with respect to weeks of unemployment during a sports season shall be based on all wage credits of the individual. Wage credits would include those earned in sports as well as in other employment covered by an employment security law. With respect to weeks of unemployment that begin during a period between sports seasons (or similar periods) no benefits are

payable on the basis of any athletic or nonathletic wages if substantially all (see subrule 24.57(1)) of the services performed by the individual during the base period were in sports or athletic events.

24.44(6) When a professional athlete is denied benefits because there is a reasonable assurance that the individual will again perform services as a professional athlete in the next ensuing season but the assurance fails to materialize, the denial of benefits is effective until the date established that the assurance is ineffective. Following the ineffective date, benefits can be paid if the individual is otherwise eligible. If an assurance given to an individual is found to be not a bona fide assurance, benefits are payable if the individual is otherwise eligible.

24.44(7) Benefits will be paid with respect to weeks of unemployment between sports seasons (or similar periods) based on wage credits of the individual, paid in other employment covered by employment security law except those in sports or athletic events or training, or preparing to so participate.

24.44(8) Athletes—denial of benefits. An individual (athlete) will be denied benefits between seasons based on services performed by such individual (athlete).

This rule is intended to implement Iowa Code section 96.5(9).

871—24.45(96) Voluntary shared work. The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of all employees in an affected unit and those employees will receive a portion of their regular unemployment insurance benefits. The program is designed to reduce unemployment and stabilize the workforce. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer will administer the program in cooperation with the department. Participating employees will complete the employee information form and claim for benefits and return it to the employer, who will submit it to the department. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and unemployment insurance overpayments will be offset as they are for regular unemployment insurance benefits.

24.45(1) The duration of a shared work plan is between 4 and 52 weeks. Any requests for subsequent plans will be reviewed by the department.

24.45(2) Employment is considered seasonal if the production or service provided by the employment is curtailed by at least 45 percent or ceases for a four-month or longer period on an annual basis due to climatic conditions.

24.45(3) A plan that has been approved may be modified at the discretion of the department. An employer seeking modification of an approved plan must demonstrate good cause as to why the modification is necessary and that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

24.45(4) The department retains discretion to approve, deny, or revoke an approved plan.

24.45(5) Employer requirements.

a. For each week that a voluntary shared work employer has an active plan, the employer will submit a certification of hours worked by each employee covered under the plan in the form or manner directed by the department. This includes a part-time employee provided that the employee meets all other requirements.

b. The first employer weekly certification is due no later than the Monday following the effective date of the employer's approved work share plan. All subsequent weekly employer certifications are due no later than Monday (close of business) immediately following the benefit week. If the employer fails to submit the weekly certification by Monday immediately following the benefit week, the department will have good cause to terminate the employer's work share plan.

This rule is intended to implement Iowa Code section 96.40.

871—24.46(96) Child support intercept. The term "benefits" for child support intercept purposes means any compensation payable under Iowa Code chapter 96, including any amounts payable pursuant to any workforce development agreement under any federal law administered by the department.

24.46(1) *Information furnished to child support recovery unit.* The department will furnish information to the child support recovery unit concerning all new claims filed that are monetarily eligible for benefits under any state or federal program administered by the department.

24.46(2) *Action taken by child support recovery unit.* The child support recovery unit will contact the claimant to afford claimant opportunity to enter into an agreement regarding amounts to be deducted and withheld.

24.46(3) *Processing of payments.* The child support recovery unit will furnish to the department the name and address of the designated public official to whom the amount deducted will be remitted. After the deduction, the remaining balance is credited to the claimant.

24.46(4) *Notice to claimant.* The department will send a notice to the claimant explaining the beginning date and the amount of the weekly benefit deduction that satisfies the individual's child support obligation to the child support recovery unit. This notice, which explains the authority for the deduction and the claimant's right of appeal, will be issued when the first deduction is made from the benefit payment.

24.46(5) *Appeal rights on the child support deduction.*

a. Any appeal on a child support deduction is limited to either the validity of the development's authority to make the deduction or the accuracy of the amount deducted.

b. The claimant will be advised to seek remedy either through the child support recovery unit or through the court system whenever the question of reasonableness or fairness of the deducted amount is raised in terms of ability to pay.

c. The department does not have the authority to change the amount of the deduction as specified by garnishment or voluntary agreement or to adjudicate any appeal from garnishment or voluntary agreement.

This rule is intended to implement Iowa Code sections 96.3 and 96.20.

871—24.47(96) Alien. An alien is defined as a person who is not a citizen or a national of the United States. An alien is a person owing allegiance to another country or government. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States.

24.47(1) To identify illegal nonresident aliens, each claimant, at the establishment of a benefit year will be asked whether or not the individual is a citizen.

a. If the response is "yes," no further proof is necessary, and the claimant's records are marked accordingly.

b. If the answer is "no," the claimant will be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is provided to the department. The principal documents showing legal entry for permanent residency are the Form I-94, Arrival and Departure Record, and the Forms I-151 and I-551, Alien Registration Receipt Card. These forms are issued by the U.S. Citizenship and Immigration Services and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the U.S. Citizenship and Immigration Services. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 871—18.10(96), prosecution on overpayments.

24.47(2) Disqualification of aliens. Color of law permanent residence is defined as:

a. An alien admitted as a refugee under Section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157, in effect after March 31, 1980;

b. An alien granted asylum by the attorney general of the United States under Section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158;

c. An alien granted a parole into the United States for an indefinite period under Section 212(d)(5)(B) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(B);

d. An alien who entered the United States prior to June 30, 1948, and who is eligible for lawful permanent residence pursuant to Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259; or

e. An alien who has been formally granted deferred action or nonpriority status by the U.S. Citizenship and Immigration Services.

24.47(3) Certain nonimmigrants may perform service in this country. All nonimmigrant aliens 18 years and older are required by law to carry alien registration card Form I-94. The immigration and naturalization service places a symbol on the Form I-94 that indicates eligibility to perform service in this country.

a. Nonimmigrant aliens who are allowed to perform certain types of service are:

Class of worker		Symbol on I-94	Employment Permitted
(1)	Ambassador, Consular officers and their immediate families	A-1	May accept employment with permission from the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(2)	Other foreign government officials and their immediate families.	A-2	Same as for A-1.
(3)	Treaty trader, spouse and children Treaty investor, spouse and children	E-1 E-2	Admitted to work for a specific employer or as a sole proprietorship or partnership.
(4)	Student	F-1 M-1	May accept employment of up to 20 hours per week with permission from the Immigration Service. I-94 will be stamped: "Employment Authorized." Employment should not displace a USC or permanent resident alien.
(5)	Representatives of foreign governments to international organization such as the U.N.	G-1 G-2 G-3 G-4 G-5	May accept employment if approved by the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(6)	Temporary worker of distinguished merit and ability	H-1	Admitted to work on a petition of an employer. Can only work for that employer unless permission is granted by the Immigration Service to change employers.
(7)	Temporary workers performing services unavailable in the U.S.	H-2	Same as for H-1.
(8)	Trainee	H-3	Same as for H-1.
(9)	Exchange visitor Spouse and children	J-1 J-2	May be admitted to work in a specific program or may be granted permission to work after entry. I-94 will be stamped: "Employment Authorized."
(10)	Fiancé or fiancee of USC entering solely to conclude valid marriage Child of a K-1	K-1 K-2	May accept employment upon approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."
(11)	Intra company transferee entering to continue employment with same	L-1 L-2	Admitted upon petition by an employer. May only work for that employer. May accept employment if approved by

Class of worker		Symbol on I-94	Employment Permitted
	employer. Dependents.		the Immigration Service. I-94 will be stamped: "Employment Authorized."
(12)	NATO representatives	NATO-1 NATO-2 NATO-3 NATO-4 NATO-5 NATO-6 NATO-7	Dependents may accept employment with approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."

b. Immigrant aliens who are not allowed to perform services are:

Class of worker		Symbol on I-94	Employment Status
(1)	Attendant, servant or personal employee of an A-1 or A-2	A-3	May not accept employment.
(2)	Temporary visitor for business	B-1	May not accept employment.
(3)	Temporary visitor for pleasure	B-2	May not accept employment.
(4)	Alien in transit	C-1 C-2 C-3	May not accept employment.
(5)	Transit without a visa	TRWOV	May not accept employment.
(6)	Seaman	D-1 D-2	May not accept employment.
(7)	Dependent of student	F-2 M-2	May not accept employment.
(8)	Spouse or child of an H-1, H-2 or H-3	H-4	May not accept employment.
(9)	Representative of foreign information media including spouse and children	I	May not accept employment.

This rule is intended to implement Iowa Code section 96.5(10).

871—24.48(96) References.

24.48(1) All references to the Code of Federal Regulations (CFR) and United States Code (U.S.C.) in this chapter are to the laws as amended as of November 1, 2024.

24.48(2) All references to the Social Security Act refer to 42 U.S.C. Sections 301-1397mm, as amended as of November 1, 2024.

24.48(3) All references to the Federal Unemployment Tax Act refer to 23 U.S.C. Sections 3301-3311, as amended as of November 1, 2024.

24.48(4) All references to the Workforce Innovation and Opportunity Act refer to 29 U.S.C. Sections 3101-3361, as amended as of November 1, 2024.

24.48(5) All references to the Americans with Disabilities Act of 1990 refer to 42 U.S.C. Sections 12101-12213, as amended as of November 1, 2024.

24.48(6) All references to Public Law 96-499 refer to the Foreign Investment in Real Property Act of 1980, as amended as of November 1, 2024.

24.48(7) All references to the Trade Act of 1974 refer to 19 U.S.C. Sections 2101-2497b, as amended as of November 1, 2024.

24.48(8) All references to the Federal Employer's Compensation Act refer to 20 CFR Sections 10.0-25.203, as amended as of November 1, 2024.

24.48(9) All references to the Ex-Service Member's Unemployment Compensation Act of 1958 refer to 10 U.S.C. Sections 1141-1155, as amended as of November 1, 2024.

24.48(10) All references to the Immigration and Nationality Act refer to 8 U.S.C. Sections 1101-1537, as amended as of November 1, 2024.

24.48(11) All references to the Railroad Unemployment Insurance Act refer to 45 U.S.C. Sections 351-369, as amended as of November 1, 2024.

24.48(12) All references to the Interstate Handbook for Interstate Claims-Taking refer to ET Handbook No. 392, published by the United States Department of Labor Employment and Training Administration, as amended and in effect as of November 1, 2024.

ARC 8358C

ATTORNEY GENERAL[61]

Adopted and Filed

Rulemaking related to victim assistance program

The Attorney General hereby rescinds Chapter 9, "Victim Assistance Program," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 915.

State or Federal Law Implemented

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

Purpose and Summary

Attorney General Brenna Bird took office in January 2023 and quickly discovered that a complete audit of the Crime Victim Assistance Program was obligatory to address any gaps and update practices to allow Attorney General Bird's staff to continue to provide victims the highest level of service and have a victim-centered approach to all issues. Several areas were identified during the audit as needing improvement and will be addressed with the updates to Chapter 9. The updates will help ensure that the rights guaranteed to victims under Iowa Code chapter 915 are upheld. Due to Chapter 13 not being updated in a regular and timely manner by the previous administration, it is necessary to rescind the entire chapter and readopt it with the changes to continue to improve overall services for victims and those who serve victims. Multiple factors, some independent, will be addressed in this rulemaking to provide a complete picture of the need and urgency for the update.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024, as **ARC 8220C**.

The Department of Justice did not hold a public hearing for the Notice of Intended Action. Comments were received during the public comment period.

The Department of Justice received four comments during the public comment period. Each of the comments will be summarized. The first commenter serves as a Forensic Nurse Examiner who is looking to become a certified Sexual Assault Nurse Examiner (SANE) through the International Association of Forensic Nurses (IAFN). The commenter is concerned with the number of continuing education (CE) hours required over a three-year period. The IAFN standards require 45 CE hours, whereas the new Iowa standards will require 50 CE hours. Although Iowa will require five more CE hours than the IAFN standards, the totality of the proposed Iowa standards, which includes more than just CE hours, are more attainable than the IAFN standards. The purpose of the Iowa standards is to ensure a higher level of medical care for sexual abuse victims, and by implementing these rules, Iowa will have the standards it needs to better serve victims.

The second commenter represents a large hospital and expressed concerns with proposed rule 61—9.79(915), which requires board-certified Emergency Medicine Physicians, Nurse Practitioners, and Physician Assistants to complete the education requirements. During the Regulatory Analysis public hearing, the required hours for a Doctor of Medicine (MD) and a Doctor of Osteopathic Medicine (DO) were reduced from 40 to 30 hours because it was discovered there is an overlap in training requirements. After speaking with multiple groups about the required hours, it was determined the 40-hour requirement is necessary for everyone except an MD and a DO.

The third commenter did not understand why the proposed rules omitted some language from the current rules under the Victim Compensation Program. Specifically, the commenter had concerns related to rule 61—9.29(915), which discusses "good cause" exceptions to reporting requirements. Under the current rules, there are certain alternative reporting options for victims of certain types of crimes, but the commenter noticed the proposed rules excluded this language. After looking into the concern, it was discovered a clerical error resulted in sentences from the current rules being unintentionally omitted from the proposed rules. The proposed rules were updated to add the sentences back into the rules.

The fourth and last commenter wanted standards and regulations for crime scene cleanup in the state of Iowa and specifically referenced the Institute of Inspection Cleaning and Restoration Certification standards developed based on best practices in the industry. The Department of Justice appreciates the desire to develop standards in this area, but this was not the focus of the rulemaking at this time.

Changes from the Notice have been made. The changes made to these rules were to fix clerical errors in the Notice and to align the appeal process for the Iowa standards for qualified sexual assault examination providers with the process used by the Victim Compensation Program.

Adoption of Rulemaking

This rulemaking was adopted by the Attorney General on October 23, 2024.

Fiscal Impact

After further review, the Department of Justice does not believe increasing the payment to the qualified providers will have a fiscal impact. However, the Department of Justice believes there will be a fiscal impact of approximately $125,000 in new expenditures each year by reimbursing mileage for qualified providers. The Victim Compensation Fund will be able to sustain the increase in expenditures.

Jobs Impact

After analysis and review of this rulemaking, the Attorney General's Office believes providing qualified providers with an increase in payment for performing sexual assault forensic examinations will incentivize medical professionals to become qualified providers and better serve victims.

Waivers

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

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 December 18, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 61—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
VICTIM ASSISTANCE PROGRAM

61—9.1(915) Definitions. These definitions apply to the entire chapter.

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

"Chief" means the section chief of the victim assistance section established in the Iowa department of justice or a designee of the chief.

"Department" means the Iowa department of justice.

"Section" means the victim assistance section of the Iowa department of justice.

61—9.2(915) Board.

9.2(1) A victim assistance board is established pursuant to Iowa Code section 915.82.

9.2(2) Members of the board shall serve terms for three years and are eligible for reappointment to the board by the attorney general.

9.2(3) The initial term of the board members shall commence on July 1 of the state fiscal year.

61—9.3(915) Expenses.

9.3(1) Board members shall be reimbursed from the crime victim compensation fund for expenses actually and necessarily incurred in the discharge of their duties including attendance at board meetings, board committee meetings, and other activities on behalf of the board as designated by the board chair and approved by the department. Reimbursement for expenses shall conform with guidelines established by the department of revenue.

9.3(2) A member of the board may receive, in addition to actual expense reimbursement, a per diem that conforms with guidelines established by the department of revenue.

9.3(3) Expenses of the board and individual members shall be submitted to the chief.

61—9.4(915) Chair of the board.

9.4(1) The attorney general shall select one of the members of the board to serve as chair of the board. The chair shall serve at the pleasure of the attorney general.

9.4(2) A member who is chair of the board and relinquishes the position or is removed as the chair may maintain board membership for the remainder of the term for which the member was originally appointed.

61—9.5(915) Resignations.

9.5(1) Resignations from the board shall be made to the attorney general.

9.5(2) Whenever a member of the board ceases to have the statutory qualifications for appointment to the board, that member shall be considered to have resigned and a vacancy shall occur on the board.

9.5(3) A board member shall be deemed to have submitted a resignation from the board if any of the following events occur:

a. The member does not attend three or more consecutive regular meetings of the board. This paragraph does not apply unless the first and last of the consecutive meetings counted for this purpose are at least 30 days apart. The chair of the board shall contact the board member if two consecutive meetings are missed.

b. The person attends less than one-half of the regular meetings of the board within any period of 12 calendar months beginning July 1. This paragraph applies only to such a period beginning on or after the date when the person is appointed to the board.

