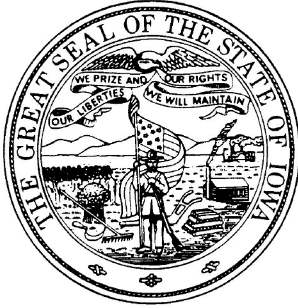

IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XLII NUMBER 13
December 18, 2019 Pages 1397 to 1598

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

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 Rule Making 2020

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
15	**Thursday, December 26, 2019**	**January 15, 2020**
16	**Wednesday, January 8, 2020**	**January 29, 2020**
17	**Friday, January 24, 2020**	**February 12, 2020**

PLEASE NOTE:

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

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

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

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Disease control—animals at exhibitions, 64.34 IAB 12/4/19 **ARC 4784C**	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 30, 2019 11 a.m. to 12 noon

EDUCATION DEPARTMENT[281]

Extracurricular interscholastic competition—scholarship rules, dead period, 36.15 IAB 12/18/19 **ARC 4815C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 7, 2020 9 to 10 a.m.
Physical plant and equipment levy (PPEL) fund—repairing transportation equipment for transporting of students, 98.64(2)"l" IAB 12/18/19 **ARC 4817C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 7, 2020 10 to 11 a.m.
Corporal punishment, physical restraint, seclusion, and other physical contact with students, ch 103 IAB 12/18/19 **ARC 4816C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 7, 2020 11 a.m. to 12 noon

INSURANCE DIVISION[191]

Insurance producers—five-year review of rules, amendments to chs 10, 11, 13, 48 IAB 12/18/19 **ARC 4821C**	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	January 7, 2020 10 to 11 a.m.

MEDICINE BOARD[653]

Prohibition of licensing sanctions for student loan debt default or delinquency, amend chs 2, 20, 23; rescind ch 16 IAB 12/18/19 **ARC 4806C**	Board Office, Suite C 400 S.W. Eighth St. Des Moines, Iowa *To participate by conference call:* Dial 866.685.1580 and enter code 971-913-4151	January 8, 2020 9 to 10 a.m.
Mandatory training for identifying and reporting abuse, 11.4 IAB 12/18/19 **ARC 4820C**	Board Office, Suite C 400 S.W. Eighth St. Des Moines, Iowa *To participate by conference call:* Dial 866.685.1580 and enter code 971-913-4151	January 8, 2020 9 to 10 a.m.
Expedited licensure for spouses of active duty military service members, amendments to ch 18 IAB 12/18/19 **ARC 4805C**	Board Office, Suite C 400 S.W. Eighth St. Des Moines, Iowa *To participate by conference call:* Dial 866.685.1580 and enter code 971-913-4151	January 8, 2020 9 to 10 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Hearing aid specialists—child abuse and dependent adult abuse mandatory reporter training, 121.9(4) IAB 12/4/19 **ARC 4786C**	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 6, 2020 9:30 to 10 a.m.
Physical therapists and physical therapist assistants, occupational therapists and occupational therapy assistants—child abuse and dependent adult abuse mandatory reporter training, 200.9(4), 206.10(4) IAB 12/4/19 **ARC 4785C**	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 6, 2020 9 to 9:30 a.m.

RACING AND GAMING COMMISSION[491]

Sports wagering; fantasy sports contests, amend chs 1, 3 to 6, 8; adopt chs 13, 14 IAB 12/18/19 **ARC 4807C**	Commission Office, Suite 100 1300 Des Moines St. Des Moines, Iowa	January 7, 2020 9 a.m.
Racing; gaming, 5.4, 7.7(14), 8.4(1), 10.4, 10.5(1)"a"(12), 10.6, 11.5(5)"b," 12.3(1) IAB 12/18/19 **ARC 4822C**	Commission Office, Suite 100 1300 Des Moines St. Des Moines, Iowa	January 7, 2020 9 a.m.

SECRETARY OF STATE[721]

Felony conviction verification process, 28.4 IAB 12/18/19 **ARC 4804C**	Iowa Capitol Bldg. Room 22 Des Moines, Iowa	January 10, 2020 2 to 3 p.m.

UTILITIES DIVISION[199]

Electric lines, ch 11 IAB 11/20/19 **ARC 4776C**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	January 14, 2020 1 to 3 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.

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ARC 4815C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to extracurricular interscholastic competition and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 36, "Extracurricular Interscholastic Competition," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 280.13A.

Purpose and Summary

Chapter 36 outlines the requirements for extracurricular interscholastic competitions. Proposed Item 1 incorporates changes to the subrule regarding scholarship rules by providing that a student may not be required to sit out in more than one school-sponsored extracurricular activity because of a failing grade. Proposed Item 2 provides the athletic associations with the discretion to set a dead period during the summer for a period up to 14 days in length in which no contact with students would be allowed.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 7, 2020. Comments should be directed to:

Nicole Proesch
Department of Education
Grimes State Office Building, Second Floor
Des Moines, Iowa 50319-0416
Phone: 515.281.8661
Email: nicole.proesch@iowa.gov

Public Hearing

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

January 7, 2020
9 to 10 a.m.

State Board Room, Second Floor
Grimes State Office Building
East 14th Street and Grand Avenue
Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 36.15(2) as follows:

36.15(2) *Scholarship rules.*

a. All contestants must be enrolled and in good standing in a school that is a member or associate member in good standing of the organization sponsoring the event.

b. All contestants must be under 20 years of age.

c. All contestants shall be enrolled students of the school in good standing. They shall receive credit in at least four subjects, each of one period or "hour" or the equivalent thereof, at all times. To qualify under this rule, a "subject" must meet the requirements of 281—Chapter 12. Coursework taken from a postsecondary institution and for which a school district or accredited nonpublic school grants academic credit toward high school graduation shall be used in determining eligibility. No student shall be denied eligibility if the student's school program deviates from the traditional two-semester school year.

(1) Each contestant shall be passing all coursework for which credit is given and shall be making adequate progress toward graduation requirements at the end of each grading period. Grading period, graduation requirements, and any interim periods of ineligibility are determined by local policy. For purposes of this subrule, "grading period" shall mean the period of time at the end of which a student in grades 9 through 12 receives a final grade and course credit is awarded for passing grades.

(2) If at the end of any grading period a contestant is given a failing grade in any course for which credit is awarded, the contestant is ineligible to dress for and compete in the next occurring interscholastic athletic contests and competitions in which the contestant is a contestant for 30 consecutive calendar days unless the student has already served a period of ineligibility for 30 consecutive calendar days in another school-sponsored activity. A student shall not serve multiple periods of ineligibility because of a failing grade.

d. to *k.* No change.

ITEM 2. Amend subrule 36.15(6) as follows:

36.15(6) *Summer camps and clinics and coaching contacts out of season.*

a. School personnel, whether employed or volunteers, of a member or associate member school shall not coach that school's student athletes during the school year in a sport for which the school personnel are currently under contract or are volunteers, outside the period from the official first day of practice through the finals of tournament play. Provided, however, school personnel may coach a senior student from the coach's school in an all-star contest once the senior student's interscholastic athletic season for that sport has concluded. In addition, volunteer or compensated coaching personnel shall not

require students to participate in any activities outside the season of that coach's sport as a condition of participation in the coach's sport during its season.