9.5(4) If the member receives no notice and had no knowledge of a regular meeting and gives the attorney general a sworn statement to that effect within ten days after the person learns of the meeting, such meeting shall not be counted for the purposes of this rule.

9.5(5) If the events described in paragraphs 9.5(3)*"a"* and *"b"* occur, then the chair of the board will provide the attorney general notice of resignation.

9.5(6) The attorney general may accept or reject such resignation. If the attorney general accepts it, the attorney general shall notify the member, in writing, that the resignation is accepted pursuant to this rule. The attorney general shall then make another appointment to fill the vacancy.

61—9.6(915) Vacancies. Barring unusual circumstances, vacancies on the board shall be filled within 45 days after the attorney general is advised of the vacancy. Vacancies shall be filled for the remainder of the vacant term.

61—9.7(915) Meetings.

9.7(1) The board shall meet a minimum of once per quarter. The board may also meet at the call of the chair or upon the written request to the chair of at least five members of the board.

9.7(2) No fewer than two-thirds of board members shall be present to vote and transact board business in accordance with the Iowa administrative procedure Act.

61—9.8(915) Duties of board. The board shall adopt rules pursuant to Iowa Code chapter 17A relating to the administration of the section, including the adoption of administrative rules relating to the following:

9.8(1) Administration of state and federal grants received for victim services and training and outreach.

9.8(2) Administration of the crime victim compensation program provided in Iowa Code chapter 915.

9.8(3) Administration of sexual abuse examination payments as provided in Iowa Code section 709.10.

9.8(4) Appeal procedures for victim compensation claims denied by the program.

9.8(5) Appeal procedures for grants administered by the program and denied by the board.

61—9.9(915) Chief and staff. The attorney general shall employ a chief and staff for the section, and they shall be employees of the department.

61—9.10(915) Duties of section. In addition to the duties contained in Iowa Code section 13.31, the section shall:

9.10(1) Administer other funds, grants, or programs for victim assistance created by public law or the department.

9.10(2) Provide administrative support to the board.

9.10(3) Enter into agreements under Iowa Code chapter 28E or other law including agreements with other state agencies and political subdivisions for the transfer to the department of funds authorized by law for victim service programs.

9.10(4) Accept, use, and dispose of contributions of money, services, and property that are made available by an agency or department of the state or any of its political subdivisions, the federal government, a private agency, or an individual and that are specifically designated for crime victim assistance programs.

61—9.11 to **9.24** Reserved.

61—9.25(915) Administration of the crime victim compensation program. The section shall administer the crime victim compensation program as provided in Iowa Code chapter 915. All questions, comments, requests for information, or applications for compensation shall be directed to the section by calling 515.281.5044 or 1.800.373.5044.

61—9.26(915) Definitions. For rules related to the crime victim compensation program of the section, the following definitions apply:

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

"Applicant" includes the following individuals who file an application with the crime victim compensation program:

1. A victim of a crime, as defined in Iowa Code section 915.80(9).
2. A person responsible for the care and maintenance of a victim.

3. A resident of Iowa who is the victim of an act that would be compensable had it occurred within the state of Iowa and any of the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

"Dependent" means a person who is wholly or partially reliant upon a victim for care or support and includes a child of the victim born after the victim's death, or a person who is unable to care for oneself due to injury, disability, or minor age status.

"Incitement" means to urge forward or to goad to action.

"Lost wages or income," "lost income," or *"lost wages"* means the gross rate of pay, decreased by 25 percent.

"Medical care" means services provided by or provided under the supervision of a person licensed under Iowa law as a medical physician or surgeon, physician assistant, osteopathic physician or surgeon, chiropractor, podiatrist, physical therapist, acupuncturist, or dentist. Medical care also includes services rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

"Medically necessary" means that the items and services prescribed or recommended by a medical provider under the prescriptive authority of the medical provider's license are reasonably necessary to facilitate the victim's physical and emotional recovery from the compensable crime.

"Pecuniary loss" means the amount of medical or medical-related expenses that include but are not limited to eyeglasses, hearing aids, dentures, and prosthetic devices, including those that were taken, lost, or destroyed during the crime; home health care; medications; counseling; pregnancy-related

services; equipment rental or purchase; property alteration; transportation for emergencies and medical care provided outside the victim's county of residence; or health insurance premiums covered by an employer previous to the victim's disability from the crime. Pecuniary loss shall also include the loss of income that the victim has incurred as a direct result of the injury to the extent that the victim has not been and shall not be indemnified from any other source.

"Personal injury" or *"injury"* means bodily harm or mental suffering and shall include a victim's pregnancy or miscarriage resulting from a crime.

"Program" means the crime victim compensation program of the department of justice.

"Provocation" means to cause anger, resentment, or deep feelings that cause or instigate another to take action.

"Public funds" means moneys provided by federal, state, county, city or other local government.

"Reasonable charges" means those ordinarily charged by the provider of the service to the general public for services of a similar nature.

"Residence" means a property on which an applicant lives and may include but is not limited to a dwelling, detached garage, shed, or similar structure located on the property, or a privately owned vehicle if the vehicle serves as the primary residence.

61—9.27(915) Duties of the section. The duties of the section shall include but not be limited to the duties provided for in Iowa Code sections 13.31 and 915.83, as well as:

9.27(1) To prepare appropriate forms for the filing and processing of compensation applications.

9.27(2) To conduct an administrative review of claims when a request for reconsideration is filed by an applicant with the chief.

9.27(3) To receive moneys bequeathed, awarded, or donated to the section by a public or private organization or individual.

61—9.28(915) Application for compensation. An applicant may file an application for compensation by telephone or in writing within two years of the occurrence or discovery of a crime pursuant to Iowa Code section 915.84(1). For a victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, the date of the discovery of the crime shall be considered to be the date when the referral was made. The program may waive the requirements of Iowa Code section 915.84(1) if good cause is shown.

9.28(1) *Application postmarked.* An application postmarked within the prescribed time period shall be considered timely filed.

9.28(2) *Good cause.* In determining whether there is good cause for waiver of the two-year application filing requirement, the victim's age, physical condition, psychological state, and cultural or linguistic barriers and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.28(3) *Multiple erroneous claims.* When two or more applications are filed by or on behalf of an individual applicant during a calendar month and the applications appear on initial review to be erroneous claims based on innocent misrepresentation or circumstances of a similar nature, the claims shall be treated as a single application. Verification shall be investigated for each crime recorded in a file with multiple erroneous applications. If any of the crimes recorded in a combined application are verified as compensable crimes, the applications for compensation for those crimes shall be separated from the combined file and assigned distinct application numbers. The program will notify the applicant whenever two or more applications have been combined as one application.

9.28(4) *Program effective date.* The effective date of the crime victim compensation program is January 1, 1983. Victims and survivors of crimes that were committed prior to the effective date may be eligible for compensation if the program can obtain sufficient documentation to verify eligibility.

9.28(5) *Concurrent primary and secondary applications.* A victim may be both a primary victim and a secondary victim in the same crime. The secondary victim application shall not be opened until a benefit has been exhausted for the primary application and there is documentation of need for further

benefits in that category. The secondary victim application shall be considered timely filed if the primary victim application was timely filed.

9.28(6) *Concurrent secondary victim applications.* A victim may be a secondary victim to multiple primary victims in a crime. A subsequent secondary victim application shall not be opened until a benefit has been exhausted in the first secondary victim application and there is documentation of need for further benefits in that category. Subsequent secondary victim applications shall be considered timely filed if the primary victim application was timely filed.

61—9.29(915) Report to law enforcement. A person is not eligible for compensation unless the crime is reported to law enforcement pursuant to Iowa Code section 915.84(3). The program may waive the requirements of Iowa Code section 915.84(3) if good cause is shown.

9.29(1) *Law enforcement report sources.* The program finds there is good cause to accept that the report of a crime to any of the following is a report to law enforcement pursuant to Iowa Code section 915.84(3):

a. Sheriffs and their regular deputies.

b. Marshals and police officers of cities.

c. Peace officers of the department of public safety.

d. Special security officers employed by a board of regents institution as identified in Iowa Code section 262.13.

e. Peace officers as authorized by Iowa Code section 350.5 or 456A.13.

f. Employees of the department of transportation who are designated "peace officers" by resolution of the department under Iowa Code section 321.477.

g. Correctional officers, including parole and probation officers.

h. County and state prosecutors.

i. An employee of the department of health and human services having jurisdiction to investigate the incident.

j. A magistrate or judge of the Iowa court system.

9.29(2) *Elements of a report.* A victim is considered to have made a report to law enforcement when the victim has provided a true and accurate report of the incident, which shall include to the best of the victim's knowledge:

a. The nature of the crime,

b. The location of the crime,

c. The name, whereabouts and description of the suspect, if known, and

d. The names of witnesses, if known.

9.29(3) *Law enforcement record.* A law enforcement trip record may satisfy the requirement that the crime be reported to law enforcement.

9.29(4) *Good cause.* In determining whether there is good cause for waiving the requirement to report a crime to law enforcement within 72 hours of the occurrence of the crime, the victim's age, physical condition, psychological state, and cultural or linguistic barriers and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered. In the event good cause is found, the crime must be substantiated through disclosure to another provider including but not limited to a licensed medical provider, a licensed mental health professional, or a designated victim service provider.

a. Child victim. If the victim is a child as defined in Iowa Code section 232.2 and is reported to be a victim of child abuse, the section finds there is good cause to waive the 72-hour reporting requirement.

b. Dependent adult victim. If the victim is a dependent adult as defined in Iowa Code section 235B.2(4) and is reported to be a victim of dependent adult abuse, the section finds there is good cause to waive the 72-hour reporting requirement.

c. Sexual abuse victim. For a victim of sexual abuse, the 72-hour reporting requirement may be waived for good cause if a sexual abuse evidentiary examination was completed within 72 hours of the crime or if the crime was disclosed to another provider including but not limited to a licensed medical provider, a licensed mental health professional, or a designated victim service provider.

d. Domestic abuse victim. For a victim of domestic abuse, the 72-hour reporting requirement may be waived for good cause if a domestic abuse protective order pursuant to Iowa Code chapter 236 is entered by the court or if the crime was disclosed to another provider including but not limited to a licensed medical provider, a licensed mental health provider, or a designated victim service provider.

e. Victim of a sexually violent predator. For a victim of sexual abuse, the section finds good cause to waive the 72-hour reporting requirement when the offender is referred pursuant to Iowa Code chapter 229A.

61—9.30(915) Cooperation with law enforcement. To be eligible for compensation, the crime victim shall cooperate with the reasonable requests of law enforcement. After considering the factors in subrule 9.29(4), the department may waive the requirement if good cause is shown.

9.30(1) *Reasonable cooperation.* Reasonable cooperation by the victim may include but is not limited to the following:

a. Providing law enforcement with a true and accurate report of the crime.

b. Participating in the investigation of the crime to assist law enforcement in the identification of a suspect as requested, including the review of photographs, composites, and lineups.

c. Participating in prosecution procedures including deposition and trial testimony as requested.

9.30(2) *Determination of cooperation.* In determining whether a victim reasonably cooperated with law enforcement, the program may consider the victim's age, physical condition, psychological state, and cultural or linguistic barriers and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.30(3) *Polygraph testing.* In determining whether a victim reasonably cooperated with law enforcement, the refusal of a victim to undergo a polygraph examination shall not be the basis of denial.

9.30(4) *Sexual abuse victim.* A victim of sexual abuse shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual abuse evidentiary examination.

9.30(5) *Domestic abuse victim.* A victim of domestic abuse shall be deemed to have reasonably cooperated with law enforcement if a report of the crime was made to law enforcement.

61—9.31(915) Contributory conduct. The program shall reduce or disqualify compensation when there is a causal relationship between the contributory conduct on the part of the victim and the victim's injury or death. Contributory conduct includes consent, provocation, or incitement of the crime on the part of the victim.

9.31(1) *Consent, provocation, or incitement.* In assessing consent, provocation or incitement on the part of the victim pursuant to Iowa Code section 915.87(2)*"a,"* the program may consider factors including but not limited to the following:

a. Whether charges are filed against the suspect;

b. Whether the victim attempted to withdraw from the incident;

c. Comparable or reasonable force on the part of the suspect in response to an action of the victim;

d. The amount of time from the beginning of the interaction between the victim and the suspect and the criminal act committed by the suspect;

e. The age of the victim; and

f. Comparable size or strength of the victim and suspect.

9.31(2) *Additional assessment of consent.* In assessing the causal nature of consent pursuant to Iowa Code section 915.87(2)*"a,"* the program may consider the victim's age, physical condition, psychological state, and cultural or linguistic barriers and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.31(3) *Consent in intoxicated driving cases.* A victim who was the passenger in the vehicle of a driver who has been determined to have been legally intoxicated at the time of the crash shall not be automatically denied eligibility for compensation. The program may consider whether the victim could have reasonably known the intoxication level of the driver, the driver's behavior or judgment appeared impaired, the victim encouraged or discouraged the driver from driving, or the victim's judgment was impaired.

9.31(4) *Additional assessment of provocation and incitement and commission of a criminal act.* In assessing the causal nature of provocation or incitement and commission of a criminal act pursuant to Iowa Code section 915.87(2), the program may consider law enforcement documentation that indicates:

a. Retaliatory action. The crime was committed as retaliation for a prior physical assault or injury committed by the victim against the perpetrator, and the victim could have reasonably foreseen the likelihood of retaliation.

b. Gang action. The crime was a direct result of gang activity, including gang initiation, or was inflicted as retaliation for prior gang activity in which the victim participated in a criminal street gang as defined in Iowa Code section 723A.1(2).

c. Mutual combat. The crime was an incident of mutual combat if the victim:

(1) Initiated a physical altercation;

(2) Made a credible threat of bodily harm against the person and took action to indicate the intent to carry out the threat and a physical altercation immediately followed; or

(3) Accepted a verbal challenge to engage in a physical altercation and took action to indicate acceptance of the challenge and a physical altercation immediately followed.

d. Exception to mutual combat. Incitement and provocation are not present in an incident of mutual combat when a significant escalation of the fight, such as the introduction of a deadly weapon, is made by a person other than the victim or when a third party becomes involved resulting in more serious injury than the victim could have reasonably expected.

9.31(5) *Victim's criminal act.* Contributory conduct includes assisting in, attempting, or committing a criminal act by the victim. A causal relationship must be documented between the injury or death for which compensation is sought and the criminal act of the victim.

61—9.32(915) Eligibility for compensation. The program shall determine the eligibility of an application for compensation.

9.32(1) *Determination of eligibility.* A denial of eligibility shall be based on written documentation that an application does not satisfy the requirements of Iowa Code chapter 915. An applicant shall be deemed eligible for compensation if the section has not obtained written documentation supporting a denial within six months of the date of the application. Notwithstanding the foregoing, the section may extend the determination of eligibility beyond six months if a court date or grand jury hearing is pending and is reasonably expected to result in information necessary to render an eligibility decision.

9.32(2) *Reopening applications.* Pursuant to Iowa Code section 915.83(2), the program may reopen and reinvestigate an application if the program determines that the decision was incorrect or incomplete. A denied application may be reopened and reinvestigated if it is discovered through a criminal trial or other investigatory source that the information relied upon for the denial decision was incorrect or incomplete. The eligibility of an approved application will be reopened for consideration if information is discovered through a criminal trial or other investigatory source that the information relied upon for the approval decision was incorrect or incomplete. The reopening of a denied or approved case is at the discretion of the administrator for the compensation program, the chief, or the board.

9.32(3) *Withdrawal of application.* An applicant may withdraw the application for compensation from consideration.

9.32(4) *Maximum compensation.* Compensation shall be reduced or disqualified to the extent that the maximum compensation allowable pursuant to Iowa Code chapter 915 and these rules has been awarded.

61—9.33(915) Emergency award of compensation. Emergency awards of compensation may be made if the applicant has incurred a loss of income or pecuniary loss as a direct result of the crime.

9.33(1) *Preliminary eligibility determination.* The program must determine that the application is likely to be eligible based on documentation available including, at a minimum, the law enforcement verification form provided to law enforcement by the program.

9.33(2) *Documentation.* To make an emergency award of compensation, the program must have documentation of the lost wages or the pecuniary loss.

9.33(3) *Emergency award decision.* A decision denying an emergency award shall not be appealable.

9.33(4) *Offset.* Any emergency award shall be deducted from the final award of compensation made to the claimant.

61—9.34(915) Computation of compensation. The section shall determine the amount of compensation to be awarded to an eligible applicant.

9.34(1) *Benefit limits.* Compensation shall be made up to the benefit category limits in effect on the date the application is filed. For an eligible victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, compensation shall be paid for expenses incurred after referral of the offender.

9.34(2) *Payer of last resort.* The program is a payer of last resort pursuant to federal law 34 U.S.C. 20102. Compensation shall not be paid for services when the provision for those services is mandated by law or administrative rule to be the responsibility of another governmental unit, private agency or program. Payments shall be reduced by payments made by offenders and third parties responsible for the damages of the crime. The department may waive this requirement for good cause after considering the factors in subrule 9.29(4) for compensation made from state funds.

9.34(3) *Voluntary financial programs.* Compensation applicants will be encouraged to apply for other financial assistance programs to pay costs resulting from the crime-related injury. However, no applicant will be denied compensation benefits based on the applicant's refusal to seek funds from a voluntary financial assistance program.

9.34(4) *Insurance providers.* Eligible victims and claimants must give service providers the information necessary to bill insurance providers for crime-related treatment. Payment of compensation will not be made if the victim refuses or fails to provide information requested by the service or insurance provider or to sign the required assignment of benefits within a reasonable time frame. The department may waive this requirement if the victim can demonstrate good cause exists. Good cause may include but is not limited to situations where the insurance policyholder is the perpetrator of the crime that gave rise to the claim.

9.34(5) *Supplanting of funds prohibited.* Compensation shall be made only when the claimant is responsible for the cost of crime-related injury. Compensation shall not be paid when a government entity, including but not limited to a mental health facility, jail, or prison, is responsible for the costs of treatment for injury from crime, unless the entity is legally allowed to pass those costs along to the victim.

61—9.35(915) Computation of benefit categories. The section shall determine the amount of compensation to be awarded to an eligible applicant for injury from crime for each benefit category pursuant to Iowa Code section 915.86.

9.35(1) *Medical care.* Compensation may be paid for the reasonable expenses of medical care provided to eligible crime victims by, or under the supervision of, a person licensed by the state under Iowa Code chapter 147, 148, 148A, 148E, 149, 151, 152C, or 153. When preexisting medical conditions are treated during crime-related medical care, the program may reduce payment to a percentage equal to the portion of the medical care determined to be directly related to the compensable crime. Medical care expenses include the following:

a. Medical care sanctioned by sovereign nations and tribes. Compensation may be paid for medical care rendered in accordance with a method of healing sanctioned by a state-recognized or federally recognized sovereign nation or tribe.

b. Medical counseling costs. Compensation may be paid for counseling provided under the direct supervision of a psychiatrist or other physician and shall be applied toward the medical benefit maximum.

c. Medical care for homicide victim survivors. Compensation may be paid to a spouse, child, parent, sibling, or person related by blood or affinity to a homicide victim for the same types of medical

care that are allowable for primary victims, including but not limited to hospital and physician care, psychiatric care, prescriptions, and transportation expenses related to injury from the crime.

d. Medical equipment and property alteration. Compensation may be paid for equipment and property alteration that are prescribed as medically necessary care due to injury from the crime.

e. Medical supplies. Compensation may be paid for medical care supplies and incidental supplies necessary for medical care due to injury from the crime.

f. Medical care for pregnancy. Compensation may be paid for medical care costs related to pregnancy resulting from the crime of sexual abuse. Eligible expenses for the care of the victim shall be paid. Expenses incurred for the care of a newborn child are not compensable.

g. Medical devices. Compensation may be paid for the replacement of a medical device including but not limited to a sight or hearing device, dentures, a prosthetic device, a wheelchair, and medication that was taken, lost or destroyed during the crime.

h. Transportation for medical emergency. Compensation may be paid for the reasonable cost of transportation in a medical emergency by private vehicle at the per-mile rate established by the department of administrative services for state employees using a privately owned vehicle for state business. Mileage will be based on mileage calculation from the most current map published by the department of transportation. Transportation within a city limit will be based on the program's estimate of mileage from the location of the injured victim to the medical facility.

i. Transportation for nonemergency care. Compensation may be paid for the cost of transportation by commercial vehicle or by private car for nonemergency medical care and counseling received outside of the victim's county of residence. Transportation provided by private vehicle for nonemergency care will be reimbursed at the per-mile rate established by the department of administrative services for state employees using a privately owned vehicle for state business. Mileage will be based on mileage calculation from the most current map published by the department of transportation.

j. Transportation medical benefit. Compensation may be paid for transportation from the applicable medical care or counseling benefit category. The available funds to the victim from the applicable benefit category will be reduced by the amount of compensation paid for transportation.

k. Health insurance. Compensation may be paid for premiums to continue a health insurance policy that was provided in whole or in part by the victim's employer prior to the crime and the employment ceased as a result of the crime.

9.35(2) *Medical care records.* When compensation for medical care is requested, the provider shall submit medical records that document the care provided and show that the medical care is for injury from crime.

9.35(3) *Mental health counseling.* Compensation may be paid for the reasonable costs of up to 12 mental health counseling sessions for eligible crime victims and survivors of a homicide victim with the provision of a treatment plan and certification as defined in paragraph 9.35(4)*"a."* Costs for those 12 sessions will be paid in full if the crime is noted in the treatment plan. If preexisting mental health issues are addressed during crime-related counseling sessions following the initial 12 visits, the program may reduce payment to a percentage equal to the portion of the counseling determined to be directly related to the compensable crime.

The mental health counseling provider shall submit a vitae establishing the provider's educational qualifications for compensation. A provider who is required to be licensed under Iowa law must provide proof of licensure and good standing with the department of inspections, appeals, and licensing. Compensation shall be paid for mental health counseling provided by the following:

a. Master's level counselor. Compensation may be paid for mental health counseling provided by a person holding at least a master's degree in a mental health or counseling field including but not limited to social work, psychology, guidance and counseling, behavioral sciences, art therapy, marriage and family therapy, child life therapy, and advanced mental health registered nursing.

b. Supervised mental health counselor. Compensation may be paid for mental health counseling provided by a counselor who does not have a master's degree but is under the supervision of a counselor with a master's degree. The supervising mental health counselor must sign the session notes that must be submitted for review by the program.

c. Intern mental health counselors. Compensation may be paid for mental health counseling provided by an intern candidate for a master's degree when the counseling is provided within a course of professional education and the intern is supervised by a provider eligible for compensation.

d. Out-of-state providers. Compensation may be paid to mental health counselors outside Iowa who provide services to victims of crime eligible for the Iowa program if the mental health counselor meets the professional licensure criteria of the state in which the counselor works.

9.35(4) *Mental health counseling records.* When compensation for mental health counseling is requested, the provider shall complete verification forms related to the counseling as follows:

a. Treatment plan and certification form. Information submitted on the treatment plan and certification form shall include but not be limited to a summary of the initial evaluation, any preexisting mental health diagnoses currently being treated, current diagnoses, issues addressed, counseling goals, expected length of counseling services, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

b. Treatment progress and certification form. At six-month intervals for the duration of the crime-related mental health counseling, the provider shall submit a treatment progress and certification form. Information on the form shall include progress on previously stated goals of counseling, current goals, current diagnosis, expected length of additional counseling, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

c. Session notes. The program may require submission of session notes to determine if the mental health counseling is directly related to the crime when:

(1) The counseling expenses for a victim exceed $3,000.

(2) The provider has not completed the treatment and certification plan with statement of the percentage of treatment directly related to the crime.

(3) The counseling begins, or is provided, more than one year after the crime.

(4) The treatment plan or progress summary indicates that the victim is receiving treatment for a diagnosis or issue not exacerbated by the crime.

9.35(5) *Counseling with the perpetrator.* Compensation for mental health counseling that includes the perpetrator of the crime may be payable when the perpetrator takes part only to take responsibility for the crime and apologize to the victim and, at the request of the victim, the victim is allowed to confront the perpetrator regarding the effects of the crime; or where treatment is court-ordered.

9.35(6) *Family counseling.* Compensation for family mental health or victim service counseling may be paid only for sessions where the victim is present and the focus of the session is to assist the victim in recovery from a compensable crime.

9.35(7) *Lost wages or income.* Compensation may be paid for reasonable lost wages or income when an eligible crime victim is unable to work as the result of physical or emotional injury from a crime, as a result of cooperation with the investigation or prosecution of the crime, or due to health and safety concerns related to maintaining employment. Lost wages or income due to crime is determined as follows:

a. Gross wage computed. Lost wages are computed as the gross rate of pay multiplied by the number of scheduled hours of work missed, decreased by 25 percent pursuant to the definition of "lost wages or income" in rule 61—9.26(915).

b. Variable income. Income that is variable shall be computed based on the average income earned during a minimum 28-day period within the three months preceding the crime. Estimated earnings not supported by past income statements shall not be accepted.

c. Self-employment and small business income. Self-employed persons or small business employees must provide federal or state income tax forms for the most recent year completed or verification of average income for a minimum of the past six months. Work estimates, labor contracts, and affidavits from individual employers may be used to establish wages.

d. Vacation, sick, holiday, bereavement, and annual leave. Lost wages or income paid shall not be reduced by vacation, sick, holiday, bereavement, or annual leave available or used by the victim due to the crime.

e. Calculation when rate of pay cannot be established. In the event employment can be verified but the rate of pay cannot be established through pay stubs, state or federal tax forms, or bank statements, compensation shall be calculated at the current state minimum wage rate on the basis of an eight-hour workday.

9.35(8) *Lost wages or income as the result of physical or emotional injury from a crime.* Compensation for lost wages or income incurred within the first two weeks following the crime shall be paid to an eligible crime victim without an authorized disability statement. Compensation for lost wages or income incurred within the first 30 days following the crime may be paid to an eligible survivor of a deceased victim without a disability statement. A victim seeking lost wages for a period of time longer than two weeks, or an eligible survivor seeking lost wages for longer than 30 days under Iowa Code section 915.86(10), shall submit a disability statement from a licensed medical provider for a physical injury or an injury related to mental health, or from a licensed mental health provider as included in paragraphs 9.35(3)*"a"* through *"d"* for an injury related to mental health. Compensation shall be made for lost wages or income under the following circumstances:

a. Lost income. Compensation may be paid when the victim cannot work due to injury from crime.

b. Lost hire income. Compensation may be paid when the victim has been hired by an employer but is unable to begin employment because of injury due to the crime, until released to work. Required documentation includes a signed affidavit by the employer.

c. Employment ceases. Compensation may be paid when the victim is terminated from employment as a result of crime-related injuries, until released to seek work.

d. Unemployment eligible. Compensation may be paid for the difference between the victim's gross wage and the unemployment benefit when the victim is terminated from employment because of injury from crime and is found to be eligible for unemployment benefits.

e. Unemployment ineligibility. Compensation may be paid for the amount of the victim's unemployment benefit when the victim is rendered ineligible for unemployment benefits because of injury from the crime, until the victim is released to work.

f. Workers' compensation benefit eligible. Compensation may be paid for the difference between the victim's gross wage and the workers' compensation benefit when the victim is unable to work because of injury from the crime and is found to be eligible for workers' compensation benefits.

g. Medical and counseling appointments. Compensation may be paid to a primary victim, the parent or guardian of a minor-aged primary victim, or the caretaker of a dependent adult primary victim for wages lost due to medical care or counseling appointments for the victim.

9.35(9) *Lost wages or income for cooperation in an investigation and prosecution.* Compensation may be paid for lost wages or income incurred by an eligible primary victim, survivor of a deceased victim as described in Iowa Code section 915.86(8), parent or guardian of a minor-aged primary victim, or caretaker of a dependent primary victim while cooperating with the investigation and prosecution of the crime, including but not limited to participation at identification sessions, arraignment, deposition, plea agreement meetings, trial, sentencing, parole and probation hearings, and sexually violent predator civil commitment proceedings.

9.35(10) *Lost wages or income due to health or safety concerns related to maintaining employment.* Compensation for lost wages or income shall be paid to an eligible crime victim for up to 30 days following an event that compromises the health or safety of the victim including but not limited to the approved crime, stalking, or harassment. Compensation for lost wages or income beyond 30 days may be extended at the discretion of the program administrator, the director, or the board.

9.35(11) *Residential crime scene cleanup.* Compensation may be paid for the reasonable costs of an eligible victim or applicant for cleaning a residential crime scene, which includes a home, or a private vehicle if the vehicle serves as the primary residence, in which the crime was committed. Cleaning a residential crime scene means to remove, or attempt to remove, from the crime scene blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. Compensation shall be paid for the reasonable out-of-pocket cost of cleaning supplies, equipment rental and labor and the value of property that is essential to the victim and that is held by law enforcement for evidentiary purposes.

Cleaning a residential crime scene does not include replacement or repair of property damaged in the crime.

9.35(12) *Loss of support.* Compensation for loss of support may be paid for the dependents of an eligible homicide victim or of a victim disabled for a period of 60 days or more when the applicant documents that the dependent relied on the victim wholly or partially for physical care or financial support.

a. Period of dependency. Compensation may be paid for loss of support for the remaining period of dependency, up to the limits established in Iowa Code section 915.86(7), in an amount equal to the lost wages or income the victim was earning at the time of death or disability. The amount of compensation shall be subject to reduction by the amount of collateral sources designated as support pursuant to Iowa Code section 915.87(1).

b. Dependent care. Compensation may be paid for loss of support at the current hourly rate of the Iowa minimum wage for dependent care provided by a person other than the victim if the victim was providing physical care to the dependent at the time of the crime.

9.35(13) *Clothing and bedding.* Compensation may be paid for clothing and bedding held as evidence by law enforcement. Compensation shall not be made for a deceased victim's clothing that is held as evidence.

9.35(14) *Funeral, burial, and memorial expenses.* Compensation may be paid for reasonable expenses incurred for the funeral and burial or cremation for an eligible victim who has died as the result of a crime committed against the victim. An estate may be reimbursed for this benefit if the application is filed by the victim's surviving spouse, children, parents, or siblings or by a person cohabiting with or related by blood or affinity to the victim. This benefit cannot be used if there are no surviving eligible applicants. Life insurance will only be considered a collateral source if there is a specific funeral expense clause in the life insurance policy. The following expenses may be paid up to the maximum expense established in Iowa Code section 915.86:

a. Funeral service. Compensation may be paid for expenses related to funeral and burial or cremation preparation and services. Funeral services may also include a memorial service or items commemorating the deceased victim.

b. Burial plot and vessel. Compensation may be paid for the cost of a burial plot, vault, casket, urn, or other permissible vessel.

c. Burial effects. Compensation may be paid for miscellaneous funeral and burial expenses including, but not limited to, flowers, burial clothing for the victim, transportation of the victim's body, and travel and lodging expenses for survivors of the deceased victim as described in Iowa Code section 915.86 with priority for the surviving spouse, children, and parents of the victim. Documentation must be provided for all miscellaneous funeral and burial expenses.

9.35(15) *Dependent care.*

a. Compensation may be paid for reasonable costs of dependent care incurred by a primary victim, the parent or caretaker of a dependent primary victim, or the survivor of a deceased victim to attend medical or counseling appointments or criminal justice proceedings. Dependent care expenses may be paid for the parent or caretaker of a primary victim to attend the parent's or caretaker's own medical or mental health appointments.

b. Compensation may include but is not limited to expenses for care provided by a day care center, private residential child care, a relative who is not a tax dependent, a before- or after-school program, custodial elder care, an adult day care center, a nanny, or an au pair. Expenses may be paid up to the maximum benefit established in Iowa Code section 915.86(13).

9.35(16) *Residential security.*

a. Compensation may be paid for reasonable costs incurred by a victim, the victim's parent or caretaker, or the survivor of a deceased victim to install new residential security items, or to replace inadequate or damaged residential security items, not to exceed the maximum expense established in Iowa Code section 915.86(14).

b. Compensation may be paid for doors, locks, windows, security cameras, security systems or devices, or other reasonable expenses that provide for the safety of the victim or the security of the residence.

9.35(17) *Transportation and lodging expenses.* Compensation may be paid for reasonable transportation and lodging expenses incurred by the victim, secondary victim, parent or guardian of the victim, or survivor of a deceased victim for medical and counseling services, criminal justice proceedings, or funeral activities, not to exceed the benefit limit established in Iowa Code section 915.86(15).

a. Use of a privately owned vehicle shall be paid at the per-mile rate established by the department of administrative services for state employees using a private vehicle for state business.

b. Commercial vehicle transportation shall be paid at the cost incurred by, or on behalf of, an eligible applicant.

61—9.36(915) Appeal of compensation decisions. An applicant shall be informed in writing of the basis for the denial of eligibility or the amount of an award.

9.36(1) *Applicant appeal.* An applicant may appeal a compensation decision as follows:

a. Appeal to chief. An applicant aggrieved by a denial decision or the amount of compensation awarded by the program may appeal to the chief.

b. Appeal to board. An applicant may appeal the chief's decision to the board.

c. Appeal to district court. An applicant who disagrees with the decision of the board has the right to appeal to the district court for judicial review within 30 days of receipt of the board's decision.

9.36(2) *Chief appeal period.* An applicant shall submit to the chief a written request for reconsideration within 30 days of the date the notice of the crime victim compensation program decision is mailed or otherwise issued by the section. Any request for reconsideration postmarked within the prescribed time period shall be considered timely filed by the section. Barring any unusual circumstances, within 30 days of the receipt of the request for reconsideration, the chief shall issue a decision.

9.36(3) *Board appeal period.* An applicant may file with the board a request for consideration of the chief's decision. This written request for consideration by the board shall be submitted within 30 days of the date the notice of the chief's decision is mailed or otherwise issued by the chief. Any request for review postmarked within the prescribed time period shall be considered timely filed by the section. Barring any unusual circumstances, within 90 days of the receipt of the request, the board, or a committee designated by the chair of not fewer than five members of the board, shall issue a decision.

9.36(4) *District court appeal period.* An applicant shall submit a petition for judicial review to the district court within 30 days of the receipt of the notice of the board's decision.

61—9.37(17A) Waiver from rules. This rule establishes a uniform process for granting waivers from rules adopted by the board governing the crime victim compensation program.

9.37(1) *When waiver is appropriate.* The board may grant a waiver from a rule the board has adopted if the board has rulemaking authority to promulgate the rule and no statute or rule otherwise controls the granting of a waiver from the rule. No waiver may be granted from a rule that defines a term. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

9.37(2) *Criteria for discretionary waivers.* The board may grant a waiver from a rule, in whole or in part, in response to a request from an applicant, as applied to a specific claim, if the board finds that:

a. The application of the rule to the claim at issue would result in hardship or injustice to the person seeking compensation; and

b. The waiver would be consistent with the public interest, or the public interest will be protected by other means substantially equivalent to full compliance with the rule; and

c. The waiver in the specific case would not prejudice the substantial legal rights of any person.

9.37(3) *Board discretion.* The decision about whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors.

9.37(4) *Criteria for mandatory waivers.* In response to an applicant's request, the board shall grant a waiver from a rule, in whole or in part, as applied to the particular circumstances, if the board finds that the application of the rule in that specific case would not, to any extent, advance or serve any of the purposes of the rule.

9.37(5) *Administrative deadlines.* When the rule from which a waiver is sought establishes deadlines, the board shall balance the specific individual circumstances of the applicant with the overall goal of uniform treatment of all applicants.

9.37(6) *Conditions.* The board may condition the granting of a waiver on reasonable conditions to achieve the objectives of the particular rule in question through alternative means.

9.37(7) *Public availability of waiver decisions.*

a. A board decision granting or denying a waiver shall be included in the board minutes with reference to the following:

(1) The particular case and the rule or portion thereof to which the decision pertains;

(2) The relevant facts and reasons upon which the action is based; and

(3) The scope and operative period of the waiver if one is issued.

b. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the department shall maintain a record of all orders granting and denying waivers under this chapter. All waiver decisions shall be indexed and available to members of the public at the section office.

9.37(8) *Voiding or cancellation.* A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver upon notice to the victim by regular mail and an opportunity to be heard if:

a. The facts as stated in the request are not true or material facts have been withheld, or

b. The applicant has failed to comply with the conditions of the waiver.

9.37(9) *Effectiveness of waiver.* After the board issues a waiver, a person seeking compensation may rely on the terms of that waiver for the purposes of the particular case for which it was issued. A waiver shall only be effective in the case for which it is issued.

9.37(10) *Appeals from waiver decisions.* Any request for an appeal from a decision granting or denying a waiver shall be in accordance with the procedures provided in Iowa Code chapter 17A and the board's rules. An appeal shall be taken within 30 days of the issuance of the waiver decision unless a contrary time is provided by rule or statute.

61—9.38 to **9.49** Reserved.

61—9.50(13) Administration of the victim services support program. The victim services support program of the Iowa department of justice shall administer the victim services grant funds as provided in Iowa Code chapters 13 and 236. All questions, comments, requests for information, or applications for grant funds shall be directed to the victim services support program by calling 515.281.5044 or 1.800.373.5044.

61—9.51(13) Definitions. For rules related to the victim services support program, the following definitions apply:

"Applicant" means a local or statewide government agency or a public or private nonprofit program that provides direct services and advocacy to crime victims; training and education to professionals and community agencies on crime-related issues, prevention, or justice support; or technical assistance to crime victim service providers and that makes an application for funds from the victim services support program.

"Application" means a request that complies with federal and state requirements for funds from the following funding streams:

1. The federal Victims of Crime Act.
2. The state domestic and sexual abuse program funds provided for in Iowa Code chapter 236.
3. The federal Family Violence Prevention and Services Act.
4. The federal Violence Against Women Act.
5. Other grants or funds available by law for crime victim assistance.

"Application review committee" means a committee, convened by the section, to review and assess applications and make funding recommendations to the victim assistance board.

"Competitive grant application" means an application for funding that the section solicits from eligible applicants and reviews for eligibility and completeness and for which the section convenes the application review committee to recommend grant awards to the board outlined in Iowa Code chapter 915.

"Crime victim center" means the same as defined in Iowa Code section 915.20A(1).

"Focus grant application" means the application for a grant for specific activities, including but not limited to training, travel, or materials, that is solicited at the discretion of the section and used in awarding the grant.

"Funding stream" means a distinct source of federal or state funding available to the section to distribute to entities eligible to receive such funds.

"Grant award" means funds granted to a local or statewide government agency or a public or private nonprofit program by the section.

"Grantee" means a local or statewide government agency or public or private nonprofit program that is awarded or receives funds from the section through a competitive or focus grant application.

"Justice support" means duties performed in the justice system related to investigation, prosecution, or disposition of a criminal case that assist or inform a victim of crime.

"Program" means the victim services support program of the Iowa department of justice.

"Victim" means a crime victim as defined in Iowa Code section 915.80.

61—9.52(13) Program description. Any eligible local or statewide government agency, any public or private nonprofit program, or a combination thereof may apply for and receive a grant award through the program. A contractual agreement specifying the terms of the grant award shall be executed between the department and the approved applicant.

61—9.53(13) Availability of grants. The program shall administer a competitive application process every three years unless otherwise directed by the board. The amount of the funds awarded shall be contingent upon the funds available through state and federal sources. The chief shall announce the opening of an application period through public notice, including but not limited to notice to current grantees and other eligible agencies identified by the program. Applications must be received by the designated due date.

9.53(1) Competitive grant applications will be awarded based on the availability of funds, history and demonstration of quality of services provided, compliance with the requirements of the section, number of victims served or other statistical data deemed useful by the program to demonstrate successful and cost-effective use of awarded funds, population served, and geographical distribution of funds across the state. A preference shall be given to continued funding of agencies and programs that have demonstrated success.

9.53(2) Focus grants will be awarded at the discretion of the chief and of the deputy attorney general who oversees the section. Funds utilized for focus grant applications must comply with all applicable state and federal rules and regulations. The award total of focus grant applications from one funding source may not exceed 3 percent of the funds available from the source in one fiscal year.

61—9.54(13) Application requirements. Applicants shall submit applications to the section in the form and manner prescribed by the section. Applications shall be available upon request to all interested parties.

9.54(1) To be included in the review process and considered for funding, an application shall be received by the section by the designated due date. Applications shall be submitted to the section in the format prescribed by the section. An extension of the filing deadline may be requested of the victim service support program prior to the deadline and may be granted for good cause. If the victim services support program administrator denies a request for extension, the applicant may file a written appeal to the chief delivered within seven days of the date of denial, stating the reason(s) for reconsideration of the

request for extension of the deadline. The determination of a good cause extension by the chief shall be final.

9.54(2) An applicant shall have on file with the program current copies of the applicant's table of organization and, for all private nonprofit programs, articles of incorporation as required.

9.54(3) An applicant shall have on file with the program evidence of any insurance coverage the applicant carries for liability or property.

9.54(4) The program may allow combined applications from two or more local or stateside government agencies if a combined application will encourage cooperation between those agencies on behalf of crime victims, as determined by the program. Each agency receiving funds under a combined application shall sign a separate contract for the awarded funds.

61—9.55(13) Contents of application. Each application shall contain the following information:

9.55(1) A paragraph describing the agencies, units of government, or public or private nonprofit programs requesting the funds.

9.55(2) A description of services for which funding is being requested. The description shall include but not be limited to the following:

a. The geographical area to be served.

b. The crime victim population to be served.

c. Victim eligibility requirements for the applicant's services.

d. A description of substantial financial support from other sources.

e. The intended use of volunteers, if any.

f. The stated goals and objectives or measurable activities of the program.

g. A description of the proposed services to be implemented during the funding year.

h. The amount of funds requested.

i. The amount of cash or in-kind resources or combination thereof that is committed where required by the section.

j. Proof of coordination with appropriate agencies at the local level.

k. A total program budget for all services provided by the applicant's crime victim program.

l. A proposed budget for the requested funds.

m. A list of other anticipated sources of income, including written commitments, if possible, and plans for continued funding of the funded activities.

n. Other information identified by the section to be included in the application to assist the application review committee and the board.

o. Signed certified assurances as required by statute or regulation or otherwise designated by the section.

61—9.56(13) Eligibility requirements. Funds must be used only to provide victim services, justice support to victims of crime, training, community education, crime prevention, or technical assistance to victim service providers and allied professionals. Awarded funds shall not be used to supplant other available or mandated funds. An applicant must meet the following additional requirements:

9.56(1) The applicant shall be a local or statewide agency, a public or private nonprofit organization, or combination thereof, as stated in rule 61—9.51(13).

9.56(2) The applicant shall provide services to victims of crime through crime victim centers, law enforcement agencies, prosecution offices, state or local agencies, culturally specific service organizations, faith-based programs, and other allied professionals. Services provided to victims shall include but are not limited to crisis intervention, civil and criminal court advocacy and support, group and individual follow-up counseling, transportation, and information and referral. Applicants may contact the program at 515.281.5044 or 1.800.373.5044 for additional services that qualify for funding.

9.56(3) An applicant providing services to victims of domestic abuse, sexual abuse, and other violent crimes must also provide or arrange safe shelter or housing for victims and their children when needed at no cost to the victims. To ensure staff training and compliance with best practice standards,

preference will be given to domestic abuse programs certified by the Iowa coalition against domestic violence and sexual abuse programs certified by the Iowa coalition against sexual assault.

9.56(4) An applicant providing services to victims of sexual abuse must also provide support to victims at the time of an evidentiary sexual abuse examination. To ensure staff training and compliance with best practice standards, preference will be given to sexual abuse programs certified by the Iowa coalition against sexual assault.

9.56(5) The applicant shall promote within the community a coordinated public and private effort to assist crime victims.

9.56(6) The applicant shall be an equal-opportunity employer and provide services on an equal-opportunity basis.

9.56(7) The applicant shall comply with applicable federal and state statutes and rules, all requirements specified in the grant between the section and any funding source, and all requirements set forth in the funding application or any other contractual document.

9.56(8) The applicant shall assist victims in seeking state crime victim compensation benefits.

9.56(9) The applicant shall have a grievance procedure established for victims, employees, and volunteers.

9.56(10) The applicant shall ensure that all employees and volunteers of crime victim centers providing direct services to victims are trained as victim counselors as defined in Iowa Code section 915.20A.

9.56(11) The applicant shall provide services within the geographical service area without regard to a victim's ability to pay.

9.56(12) An existing program must document results of prior program activities demonstrating that the needs of victims have been met.

61—9.57(13) Selection process. The program shall conduct a preliminary review of each application to ensure that the applicant is eligible, the application is complete, and the proposed services are consistent with the section's mission of providing quality assistance to crime victims and crime victim programs throughout the state.

9.57(1) In selection of competitive applicants, the program may utilize generally accepted methods of grant review, including but not limited to checklists; quality scales; written comments by application review committee members; and formulas based on past funding, population, clients served and available funds.

9.57(2) In selection of competitive applications, the program shall establish an application review committee. The committee shall submit recommendations for funding awards to the chief. The chief shall submit to the board the recommendations of the application review committee and any alternative recommendations by the program staff.

a. The application review committee shall be comprised of representatives from the victim assistance board and experts in the fields of victim services, funding administration and management, and criminal justice. Committee members shall be selected solely by section staff.

b. The program shall provide the committee with information related to an applicant's performance with previous awards, the quality and quantity of services provided, and community support for an applicant.

c. The committee shall review the contents of the applications and information provided by the section and members of the committee regarding an applicant and the geographical area to be served.

9.57(3) The board shall consider the recommendations of the application review committee and the chief to determine final competitive awards to the extent that funds are available and to the extent to which applications meet the application criteria. The board may reject any or all applications.

9.57(4) In selection of an applicant for a focus grant, a written proposal shall be solicited from current grantees. Interested grantees shall submit a proposal to the chief outlining the purpose, cost, and outcome of the proposed activities and funds. The chief shall submit a recommendation to the deputy attorney general for criminal justice who oversees the section, and the deputy attorney general shall make a final decision based on the availability of funds and the merits of the proposal.

61—9.58(13) Notification of applicants. An applicant shall be notified within 90 days after the application due date whether the application has been denied or approved by the board and the amount of funds approved for the application.

61—9.59(13) Request for reconsideration.

9.59(1) An applicant may file with the board a request for reconsideration of the denial of an application or of the amount of an award. The request for reconsideration must be submitted within ten working days of the date the notice of decision is mailed or otherwise issued by the section to the applicant. The request must be in writing and state grounds for reconsideration. The grounds for reconsideration the board shall consider are limited to the following: victim assistance misconduct, ineffective review processes, disparities in funding, or miscalculation of funding amounts. The appeals process is not an opportunity to resubmit an application or to provide additional information for consideration. The board or a committee designated by the board chairperson shall review the request in a timely manner. A decision of the board or designated committee shall constitute final agency action.

9.59(2) At the time a request for reconsideration is received by the chief, notice that a request for reconsideration has been filed shall be sent to all approved applicants whose funds may be affected by the request.

9.59(3) Funds shall not be disbursed pending a request for reconsideration to the extent the funds are affected by the outcome of the request. Every applicant that would be adversely affected shall be notified if a request for reconsideration is approved, and grant awards shall be reduced as necessary.

61—9.60(13) Contract agreement.

9.60(1) A contract shall be negotiated by the section and each applicant.

9.60(2) Prior to entering into a contract, the section or the board may require modification of the proposed program, submission of further information or documentation, or other stipulation by the applicant. The required modification, information, documentation, or stipulation shall be specified in the notification of award contract.

9.60(3) The applicant or the section may request a modification of the program budget to reflect the amount, expenses and activities allowed by the award. Both parties must agree to any modification of the applicant budget.

9.60(4) In the event of a state, federal, or other audit, the grantee shall be responsible for the audit and liable for payment of any funds required to conduct the audit, to compensate for any grant disallowance, or to repay any funds received or spent contrary to the contract, these rules, or applicable law.

9.60(5) Funds shall be spent to meet the stated services and activities as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa in the form and manner as designated by the section.

9.60(6) The grantee shall sign the certified assurances for the award at the time of application and at any time requested by the section.

9.60(7) Nothing in these rules shall be construed as limiting the remedies available to the state or the section for improper use of awarded funds or other breach of the grantee's duties under the contract and applicable law.

61—9.61(13) Performance reports. Performance reports shall be submitted to the program from all grantees. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee by the program until such time as the report is received. Delinquent or inadequate reports from prior grants may detrimentally affect any award to a grantee for the following year.

61—9.62(13) Termination. Contracts may be terminated for the following reasons:

9.62(1) *Termination by grantee.* The grantee may terminate the contract at any time during the contract period by providing written notice to the section.

9.62(2) *Termination by department.* The section may terminate a contract upon a ten-day written notice when the grantee or any of its subcontractors fail to comply with the grant award stipulations,

standards, or conditions. When there is a reduction of funds by executive order or by another method, the section may terminate a contract by providing a grantee with written notice.

9.62(3) *Termination for cause.* If the grantee fails to fulfill its obligations under the contract properly or on time, uses grant funds for purposes other than crime victim services approved by the program, or otherwise violates any provision of the contract, the board may terminate the contract by providing written notice to the grantee. Funds shall not be used for social justice activities. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished products and services provided by the grantee shall, at the option of the section, become state property. The section shall pay the grantee fair and equitable compensation for satisfactory performance prior to receipt of notice of termination minus any funds owing to the department (e.g., damages for breach, improperly spent funds).

61—9.63(13) Financial statement supplied. Within 45 days of the termination, the grantee shall supply the section with a financial statement detailing all costs incurred up to the effective date of the termination. The section's determination of costs and amounts to be paid shall be final.

61—9.64(13) Indemnification. The grantee shall defend, indemnify, and hold harmless the state of Iowa; its officers, agents and employees; and any of the state's federal funding sources for:

9.64(1) Grantee's performance or nonperformance of a contract entered into or violation of these rules.

9.64(2) Grantee's activities with subcontractors and all other third parties.

9.64(3) Any other act or omission by a grantee, its agents, officers, or employees.

61—9.65(13) Records. Grantees shall keep statistical records and documentation of services provided and any other activities as required by the program. The program shall have immediate access during working hours to records pertaining to the contract. No notice needs to be provided to the grantee prior to inspection of the records.

61—9.66 to **9.78** Reserved.

61—9.79(915) Iowa standards for sexual assault nurse examiners.

9.79(1) *General.* To ensure the highest standard of care for sexual assault victims, registered nurses, doctors of medicine or doctors of osteopathic medicine, advanced registered nurse practitioners, and physician assistants are eligible for reimbursement from the state for mileage and compensation for performing sexual assault examinations as long as they meet all of the requirements set forth in subrules 9.79(2) through 9.79(5). All applicant documentation submitted is reviewed, and either approved or recommended for denial by the sexual assault forensic response coordinator. All recommendations for denial are reviewed by the strategy and compliance manager and are either approved or denied. Sexual assault nurse examiners or sexual assault nurse examiner candidates who disagree with the decision may appeal to the chief, who will either approve or deny the decision. If the applicant disagrees with the chief's decision, then the decision may be appealed to the victim assistance board within 30 days of receipt of the decision. If an applicant disagrees with the decision of the board, the decision may be appealed to the district court for judicial review within 30 days of the receipt of the board's decision. All sexual assault nurse examiners must be committed to being in regular contact with the sexual assault forensic response coordinator and communicating any changes in their ability or commitment to serve.

9.79(2) *Eligibility.* To be eligible to become a sexual assault nurse examiner in the state of Iowa, a qualified provider shall meet or exceed the following requirements:

a. Active and unrestricted qualified medical practicing licensure in accordance with subrule 9.79(1).

(1) For registered nurses, an adult/adolescent sexual assault nurse examiner candidate shall have two years of nursing experience unless prior experience as a certified nursing assistant (CNA) or licensed practical nurse with experience in an acute care environment, including but not limited to an

emergency department, intensive care, coronary care, cardiology, and neonatal intensive care, is deemed sufficient by the sexual assault forensic response coordinator.

(2) A pediatric sexual assault nurse examiner candidate shall have three years of nursing experience that includes a minimum of one year of specialty pediatric nursing experience.

b. A criminal history record check. All candidates shall request a background check from the division of criminal investigation online, by mail, by fax, by email, or in person. The fee is not reimbursed by the state but may be reimbursable through the candidate's employer.

(1) Iowa Code section 272C.15(2) describes criminal convictions that may disqualify a candidate from qualifying to serve as a sexual assault nurse examiner. Any convictions involving a crime of dishonesty or false statements shall be disclosed by the candidate since the conviction may be used to attack a witness's character and ultimately impeach the witness (more information can be found in Iowa Rule of Evidence 5.609).

(2) In cases where a conviction may disqualify a candidate, the candidate shall follow the appeal process in subrule 9.79(1).

(3) After the completion of the background check, any conviction other than a minor traffic infraction shall be disclosed to the sexual assault forensic response coordinator within 15 calendar days to determine whether the conviction disqualifies the individual from continuing to serve as a sexual assault nurse examiner. In cases where a conviction may disqualify a candidate, the candidate shall follow the appeal process in subrule 9.79(1).

c. Commitment to practice as a sexual assault nurse examiner and maintain knowledge, standards and education. Every sexual assault nurse examiner in Iowa will complete the Commitment to Practice as a Sexual Assault Nurse Examiner in Iowa document and submit it to the sexual assault forensic response coordinator.

d. A letter of support to practice as a sexual assault nurse examiner in a facility. The letter of support will be written by a professional in the sexual assault field or a supervisor, state that the professional supports the candidate in providing services to sexual assault victims, and be submitted to the sexual assault forensic response coordinator. Examples of professionals or supervisors include but are not limited to a sexual assault nurse examiner coordinator, emergency department director, or advocacy sexual assault response team (SART) coordinator.

9.79(3) *Candidate approval.* All sexual assault nurse examiner candidates shall meet one of the following:

a. The candidate has completed an approved and accredited 40-hour adult and adolescent course that is consistent with sexual assault nurse examiner education guidelines established by the International Association of Forensic Nurses (IAFN), which includes the awarding of continuing education for course completion. Additionally, the course shall include training and objectives covering Iowa-specific knowledge, including but not limited to laws; regulations; Iowa kit tracking requirements; and medical, legal, and judicial protocols. The candidate shall submit all certificates of completion to the sexual assault forensic response coordinator; or

b. If the candidate has completed a sexual assault nurse examiner education course in another state, the course will be verified and either approved or denied by the sexual assault forensic response coordinator, indicating whether the course meets the standards required by Iowa (as referenced above). If the course is denied, the sexual assault forensic response coordinator will provide all documentation to the strategy and compliance manager for a second review and decision. If the 40-hour course meets approved standards but is missing the Iowa-specific education, the sexual assault forensic response coordinator will make a recommendation to fulfill this training requirement.

c. A practitioner who holds doctor of medicine or doctor of osteopathic medicine licensure will be considered a qualified provider in accordance with the Iowa standards for sexual assault nurse examiners approved by the department upon completion of an approved 30-hour adult and adolescent course.

9.79(4) *Completion of clinical training log/preceptorship.* All sexual assault nurse examiner candidates shall complete the following within six months of successfully completing coursework:

a. Complete and turn in a training log to the sexual assault forensic response coordinator, who will maintain the initial certificate and all continuing education (CE).

b. Clinical experience, which may be obtained by working with an experienced practicing sexual assault nurse examiner, through a live clinical simulation training, or a combination of the two. Documentation shall be submitted to the sexual assault forensic response coordinator.

c. Submit a log of a preceptorship to the sexual assault forensic response coordinator for review and approval. The log shall include acute examination evaluation and skill verification, including demonstration of use and the ability to perform the following: components of a medical and forensic examination and interview; documentation; understanding and obtaining patient consent forms; kit collection; tracking system use and education to patient; prophylactic medication administration and education; and verbalizing and demonstrating interaction of the multidisciplinary team (MDT) approach and collaboration.

9.79(5) *Reapproval, practice expectations, and CE.* Every three years, sexual assault nurse examiners will submit reapproval documentation to the sexual assault forensic response coordinator by March 31 of the year reapproval is due. The sexual assault forensic response coordinator will provide confirmation of reapproval by April 30 of the same year. The documentation will include:

a. 200 total hours of sexual assault nurse examiner-related practice or education, which shall be achieved in the following ways:

(1) A minimum of 150 hours of intended direct care of sexual assault patients. "Intended direct care" means a qualified provider is available and expected to provide services to patients presenting for sexual assault if the provider is on duty during a scheduled shift or on call or a combination of both; and

(2) 50 hours of education related to sexual assault patient care. This can include topics such as trauma neurobiology, sexual assault, testifying, human trafficking, and other related topics.

b. Continuing education. All sexual assault nurse examiners shall complete the following:

(1) Attend at least one virtual or in-person biannual meeting led by the sexual assault forensic response coordinator.

(2) Submit proof of attendance for at least 50 hours of education in the area of sexual assault patient care every three years. This can include topics such as neurobiology of trauma, MDT response, human trafficking, testifying, and other related topics.

(3) Submit verification of the number of examinations completed. If fewer than two examinations are completed in a 16-month period, attendance at an approved clinical simulation training or collaboration with a designated preceptor for skill validation will be required.

61—9.80(915) Administration of sexual abuse examination payment. The section shall administer the sexual abuse examination program as provided in Iowa Code section 915.41. That Iowa Code section states in part that the cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing sexually transmitted disease and preventing pregnancy shall be borne by the department of justice. Questions regarding payment should be made by calling 515.281.5044 or 1.800.373.5044.

61—9.81(915) Definitions. For rules related to sexual assault nurse examiners and sexual abuse payments, the following definitions apply:

"Administration" means the administrator of the section.

"Eligible claimant" means a medical provider that provides a sexual abuse examination to a sexual assault victim. The following are eligible to file a claim with the crime victim assistance program in the event that they have made payment to a medical provider for the costs of a sexual abuse examination:

1. A victim of sexual abuse.
2. A person responsible for the maintenance of a sexual abuse victim.
3. A dependent of a victim who has died as a result of injuries sustained in a sexual assault.
4. The guardian of a sexual abuse victim.

"Reasonable charges" means those ordinarily charged by the provider of the service to the general public for services of a similar nature.

"Sexual abuse" means the same as "sexual abuse" as defined in Iowa Code section 709.1 or "incest" as described in Iowa Code section 726.2.

"Sexual abuse examination" means a medical examination provided to a woman, man, or child to collect evidence of sexual abuse victimization of that person as described in Iowa Code sections 709.1 and 726.2 and provide treatment for the prevention of sexually transmitted disease and prevention of pregnancy pursuant to Iowa Code section 915.41. When applicable, the provider of a sexual abuse examination shall file a child abuse report with the Iowa department of health and human services as required by Iowa Code section 232.70.

61—9.82(915) Application for sexual abuse examination payment.

9.82(1) *Consideration for payment.* The department will consider payment upon receipt of a claim for reimbursement from a medical provider indicating that the claim is for the collection of evidence by sexual abuse examination. In the case that a victim, guardian of a victim, person responsible for the victim, or dependent of a victim who died of injuries sustained in a sexual assault has paid part or all of the charges incurred, a copy of the provider bill and documentation of personal payment of the bill must be submitted for reimbursement. An application for sexual abuse examination payment must include the federal identification number or social security number of the claimant.

9.82(2) *Application filing.* To apply for payment under the sexual abuse examination program, the form or bill submitted must identify the sexual assault victim by name, birth date, and patient number; indicate that the claim is for a sexual abuse examination; and itemize all services rendered and the fee for each service.

61—9.83(915) Computation of sexual abuse examination payments.

9.83(1) *Payment for examination.* The department shall make payment for sexual abuse examinations, as appropriate, for services including but not limited to:

a. Examiner's fee:

(1) To collect the patient's medical history;

(2) To conduct a physical examination;

(3) To collect laboratory specimens; and

(4) To test for sexually transmitted diseases.

b. Treatment for the prevention of sexually transmitted disease.

c. Examination facility, including:

(1) Emergency room, clinic room or office room fee;

(2) Pelvic tray and medically required supplies;

(3) Additional facility or equipment fees that the department determines to be reasonable.

d. Laboratory collection and processing of specimens for criminal evidence, sexually transmitted disease, and pregnancy testing.

9.83(2) *Provider payment.* Any sexual assault forensic examination performed or any sexual abuse services provided by a qualified provider within the first 30 days after a sexual abuse will qualify the provider to receive a $400 provider fee and the $300 facility fee. Qualified providers serving sexual abuse patients with follow-up care will receive a $200 provider fee and a $300 facility fee, if it applies. Services provided by nonqualified providers will only be reimbursed the $300 facility fee, if it applies. Qualified providers are sexual assault nurse examiners as well as other professionals, including doctors of medicine or doctors of osteopathic medicine, advance registered nurse practitioners, and physician assistants who meet or exceed the Iowa standards for sexual assault nurse examiners (more information can be found in rule 61—9.79(915)). For this purpose, an individual does not have to be certified by IAFN to be a qualified provider. Additionally, child protection centers (CPCs) in Iowa that have been accredited by the National Children's Alliance or equivalent accrediting body will be reimbursed by the state at a rate equivalent to that of those individuals who meet or exceed the Iowa standards for sexual assault nurse examiners. The medical exam shall be completed within 30 days of the disclosure of sexual abuse to the CPC. A qualified sexual assault nurse examiner shall also be reimbursed for travel at the per-mile rate established by the department of administrative services for state employees using a privately owned vehicle for state business. No reimbursement will be provided until the appropriate reimbursement invoice and the sexual assault forensic examination consent form are submitted. Any

charges in excess of these amounts will require additional documentation from the provider. The crime victim assistance program will pay only those charges determined by the department to be reasonable and fair.

9.83(3) *Examination kits available at no cost.* The section makes sexual abuse examination kits available to health care providers at no cost.

61—9.84(915) Victim responsibility for payment. A victim of sexual abuse is not responsible for the payment of the costs of a sexual abuse examination determined to be eligible for payment by the department. A medical provider must not submit any costs associated with a sexual abuse examination to a victim's insurance or to the sexual abuse victim. A medical provider must not submit any remaining balance to the sexual abuse victim after the sexual abuse examination program has determined payment.

61—9.85(915) Sexual abuse examination—right to restitution. In all criminal cases under Iowa Code chapter 709 and sections 726.2 and 710.2 in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, restitution may be ordered from the offender to the crime victim assistance program for the cost paid by the department for a sexual abuse examination rendered to the victim of that crime pursuant to Iowa Code section 910.2.

61—9.86(915) Erroneous or fraudulent payment—penalty. If a payment or overpayment of a reparation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipients, the recipient is liable for repayment of the reparation. However, if the program does not notify the recipient of the erroneous payment or overpayment within one year of the date of payment, the recipient is not responsible for repayment to the department. If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment to the department.

61—9.87(915) Right to appeal. An eligible claimant who disagrees with the program's decision concerning payment or amount of payment has the right to request reconsideration of the decision by the victim assistance board. The request for reconsideration must be received by the department within 60 days after the decision of the program is mailed.

These rules are intended to implement Iowa Code chapter 915.

[Filed 10/23/24, effective 12/18/24]
[Published 11/13/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/13/24.

ARC 8359C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rulemaking related to unemployment insurance services division

The Director of the Workforce Development Department hereby rescinds Chapter 21, "Unemployment Insurance Services Division," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Pursuant to Executive Order 10, the Department is rescinding Chapter 21 relating to the organization of bureaus within the Unemployment Insurance Services Division and adopting a new chapter in lieu thereof. The new chapter eliminates language that duplicates statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024, as **ARC 8216C**. A public hearing was held on the following date(s):

- October 8, 2024

No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Director of the Workforce Development Department on October 23, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 871—Chapter 41.

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 December 18, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 871—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
UNEMPLOYMENT INSURANCE SERVICES DIVISION

871—21.1(96) Unemployment insurance services division. The primary responsibility of the unemployment insurance services division is to administer the provisions of the Iowa employment

security law and related federal programs in accordance with pertinent laws, regulations, and policies. The division administers the payment of job insurance benefits to eligible individuals, determines which employers are subject to the state and federal laws enacted in this area, supervises the collection of taxes from these employers, and oversees a program to control the quality of benefit payment and revenue collection. These functions are performed by the following bureaus:

21.1(1) *Benefits bureau.* The benefits bureau determines the eligibility of individuals claiming unemployment insurance. It processes unemployment compensation in accordance with Iowa Code sections 96.1A(32), 96.7(2)*"d,"* and 96.40 and is responsible for payments of other special federal unemployment insurance benefits as agreed to by the United States Department of Labor and the state of Iowa. The benefits bureau is responsible for:

a. Screening all employer protests,

b. Investigating all labor dispute protests and issuing appropriate decisions,

c. Performing fact-finding interviews with claimants and employers to resolve issues such as the determination of claimant eligibility and employer liability for benefit charges,

d. Responding to communications involving technical matters related to unemployment insurance,

e. Correcting records due to reversal or modification of a decision on appeal,

f. Processing initial interstate claims; processing combined wage claims; and issuing duplicate benefit payments for lost, stolen, outdated, or returned payments,

g. Retaining and organizing records, producing records as required by law, and collecting fees for such production, and

h. Maintaining the voluntary income tax withholding program in accordance with Iowa Code section 96.3(10) and reporting tax withholding and taxable benefits to the relevant federal and state authorities.

21.1(2) *Tax bureau.* The tax bureau is responsible for contacting Iowa and out-of-state employers that do business in Iowa to establish taxpayers' liability under the law. This includes:

a. Maintaining and controlling all records of unemployment insurance taxes paid in the state and assigning rates each year to each employer,

b. Collecting and depositing all money received for contribution reports, delinquent contribution reports, benefit reimbursements, interest, and penalties with the state treasurer's office,

c. Initiating routine legal actions such as the filing of liens, garnishments, and bankruptcies,

d. Conducting investigations on Federal Unemployment Tax Act (FUTA) discrepancy problems, contractor registration issues, business closings, and claimant requests for omitted wage credits, and

e. Determining employer/employee and independent contractor relationship issues.

21.1(3) *Integrity bureau.* The integrity bureau consists of the following three distinct work units:

a. Investigations and recovery unit. The investigations and recovery unit was established to prevent, detect, investigate, and penalize unemployment insurance benefit fraud. The unit verifies whether aliens are entitled to unemployment insurance and investigates and disqualifies those who are not eligible, conducts the fictitious employer detection program to discover employers set up for the purpose of fraudulent activities, and investigates and determines whether an unemployment insurance warrant has been forged and whether it should be reissued.

b. Benefits collections unit. The benefits collections unit is responsible for benefit overpayment recovery, including the collection of benefit overpayments and penalties; initiating routine legal actions similar to those of the tax bureau; and utilizing state and federal programs to access claimants' Iowa and federal income tax refunds, Iowa lottery prizes, and Iowa vendor payments.

c. Quality control unit. The quality control unit works to support the development and execution of corrective action plans for the improvement of the unemployment insurance program. The unit is responsible for the collection and analysis of data pertaining to the accuracy of unemployment insurance benefit payments and denial determinations, validation of the unemployment insurance data reports, identification and analysis of risk factors that could threaten the unemployment insurance program, and maintenance of the data-processing capabilities to store and transmit various agency-required reports to the federal government.

This rule is intended to implement Iowa Code chapter 96.

[Filed 10/23/24, effective 12/18/24]
[Published 11/13/24]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/13/24.

ARC 8360C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rulemaking related to employer records and reports

The Director of the Workforce Development Department hereby rescinds Chapter 22, "Employer Records and Reports," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Pursuant to Executive Order 10, the Department is rescinding Chapter 22 relating to employer records and reports and adopting a new chapter in lieu thereof. The new chapter eliminates language that duplicates statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024, as **ARC 8218C**. A public hearing was held on the following date(s):

- October 8, 2024

No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Director of the Workforce Development Department on October 23, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 871—Chapter 41.

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 December 18, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 871—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
EMPLOYER RECORDS AND REPORTS

871—22.1(96) Records to be kept by the employer.

22.1(1) Each employing unit shall maintain, for a period of five years after the calendar year in which the remuneration to which they relate was paid or, if not paid, was due, records evidencing remuneration made by the employing unit and reportable to the department.

22.1(2) Such records shall show with respect to each employee:

a. Name of worker.

b. Social security number.

c. Date on which the employee was hired, was rehired, or returned to work after a temporary layoff and the date on which the employee was separated from work and the reason therefor.

d. Scheduled hours, except for workers without a fixed schedule of hours, such as those working outside of the employer's establishment in such a manner that the employer has no definite knowledge of their working hours.

e. Total wages paid for employment in each period and the date of payment. For all pay periods ending in each quarter, the records must show separately the following: money wages; the cash value of other remuneration, including wages in lieu of notice, bonuses, gifts, and prizes; the nature of payments such as accounts paid to employees as allowance or reimbursement for traveling and other business expenses; and the amounts of such expenditures actually incurred and accounted for by the employees.

f. The state or states, and the name of the Iowa county, if applicable, in which the services are performed. If any of such services are performed outside of this state, employers are subject to 871—subrule 23.24(1).

g. When the pay period covers services performed both in covered employment and in excluded work, the hours and wages for covered employment under the Iowa employment security law, hereinafter referred to as the "Act," and hours and wages for excluded work.

h. The physical worksite at which each employee worked during each pay period that includes the twelfth of each month. If an employee worked at more than one worksite, the worksite at which the majority of the work was performed should be the one on record.

22.1(3) Such payroll records may be preserved by the employer in an electronic format, provided the employer is willing to provide access to such records as may be required by the department.

22.1(4) Any employing unit having its principal place of business outside of Iowa shall maintain payroll records in this state with respect to wages paid to employees who perform some service in this state. An out-of-state employing unit may, with the approval of the department, maintain such payroll records outside the state if the employing unit agrees to furnish the department with a true and correct copy of such payroll records upon request. The department may make estimated reports and payroll listings upon an out-of-state employing unit's failure to maintain said records in Iowa as required.

This rule is intended to implement Iowa Code section 96.11(6)*"a."*

871—22.2(96) Reports. Each employing unit shall comply with the instructions issued by the department pertaining to the preparation and filing of reports.

This rule is intended to implement Iowa Code section 96.11(1).

871—22.3(96) Filing employer's contribution and payroll report.

22.3(1) Each employer shall, by the due date, electronically submit contribution and payroll for each quarter listing wages paid with respect to all the employer's business maintained within this state computed in accordance with the Iowa Code and these rules.

22.3(2) A copy of each such report shall be preserved by each such employer for a period of at least five years from the end of the calendar year in which the report was due.

22.3(3) Every qualified or subject employer is required to file contribution and payroll each quarter, even if an employer finds that for some particular quarter no contributions are due or the employer has no employees during the period covered.

22.3(4) Combined reports, leased employees, and concurrently employed individuals.

a. Consolidated or combined reports of parent and subsidiary corporations or other employing units, whether or not the employing units are related, are not permitted.

b. Employees of parent and subsidiary corporations or other employing units, whether or not they are related, shall be reported on the quarterly reports of the employing unit for which the services are performed regardless of which employing unit actually issues the employees' paychecks.

c. Leased employees.

(1) Except as described in subparagraphs 22.3(4)*"c"*(2) through 22.3(4)*"c"*(5), individuals leased from an employee leasing company, by the client of the employee leasing company, shall be considered to be employed by the client and shall be reported on the quarterly reports of the client, at the contribution rate of the client, unless and until it is shown to the satisfaction of the department that the individuals are and will continue to be under the exclusive direction and control of the employee leasing company, both under a written contract and in fact.

In order for a contract to be considered evidence that individuals are the employees of the employee leasing company, the contract shall:

1. Specify the service to be performed by the individuals, on behalf of the employee leasing company, for the client.

2. Specify the fee the client must pay for this service. The fee must be large enough to cover the actual cost of the individuals' wages and fringe benefits plus provide a reasonable profit on the service performed for the client.

3. Specify that the employee leasing company has the exclusive right to determine the number of individuals needed to provide the service for the client and to direct and control the individuals in the performance of the service.

4. Specify that the employee leasing company has the exclusive right to hire, fire, discipline, and reassign any of the individuals to another position or to another client without the consent of the client.

(2) If an individual is leased to fill a temporary need from a company whose business is primarily to provide workers to fill temporary needs, the individual shall be considered to be the employee of the leasing company as long as a written contract is in place.

(3) If an individual is a truck driver leased from a company that leases truck tractors with drivers to trucking companies, the individual shall be considered to be the employee of the leasing company unless and until it is shown to the satisfaction of the department that the trucking company has the exclusive right to hire, fire, discipline, reassign, and direct and control the services performed by the individual, both under a written contract and in fact.

(4) If an individual leased from an employee leasing company is a corporate officer of the client, the individual shall always be considered the employee of the client and not the employee of the leasing company.

(5) If an individual leased from an employee leasing company holds an exempt relationship, as described in Iowa Code section 96.1A(16)*"g,"* with the client, the individual shall not be considered to

be an employee of either the client or the leasing company unless an election to cover the individual has been filed and approved in accordance with Iowa Code section 96.8(3)*"b."*

d. Concurrently employed individuals.

(1) Except as described in subparagraph 22.3(4)*"d"*(2), individuals who perform services concurrently for more than one employing unit, whether or not the employing units are related, shall be considered as working for each of the employing units and shall be reported on the quarterly reports of each of the employing units. Each of the employing units shall be required to pay contributions on the wages attributable to that employing unit up to the taxable wage base limit for each calendar year.

(2) An individual who concurrently performs services as a corporate officer for two or more related corporations and who is paid through a common paymaster that is one of the related corporations may be treated as working for only the common paymaster at the discretion of the related corporations.

22.3(5) The employer's contribution and payroll report shall include:

a. The social security number of, name (last name first) of, and total wages paid to each employee during the calendar quarter. All corrections to previous reports must be submitted electronically. All employees' wages will be reported by the reporting unit under which the work was performed.

b. Wages paid. The electronic system will calculate the taxable wages for each employee, contribution, interest, and penalty due for the calendar quarter and provide the employer with the sum of the total and taxable wages paid to all employees during the calendar quarter. If the employer is claiming taxable wages reported to another state, the amount claimed and the state that the wages were reported to will be listed.

c. The amount of extraordinary pay that was paid to the employees during the calendar quarter for each reporting unit.

d. The total number of employees who were paid wages during the pay periods that include the twelfth day of each month of the calendar quarter for each reporting unit.

e. The number of the county in which the reporting unit is located if only one business activity is conducted at only one worksite during the calendar quarter; however, if the same business activity is conducted at more than one worksite or if different business activities are conducted at one or more worksites, the employer shall include for each worksite the total number of employees paid wages during the pay periods that include the twelfth day of each month of the calendar quarter and the total wages paid during the calendar quarter. The system will compute and enter taxable wages.

The total number of employees paid wages during the pay periods that include the twelfth day of each month of the calendar quarter for all worksites should equal the total number of employees reported for that month.

f. The reason for the increase or decrease in total employment during the calendar quarter.

g. The electronic signature of the owner, responsible officer, or authorized agent of the employer certifying that the information given is true and correct to the best of the signer's knowledge and belief; the date the report was submitted; and the telephone number of the signer.

h. Such other schedules or reports as may be required, duly completed in all substantial respects on such forms and in accordance with instructions provided or approved by the department.

i. The amount of net remittance due. If the amount of net remittance due is less than $1, the employer need not submit payment. The system will compute and enter the net remittance due.

j. The total number of employees on the report, which will be computed and entered by the system.

This rule is intended to implement Iowa Code sections 96.1A(15), 96.7, 96.11(6), and 96.11(11).

871—22.4(96) Reporting of earnings data by secure file transfer.

22.4(1) An employer, agent, or third-party administrator may submit an electronic file. Authorization for this reporting method will be given if the submitting party meets the department's technical specifications, which will be furnished upon request.

22.4(2) The electronic file submitted must contain, for each reporting unit, all of the required employer information, wage information, and labor market information. Adjustments to prior submitted reports should be submitted electronically via the system application.

22.4(3) The director shall annually designate the number of wage lines per report that will require the report to be filed electronically.

This rule is intended to implement Iowa Code section 96.11(6)*"a."*

871—22.5(96) Filing of quarterly contribution and payroll by newly subject or covered employers. Any employing unit that becomes an employer subject to this chapter within any calendar quarter other than by a voluntary election of the employing unit shall file contribution and payroll for each calendar quarter. Payroll includes all wages paid during the current quarter as well as separate quarterly reports for wages paid in prior quarters of the same calendar year. The first quarterly reports are due on the last day of the calendar month following the close of the calendar quarter in which the employing unit becomes subject to the Act. Any employer filing a voluntary election for coverage must begin filing reports in the quarter the employer's election is effective.

This rule is intended to implement Iowa Code sections 96.7(1), 96.8(3), 96.14(1), and 96.14(2).

871—22.6(96) Employer changing status, address or name required to file report. Any employer that terminates business for any reason whatsoever; transfers or sells all or a substantial part of the assets of the organization, trade or business to another; or changes the trade name of such business or address thereof shall, within ten days, provide electronic notification to the department of such change, including the former name and address of the business; the new name, telephone number, and address; the name of any new owner; and the employer's own name, telephone number, and present address.

This rule is intended to implement Iowa Code sections 96.8(4) and 96.11.

871—22.7(96) Exempt employing units and exempt employment.

22.7(1) The department may request, and the employing unit having workers performing services for the unit who the unit considers exempt from this Act may file, Form 68-0192, Questionnaire for Determining Status of Workers, along with supporting exhibits and documents to enable the department to determine whether an exemption exists.

22.7(2) Any employing unit exempt under this Act or for whom certain employment performed is not subject to contributions shall immediately notify the department of any changes that may impact the exemption, including the character of its organization, the purposes and manner of its operation, or the changed manner in which employment is performed.

22.7(3) The burden is on the employer to prove the exemption claimed.

This rule is intended to implement Iowa Code section 96.1A(16)*"f."*

871—22.8(96) Subject employers.

22.8(1) Whenever an employing unit is in doubt as to whether or not an individual is an employee or is engaged in employment subject to the Act, the department may request and the employing unit shall submit Form 68-0192, Questionnaire for Determining Status of Workers.

22.8(2) The department will maintain a separate account for each employer and notify the employer of any status change. This notice will advise the employer of:

a. The effective subjectivity date.
b. The date of the determination.
c. The assigned industry code.
d. The section of the law under which the employer was found liable.
e. The federal identification number (if available).
f. The workforce development unemployment insurance account number.
g. The contribution rate for that year and preceding four years, if applicable.
h. Whether the account was new, reestablished or inactive.

22.8(3) An appeal of an employer liability determination may be perfected according to rules 871—23.52(96) through 871—23.56(96).

This rule is intended to implement Iowa Code section 96.7(4).

871—22.9(96) Registration of employing units to determine liability.

22.9(1) Each employing unit doing business in the state of Iowa, within 30 days of commencing business in the state in any manner whatsoever, whether by succession to a business already being operated, by starting a new business, or otherwise, shall inform the department and complete a registration.

22.9(2) The registration shall provide the department with the following:

a. The names and addresses of the owners of the business, or if a corporation, association, or joint stock company or limited liability company, the names and addresses of its officers or members.

b. The employing unit's principal place of business, the nature of its business, the number of individuals whom it customarily hires to perform services for it, the place or places where such services are performed, the time when such business was begun, the number of weeks in the year for which it is customary to operate such business, and such other information as may be required.

22.9(3) The employing unit must also file contribution and payroll for all reporting units, if applicable.

This rule is intended to implement Iowa Code section 96.11(1).

871—22.10(96) Report of a partnership on change in partners.

22.10(1) If a partnership alters its ownership structure and the Internal Revenue Service does not require the partnership to obtain a new federal identification number, the partnership has ten days to notify the department of the change. The department will subsequently update the partnership account to reflect this change.

22.10(2) If the Internal Revenue Service requires the partnership to obtain a new federal identification number, or if there has been a change of ownership as described in Iowa Code section 96.1A(16)*"b"* or rule 871—23.28(96), then the old partnership has ten days to electronically file the change of ownership with the department and to complete a registration.

This rule is intended to implement Iowa Code section 96.11(6).

871—22.11(96) Employer account.

22.11(1) An employer that has more than one establishment or business is considered to be one employing unit entitled to one account and a single experience rate. If an establishment or business owned by an employer is a separate legal entity in its own right (i.e., a subsidiary corporation), it will be considered to be a separate employer with its own experience rate. When an already covered employer acquires another establishment or business, the employer will have a separate account number with a separate experience rate for the acquired business only if that business retains its character as a separate legal entity. If the acquired business is merged with that of the employer so that they become a single legal entity under the law, the successor is not entitled to separate rates for each establishment or business.

22.11(2) Each employer shall report all wages paid and pay all contributions into the unemployment account maintained by the department. The title of the employer's account shall be the name of the employing unit and may contain its trade name. Where the employing unit is a fiduciary agent or legal representative, the title of the account will be the name of the fiduciary or legal representative and the official title.

22.11(3) The department shall assign each employer's account a number that may only be changed if the system of numbering accounts is changed.

22.11(4) As used in this rule, "establishment" means an economic unit, generally at a single physical location, where business is conducted, where services or industrial operations are performed, or from which employees are dispatched.

This rule is intended to implement Iowa Code sections 96.1A(15) and 96.7(2)*"a"*(1).

871—22.12(96) Reporting units. Any employer having two or more separate establishments will file those establishments as separate reporting units. Additionally, at the employer's discretion, the employer may establish reporting units to report according to function within the business. When filing employer's contribution and payroll, all reporting units will be submitted together unless the department authorizes

otherwise. The submission is not complete until all reporting units are completed. It is the responsibility of the employer to maintain current status for the reporting units, and if any reporting units are deleted or added, the employer must notify the department within ten working days from the date of change.

This rule is intended to implement Iowa Code sections 96.1A(6) and 96.7(2)*"a."*

871—22.13(96) Procedure to be followed by an employer wishing to have an active reporting unit coded for notice of claim for unemployment benefit mailing.

22.13(1) Any employing unit reporting under an assigned account and having one or more reporting units in the state may request a reporting unit number for the specific purpose of receiving a Notice of Claim Filing so that the employing unit may make a timely protest if the employment separation was for a disqualifiable reason. Those accounts so wishing may request that all unemployment insurance material other than the Notice of Claim Filing be sent to the home office or regional accounting office. All such requests must be from a responsible financial or operating officer of the firm and must indicate:

a. The full trade name and address of each location to be coded.

b. The full employer name and address of the home office or financial office where all unemployment insurance material other than the Notice of Claim Filing is to be sent.

22.13(2) Qualified personnel in the tax bureau may accept this information over the telephone provided that the employer makes known all of the above requested information and the person receiving this information notes the date it was received, the time it was received, who telephoned the information to the department, and the name and telephone number of a responsible party that can be contacted if further verification is needed with respect to the location coding procedure. Tax bureau personnel receiving this classified information by telephone will accordingly note this and make it a matter of permanent record.

This rule is intended to implement Iowa Code section 96.6(2).

871—22.14(96) Notification by employer of employee's rights. Notification is in accordance with Iowa Code section 96.11(2).

This rule is intended to implement Iowa Code section 96.11(2).

871—22.15(96) 940 certification.

22.15(1) Upon request, the department shall furnish to the Internal Revenue Service a certification of an employer's account for a particular year. Certification requests may be on an individual basis or may be part of a bulk yearly certification. Such certification will include the employer's state account number, yearly taxable payroll, contribution rate, contributions paid prior to January 31 of the next succeeding year, and the date and amount of contributions after January 31 of the next succeeding year.

22.15(2) In addition to the information certified in subrule 22.15(1), yearly certification shall include:

a. Employers that filed a federal unemployment tax return (Form 940) that did not file with the department.

b. Employers that filed returns with the department but not with the Internal Revenue Service, except governmental employers and employers that department records indicate to be 501(c)(3) nonprofit organizations.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.11(6)*"c"*(2).

871—22.16(96) Electronic transmittal of contribution payments. Employing units must transmit payment of contributions to the department electronically.

This rule is intended to implement Iowa Code sections 96.7(1) and 96.14(2).

871—22.17(96) Procedures of field auditors.

22.17(1) Field auditors are to provide a cost-effective method of promoting employers' understanding of employer rights and responsibilities under Iowa unemployment insurance laws.

22.17(2) The department, through duly appointed field auditors, may examine an employer's records at any reasonable time to determine compliance with the Act.

22.17(3) The department has enforcement authority. An employer, when requested to produce records by an auditor, must make the records available. If an employer does not comply with the auditor's request to produce records, a subpoena duces tecum may be served on the employer.

22.17(4) The department, through duly appointed field auditors, may perform a systematic audit of an employer's records as authorized by Iowa Code section 96.11(7) and as mandated by the United States Department of Labor. In addition to the provisions of subrules 22.17(1) through 22.17(3), the following provisions apply to systematic audits:

a. The employer is to be given reasonable notice of the intent to audit, and a preaudit interview, typically in the form of a preaudit questionnaire, is to be conducted with the employer or a designated representative.

b. The records required, if maintained, may include individual pay records, Internal Revenue Service Forms W-2 and 1099, cash disbursement journals, check registers, general ledgers, balance sheets, profit and loss statements, federal and state tax returns, and other records to the extent they relate to possible hidden or misclassified wages.

c. To verify the existence of the business, the auditor may require a visit to the business premises or request other evidence of legitimate business activity.

d. To verify the correct business entity is listed on department files, the auditor may examine various employer business licenses, legal documents or other tax returns.

e. To verify the reporting of all workers reportable to the department under the Act, questionable entries will be investigated and documented. If the employer disagrees with the audit decision on coverage of a worker, the auditor may require the employer to complete Form 68-0192, Questionnaire for Determining Status of Workers. In any disputed case, the auditor is to be granted access to records as necessary to determine the remuneration paid for any given calendar quarter.

f. To verify proper employer posting to department reports, a detailed audit of check stubs or other maintained source documents will be made and documented for at least one worker for at least one quarter. The detailed audit may be more comprehensive at the discretion of the auditor or if discrepancies are found.

g. Employer records will be compared and reconciled to amounts reported to the department on contribution and payroll reports and audit findings documented.

h. Discrepancies will be resolved or explained, and report adjustments prepared, as necessary.

i. The audit will cover four calendar quarters; however, if material errors are found, the audit may be expanded to cover prior or subsequent years subject to limitations of subrule 22.1(1).

j. Additional amounts due will be calculated and collected, including applicable interest and penalties, or an explanation will be given.

k. Upon completion of the audit, the department will communicate the results to the employer or designated representative. An audit report with all worksheets, adjustments, and reports will be retained by the department.

22.17(5) There are several other reasons department representatives may make employer contacts and demands under authority of this rule. Any of these activities may be expanded into a systematic compliance audit as described in subrule 22.17(4) upon approval of the duly authorized representative of the department.

a. An auditor may request to examine business records to determine the date employment began and the date the employing unit became subject to the Act.

(1) To determine whether an employing unit is to be a covered employer and whether an individual, or class of individuals, is an employee whose remuneration would be subject to contributions, the auditor will examine employment contracts and related documents.

(2) If it is determined that the employing unit is to be a covered employer, the auditor will examine legal documents such as leases, purchase contracts, partnership agreements, articles of incorporation, limited liability operating agreements, and stock records to determine ownership of the business; to

establish responsibility for filing reports and paying contributions; and to assist in the determination of the unemployment insurance tax rate.

(3) If liability is determined, the payroll/remuneration records may be examined to establish the correct amount of covered wages and the period to which they belong. Reports will be completed; the correct amount of contribution, penalty, and interest due will be computed; and collection action will be initiated.

b. When an unemployment insurance claim is filed, an auditor may request to examine the records of an employer to establish the claimant's rights to benefits under the Act. Form 68-0192, Questionnaire for Determining Status of Workers, and supporting documents may be required in contested cases. If the department determines that the claimant is an employee, the records will be examined to determine the correct amount of wages paid to the claimant and the period to which the wages apply.

c. When an employer fails or refuses to file contribution and payroll, the auditor may examine the records to determine the correct amount of wages that should be reported and may compute and collect contributions, penalty, and interest due. Should records not be made available, the auditor may estimate the wages paid and amounts due pursuant to 871—subrule 23.59(2).

d. When an employer is delinquent in paying contributions due, the auditor may examine records including cash accounts, accounts receivable, real and personal property accounts, accounts payable, notes payable, installment contracts, and mortgages payable to determine the employer's equity in the assets on which a lien may be filed and judgment obtained.

22.17(6) When a temporary writ of injunction has been filed by the department against an employer because of the employer's failure or refusal to file a required report or to pay assessed contributions, penalty, and interest, a field auditor may inspect the enjoined business premises during reasonable hours and interview any interested parties having knowledge of or being involved with the enjoined employer to ensure that such enjoined employer and all of the employer's agents, servants, employees, and assigns are observing the conditions of the temporary writ of injunction.

This rule is intended to implement Iowa Code sections 96.7(1), 96.7(3), 96.8(1), 96.11(1), 96.11(6) *"a,"* 96.11(7), 96.14, 96.16 and 96.20(3).

871—22.18(96) Agents and other practitioners or firms representing employers in unemployment insurance matters.

22.18(1) An agent, tax practitioner, accounting firm, attorney or any other firm or individual that represents or intervenes on behalf of an employer in any unemployment insurance matter must file with the department:

a. A power of attorney, or

b. A letter of authorization from the employer, or

c. An electronic designation of authority from the employer.

22.18(2) The foregoing documents must contain:

a. Employer's full legal name, address, and account number.

b. Employer doing business as (DBA) or trade name, if any.

c. Legal name, address, telephone number and federal employer identification number (FEIN) of the agent or firm representing the employer.

d. Employer's email address.

e. Address of the designated agent.

f. Roles that the agent or firm is authorized to perform for the employer.

g. Signature of the employer.

This rule is intended to implement Iowa Code section 96.11(7).

871—22.19(96) Notification of availability of unemployment insurance. Upon an employee's separation from employment, an employer must provide to the employee documentation informing that:

22.19(1) Unemployment insurance benefits are available to workers who are unemployed and who meet the state's eligibility requirements;

22.19(2) Employees may file a claim in the first week that employment stops or work hours are reduced;

22.19(3) Employees may file claims online at iowaworks.gov; and

22.19(4) Employees must provide the department with the following information to process the claim:

a. Full legal name;

b. Social security number;

c. Authorization to work (if the employee is not a U.S. citizen or resident);

d. Last employer name and address;

e. Start and end dates of the employee's last employment; and

f. Additional information upon request of the department.

This rule is intended to implement Iowa Code chapter 96 and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136).

[Filed 10/23/24, effective 12/18/24]
[Published 11/13/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/13/24.

ARC 8361C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rulemaking related to benefit payment control

The Director of the Workforce Development Department hereby rescinds Chapter 25, "Benefit Payment Control," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Pursuant to Executive Order 10, the Department is rescinding Chapter 25 relating to benefit payment control and adopting a new chapter in lieu thereof. The new chapter eliminates language that duplicates statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024, as **ARC 8217C**. A public hearing was held on the following date(s):

- October 8, 2024

No one attended the public hearing.

Public comments were received. As a result, the Department revised the proposed changes to subrule 24.7(6). A date certain was added to federal law cited in rule 871—25.17(96). In rule 871—25.1(96), citations to definitions were amended or replaced due to concurrent changes to 871—Chapter 24 under the Red Tape Review process.

Adoption of Rulemaking

This rulemaking was adopted by the Director of the Workforce Development Department on October 23, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 871—Chapter 41.

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 December 18, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 871—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
BENEFIT PAYMENT CONTROL

871—25.1(96) Definitions.

"Administrative penalty" means the disqualification of a claimant from the receipt of benefits due to fraud or misrepresentation or the willful and knowing failure to disclose a material fact for a period of not more than the remaining benefit year, including the week in which such determination is made.

"Allegation of fraud" means any form of communication from a party that implies fraudulent activity.

"Anonymous tip" means information about suspected fraudulent activity received from a party who wishes to remain unidentified.

"Appeals" means a request for a review by an appeals authority of the department from any determination made by a representative of the department, including any request for a review by a higher appeals authority of a decision made by a lower appeals authority. It also includes any appeal from a determination of a representative, or any appeal or request for a hearing by a properly affected party.

"Benefits" means the same as defined in Iowa Code section 96.1A(5).

"Claim" means the same as defined in 871—subrule 24.1(9).

"Claimant" means the same as defined in 871—subrule 24.1(10).

"Earnings" means the remuneration for services performed.

"Employing unit" means the same as defined in Iowa Code section 96.1A(15).

"Evidence" means any witnesses' testimony, records, documents, copies of documents, statements, demonstrations, or any other relevant testimony or concrete objects before the department or at an

employment appeal hearing or trial of an issue for the purpose of inducing belief in the minds of the hearing officer, department, court or jury as to the truth of a contention.

"Fact-finding interview" means a discussion between a claimant or an employer and an investigator for the purpose of obtaining from the claimant or employer a statement containing information on a specific eligibility or disqualification issue.

"Fraud" means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury.

"Fraudulent activity" means actions based on or in the spirit of fraud.

"Initial determination" means the first determination with respect to a claim or a request for determination of insured status.

"Intent" means the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective.

"Investigator" means an investigation and recovery section investigator.

"Local office" means the workforce development center office in which claims functions are performed.

"Material fact" means a fact that necessarily has some bearing on the subject matter, such as is necessary to determine the issue.

"Misconduct" means the same as defined in Iowa Code section 96.5(2).

"Misrepresentation" means to give misleading or deceiving information or omit material information; and to present or represent in a manner at odds with the truth.

"Month" means the time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.

"Overpayment" means the amount of unemployment insurance benefits erroneously paid to a claimant due to error, misrepresentation, or fraud.

"Social security number" means the same as defined in 871—subrule 24.1(31).

"Surveillance" means the observance of activities.

"Wage cross match audit" means the computerized quarterly cross match of benefits received by Iowa claimants and wages reported by employers to the state of Iowa.

"Wages" means the same as defined in Iowa Code section 96.1A(40).

"Week" means the same as defined in Iowa Code section 96.1A(41).

This rule is intended to implement Iowa Code chapter 96.

871—25.2(96) Policy of the investigation and recovery unit. The policy of the investigation and recovery unit is to:

25.2(1) Take aggressive action to prevent, detect, and deter benefits paid through error and to investigate and penalize fraud;

25.2(2) Maximize the recovery of benefit overpayments; and

25.2(3) Seek prosecution when the unit believes a person has committed a serious violation of the employment security law.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

871—25.3(96) Functions of the investigation and recovery unit. The functions of the investigation and recovery unit are to:

25.3(1) Investigate and make determinations on issues within the unit's scope that are referred by the general public, employing units, agency personnel, other agencies, or anonymous sources. The unit examines allegations of the following type:

a. Failure to report earnings while receiving benefits.

b. Collusion between claimant and employer, or between two or more claimants, in fraudulently obtaining or attempting to obtain benefits.

c. Utilizing the identity of another to fraudulently obtain or attempt to obtain benefits.

d. Employing units fraudulently attempting to evade unemployment insurance coverage and tax assessment. The unit determines the resulting status of claimants employed by these entities.

e. Claims involving contrived or fictitious employment (e.g., family relationships).

f. Cases of possible concurrency in claiming workers' compensation, railroad retirement, or social security while receiving benefits. Also concurrency of claiming benefits outside of Iowa while receiving unemployment insurance benefits. Possible welfare concurrency will be referred to the appropriate agency.

g. Issues of availability, capability, voluntary leaving of employment, refusal of employment, misconduct, intervening employment, and industrial controversy where the facts are complex and field work is necessary to establish proper findings.

h. Validity of alien registration numbers through a cross-check with U.S. Citizenship and Immigration Services. If an alien has falsely claimed to be a U.S. citizen or used a false alien registration card in order to receive benefits, prosecution cases will be prepared when appropriate. "Alien" means the same as described in rule 871—24.47(96).

25.3(2) Collect refunds of overpayments resulting from determinations of claimant fraud.

25.3(3) Prepare all cases for prosecution.

a. Submit cases to the county attorneys.

b. Assist county attorneys and others by presenting evidence and giving testimony in court proceedings.

25.3(4) Formulate methods and procedures to prevent and detect all types of fraud by claimants, employing units, and unemployment insurance services personnel.

25.3(5) Provide liaison with local, state, and federal law enforcement agencies.

25.3(6) Testify and produce evidence before hearing officers and employment appeal board hearings regarding fraudulent activities.

25.3(7) Conduct internal audits as established by federal guidelines.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

871—25.4(96) Allegation of claimant fraud.

25.4(1) If the party alleging fraud supplies sufficient information to proceed with an investigation, the information is to be forwarded to the investigation and recovery unit, which will advise the alleging party that the unit will fully investigate. The unit is to provide its findings to the alleging party if the investigation may impact the alleging party's employer account of claim for benefits.

25.4(2) If the results of the investigation indicate that a disqualification would have resulted for the period benefits were paid, the unit is to schedule an informal fact-finding interview to allow testimony by the parties. The unit may recommend separate fact-finding interviews if necessary.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

871—25.5(96) Allegation of employing unit fraud.

25.5(1) If the party alleging fraud supplies sufficient information to proceed with an investigation, the information is to be forwarded to the investigations and recovery unit. The unit will advise the alleging party that the unit will fully investigate. The unit may seek the assistance of the tax unit staff. The unit is to provide its findings to the alleging party if the investigation may impact the alleging party's employer account of claim for benefits.

25.5(2) If the results of the investigation indicate that misrepresentation occurred on the part of the employer, the unit is to schedule an informal fact-finding interview to allow testimony by the parties.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

871—25.6(96) Investigation of fraud (procedure).

25.6(1) Upon receipt of an allegation of fraudulent activity, the investigation and recovery unit will prepare an investigation file containing all necessary documents, assign an investigation number, and assign the case to an investigator. All investigation files will remain confidential.

25.6(2) The investigator will make a thorough review of all documents contained within the file and determine what issues need to be investigated. Documented evidence will be obtained from any necessary source.

25.6(3) An investigator has the authority to request all necessary information in the investigation of any error or potential fraudulent activity committed by a claimant, employing unit, or other party. Likewise, testimony may be taken from any person who has relevant information or records. Any person, when requested by an investigator to produce records or give testimony, must be available to give testimony to the department or to produce records within a reasonable time. If any person does not comply with the investigator's request for the person to give testimony to the department or produce records, a subpoena may be issued summoning the person to appear before the investigator to give testimony or present the records.

If the investigator determines that any request for the voluntary production of pertinent records might endanger the existence of such records, the investigation and recovery unit may immediately issue a subpoena duces tecum to ensure the production of such records.

25.6(4) The investigation and recovery unit may seek the assistance of field auditors.

25.6(5) The investigator may surveil any relevant individual or location.

25.6(6) Upon completion of the investigation, a determination shall be made as to whether fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated. The unit is to provide its findings to the alleging party if the investigation may impact the alleging party's employer account of claim for benefits. The case may be prepared for prosecution if warranted.

25.6(7) A detailed report will be entered in the case management system upon completion.

This rule is intended to implement Iowa Code sections 96.16, 96.11(6) and 96.11(7).

871—25.7(96) Determination of overpayment by reason of claimant's fault or fraud.

25.7(1) The investigation and recovery unit may determine that a claimant has received benefits to which the claimant was not entitled due to the claimant's own fault, the employer's fault, the agency's fault, or fraud as provided in Iowa Code section 96.16.

25.7(2) A dated notice of such determination shall promptly be mailed to the claimant at the claimant's last-known address. Such notice shall advise the claimant of the reason for and total amount of the overpayment as well as the benefit weeks involved. The determination is final unless the claimant, within ten calendar days of the date shown on the notification, files a written request for review or appeal.

25.7(3) Upon receiving a written request for review, the investigation and recovery unit, based upon such facts as it has or may acquire, may affirm, modify, or reverse the prior decision or refer the matter to an administrative law judge. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within ten calendar days after the date of mailing, such decision shall be final.

25.7(4) The claimant may directly appeal the decision, without request for review, to the department of inspections, appeals, and licensing.

25.7(5) Claimants affected by determinations made in accordance with this rule have the same rights to further appeal as are provided in Iowa Code section 96.6.

25.7(6) When a determination has become final, the benefits shall be recovered.

a. If a claimant does not immediately repay the overpayment on demand, recovery of overpayments due to misrepresentation or fraud may also include the filing of a notice of lien or other civil action. Upon finalization of the determination of overpayment by reason of a claimant's fault or fraud, interest shall accrue at a rate of 1/30th of 1 percent per day until the overpayment is paid in full.

Amount of	Minimum	Number of Months

Original Overpayment	Monthly Payments	Required to Liquidate the Overpayment
Under $199	$ 25	1 to 8
$200 to $399	$ 50	4 to 8
$400 to $599	$ 75	5 to 8
$600 to $799	$ 90	6 to 9
$800 to $999	$ 100	8 to 10
$1,000 to $1,499	$ 150	6 to 10
$1,500 to $1,999	$ 200	7 to 10
$2,000 to $2,999	$ 250	8 to 12
$3,000 and over	$ 300	10 to —

b. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment to the department.

c. If a claimant fails to respond to the first statement of overpayment, a demand letter shall be sent 30 days later. The demand letter notifies the claimant that full repayment must be made. If the claimant cannot make full repayment, the department will consider a monthly repayment agreement. Monthly amounts based on the minimum repayment agreement schedule below will be printed on the demand letter. The first repayment is expected ten days from the date of the demand letter and the additional repayments every 30 days thereafter until the debt is paid in full. The following minimum repayment agreement is acceptable to the department, though the department reserves the right to accept or reject any proposed repayment agreement.

d. After sending the demand letter, the department may proceed with any appropriate lien or civil action to collect the debt, which would include but not be limited to a judgment in a court having jurisdiction over the matter. The department may pursue the same type of action where a claimant defaults on a repayment agreement.

e. If the department receives a cash repayment of an overpayment, the department shall issue a receipt and mail it to the claimant's last-known address. If the department receives a repayment that is not identified by a social security number, name, or other means of identification, the department will retain the money until such time as a positive identification can be made and proper credit given to the claimant.

f. An overpayment to the claimant will cause the employer to be relieved of charges except when the overpayment is a result of payment of a back pay award.

g. An underpayment of $5 or less will not be set up and paid to an individual unless the individual requests the payment in writing.

This rule is intended to implement Iowa Code sections 96.1A(37), 96.3(3), 96.3(7), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.8(5), 96.11(1), and 96.16.

871—25.8(96) Recovery of benefit overpayments when benefits are erroneously received.

25.8(1) *Good faith overpayment.* The department shall recover good faith overpayments. The department shall issue the overpayment decision to the claimant's last-known address or through the claimant's preferred contact method. Once the overpayment amount has been established, an overpayment schedule will be established to leave an audit trail even if the claimant fully repays the overpayment in one payment.

a. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment.

b. If a claimant fails to respond to the first statement of overpayment, a demand letter shall be sent 30 days later notifying the claimant that full repayment must be made. If the claimant cannot make full repayment, the department will consider a monthly repayment agreement.

c. If an individual has acted in good faith and is without fault in claiming federal unemployment compensation under Unemployment Compensation Federal Employees (UCFE), Unemployment Compensation Ex-servicemembers (UCX), Trade Readjustment Allowances (TRA), or Disaster Unemployment Assistance (DUA), and it is subsequently determined that the individual is not entitled to the benefits, the department has the right to recover the benefits in accordance with the procedure

outlined in subrule 25.8(1). Any federal unemployment compensation overpayments recovered will be credited to the appropriate account of the United States. Three years after the federal unemployment compensation overpayment, if the department concludes that continued collection efforts would result in diminishing returns, then the unrecovered amount will be removed from the department accounting records. An administrative record will be maintained for possible collection through offset or other appropriate method. If no collection action has taken place during the three years after the department has removed the overpayment from its accounting records, then the overpayment will be disposed of.

Any overpayment of TRA, Trade Adjustment Assistance, or DUA will be offset at the rate of 50 percent of the benefit amount otherwise payable to the individual for unemployment insurance, extended benefits, or any other federal unemployment compensation program.

25.8(2) *Misrepresentation.*

a. The department may attempt to collect the overpayment by filing a lien on the claimant in the manner provided in Iowa Code section 96.14(3).

b. The employer's account may be relieved of overpayments caused by fraud or misrepresentation.

c. If it is found that an individual has received benefits through misrepresentation and has been assessed with an overpayment under UCFE or UCX, and criminal charges are not involved, the department will limit deduction from future benefits to a two-year period following the original determination of overpayment. If an individual is convicted for fraud, the department shall have the right to recover any resulting overpayment in accordance with the procedure outlined in subrule 25.8(2).

This rule is intended to implement Iowa Code sections 96.7(2), 96.11(1), 96.11(11), 96.11(13), 96.14(3), 96.16, 96.20, and 96.29.

871—25.9(96) Administrative penalties.

25.9(1) An administrative penalty may be imposed on a claimant as per Iowa Code section 96.5(8).

25.9(2) Penalties.

a. Any penalties imposed by this rule shall be in addition to those imposed by Iowa Code section 96.16.

b. The general guide for disqualifications for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the investigator. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The department may also consider the filing of criminal charges whenever an administrative penalty is imposed against a claimant. If the same offense is repeated, loss of benefits through the end of the benefit year will result.

c. The department shall issue a determination that sets forth the specific penalty being applied. The investigator will determine the degree and severity of the penalty based upon the nature of the offense and the facts.

25.9(3) Sources of information concerning the application of an administrative penalty shall be the same as those pertaining to fraud and overpayment, namely:

a. Comparative analysis of employer wage reports and benefit payments.

b. Information obtained by a local office.

c. Tips and leads from other sources.

d. Cross-checking of information regarding vital statistics from the department of health and human services.

e. Review of claims using social security numbers not issued by the social security administration.

f. Cross-checking of information from the Iowa centralized employer registry.

g. Cross-checking of information with the National Directory of New Hires.

h. Cross-checking of information on incarcerated individuals from the department of corrections.

i. Cross-checking of information with fraud detection tools identified by the department.

25.9(4) The claimant shall be notified of the possible application of the administrative penalty by Form 65-5315, Notice of Unemployment Insurance Fact-Finding Interview, in the same manner a claimant is notified of a possible overpayment.

25.9(5) The claimant shall be afforded an opportunity to give testimony, either refuting or affirming the allegation of intent to defraud and may be represented by legal counsel.

25.9(6) In the event any claimant is aggrieved by the representative's determination assessing an administrative penalty or by the severity of the penalty assessed, such claimant shall have the same protest and appeal rights as provided for all other determinations.

25.9(7) A criminal conviction of a claimant for fraud or a court order requiring restitution for the amount of the overpayment shall not preclude the investigation and recovery unit from also imposing an administrative penalty denying further benefits to the claimant for a period of time not to exceed the remainder of said claimant's benefit year and including the week in which such determination is made by the investigation and recovery unit.

This rule is intended to implement Iowa Code sections 96.5(8), 96.11(1), and 96.11(10).

871—25.10(96) Prosecution on overpayments.

25.10(1) When, after an investigation, the department determines an overpayment occurs due to misrepresentation or fraud, the case shall be given a thorough and detailed review to determine if it may be referred to a county attorney or the attorney general for prosecution for fraud.

25.10(2) Restitution or the establishment of a repayment plan of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact does not preclude the investigation and recovery unit from instituting criminal proceedings against the claimant.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.11(96) Prosecution for fraud (procedure).

25.11(1) If prosecution is warranted, supportive documentation and evidence will be requested and thoroughly reviewed by the investigator.

25.11(2) A handwriting sample may be taken from claimant and submitted for investigation.

25.11(3) A summary of the case will be prepared and the case taken to the county attorney for filing of criminal charges.

25.11(4) Upon request by the county attorney, the investigator may make recommendations regarding plea bargaining, dismissals, and sentencing and participate in the mediation process.

25.11(5) Investigators may testify and produce evidence at district court and grand jury proceedings.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.12(96) Wage verification procedure.

25.12(1) Each quarter, wage verification documents are mailed to selected employers requesting wage information on specific claimants with regard to benefit payments.

25.12(2) The completed documents are sent to the investigation and recovery unit for review. Potential cases of conflict will result in an investigation assignment. Claimants will be notified by means of Form 65-5332, Audit Notice of Potential Overpayment, and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031, Decision Overpayment Worksheet, on which the amount, weeks, type, and reason for the overpayment are identified. Claimants are notified of the determination on Form 65-5352, Unemployment Insurance Decision.

25.12(3) An employer may choose to participate in the automated wage verification procedure by following the electronic submission guidelines.

25.12(4) An employer that fails to respond to a request for wage information pertaining to specific claimant(s) will be charged a fee of $25 per claimant.

This rule is intended to implement Iowa Code section 96.11(1).

871—25.13(96) Duplicate benefit warrants.

25.13(1) *Undelivered warrant.* Any warrant issued in payment of benefits that is returned undelivered to the department will be canceled 90 days after the original issue date unless it can be mailed to the correct address.

25.13(2) *Canceled warrant.* Warrants are canceled as per Iowa Code section 96.11(7). Any individual who has an outdated warrant may contact the department for assistance.

25.13(3) *Lost and uncashed warrant.*

a. The payee of a warrant issued in payment of benefits that is lost, stolen, mutilated, destroyed, or canceled under conditions cited in subrule 25.13(1) or 25.13(2) may contact the department for assistance.

b. The department will ascertain whether the warrant has been cashed and take the following action:

(1) If the warrant has been cashed, the procedure in subrule 25.13(4) shall be followed.

(2) If the warrant has not been cashed, the department shall issue a stop payment order on the warrant and issue Form 68-0163, Affidavit and Agreement for Issuance of Duplicate Warrant, to the individual. The completed affidavit is a sworn statement that the original warrant was not received and that the warrant will be surrendered voluntarily if received by the claimant. The claimant should be warned that the warrant cannot be cashed after the stop payment order is in effect.

c. The affidavit shall be personally prepared in duplicate by the claimant, and the claimant's signature on the affidavit must be notarized. The affidavit shall be transmitted in duplicate to the department.

d. The department will then request that the director of the department of administrative services issue a duplicate warrant, which the department will mail to the claimant.

e. If the claimant should cash the original warrant after the stop payment order is in place, an overpayment shall be set up and the department may refer the matter for criminal prosecution.

f. If the claimant should find the original warrant after the duplicate warrant has been issued, the claimant will send the original warrant to the department.

25.13(4) *Forged warrants.*

a. In the event that the original warrant has been endorsed by and paid to someone allegedly not authorized to receive payment, the payee whose endorsement was forged will be given the opportunity to examine the endorsement on the copy of the warrant.

b. If the payee determines that the endorsement is a forgery, the following action shall be taken:

(1) The claimant will prepare Form 68-0320, Affidavit as to Forged Endorsement, in duplicate, and the claimant's signature must be notarized.

(2) The claimant is required to file a police report with the local law enforcement agency and return a copy of the police report to the department.

(3) The claimant will send a copy of the original warrant, the notarized affidavit, and a copy of the police report to the department for review.

c. The investigation and recovery bureau will make a handwriting analysis to determine if the warrant was forged. If the handwriting is determined to be a forgery, a duplicate warrant will be issued to the payee.

25.13(5) *Employer account credit.* At the time of cancellation of any outstanding benefit warrant, the employer account shall be credited with the amount of the warrant so canceled. The reissuance of any benefit warrant canceled in subrule 25.13(1) or 25.13(2) shall be charged to the employer account.

This rule is intended to implement Iowa Code sections 96.9(7) and 96.11(1).

871—25.14(96) Payments of benefits due a deceased person.

25.14(1) An eligible week for a deceased claimant will be one where the week is claimed by the individual prior to death. If benefits are due a deceased person, the benefits are paid to the person or persons who have been issued letters testamentary or of administration pursuant to an application filed within 30 days after the claimant's death.

25.14(2) In the event that no application for letters testamentary or of administration has been filed within 30 days after the claimant's death, the benefits that were due will be paid to the decedent's surviving spouse, if any; or, if no spouse survives the decedent and the decedent is survived by an unmarried minor child or children, the benefits will, at the discretion of the department, be paid:

a. To the guardian or guardians of unmarried minor child or children for their benefit; or

b. To the person or institution who or which the department finds assumed the obligation of providing support for or maintenance of such minor child or children; or

c. To any person who the department finds has furnished to such child or children necessaries of a value equaling or exceeding the amount of benefits; or

d. To any person who the department finds has paid expenses of the claimant's last illness or burial expenses in an amount equaling or exceeding the amount of benefits.

25.14(3) The director of the department of administrative services will void any unredeemed warrant or warrants payable to a deceased person. Once the warrant is surrendered, the director of the department of administrative services will issue a new warrant or warrants bearing the same dates and numbers and made payable to the entitled person or persons under the provisions of this rule. The issuance of the new warrant or warrants fully discharges the department of its obligation with respect to the claims covered thereby and no other person may claim or assert any right to them.

25.14(4) Any person claiming entitlement to the payment of benefits under this regulation shall present the claim in writing within 60 days after the death of the claimant and shall offer proof thereof in such form as the department may require; however, the department may, upon good cause shown, extend the time for presentation of a claim. In the event no timely claim is made for the benefit payment, the benefits will not be paid but will remain in the unemployment compensation fund.

This rule is intended to implement Iowa Code sections 96.9(3), 96.9(7), and 96.11(1).

871—25.15(96) Back pay—benefit recovery and charging.

25.15(1) Recovery and charging of back pay is governed by Iowa Code section 96.3(8).

a. The department shall first attempt to reach an agreement with the individual and the employer.

b. The burden of proof is on the employer to establish the dollar amount of the back pay award that is remuneration for lost wages and the specific time period to which the remuneration applies.

25.15(2) If the department reaches an agreement with the individual and the employer as per Iowa Code section 96.3(8), then the employer's account shall be relieved of benefit charges in an amount equal to the amount remitted by the employer to the department. If the department fails to reach an agreement, then the benefit charges are not relieved until the benefits paid to the individual are recovered.

This rule is intended to implement Iowa Code section 96.3(8).

871—25.16(96) State payment offset. An individual who is owed a payment from the state of at least $50 and owes an overpayment of benefits of at least $50 is subject to an offset against the individual's payment from the state to recover all or a part of the overpayment and to reimburse the department of revenue for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

25.16(1) The department will provide the department of revenue with the claimant's name and social security number.

25.16(2) The department of revenue will process the offset according to Iowa Code section 421.65.

25.16(3) In the event that the amount of the offset exceeds the remaining overpayment, the department will issue to the individual a payment equal to the amount of the excess.

This rule is intended to implement Iowa Code section 96.11.

871—25.17(96) Federal payment offset. Pursuant to Section 303(m) of the federal Social Security Act (42 U.S.C. §503) and 26 U.S.C. §6402(f), both as amended and in effect as of October 23, 2024, the department will utilize the treasury offset program in order to collect covered unemployment compensation.

This rule is intended to implement Iowa Code section 96.3(7).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/13/24.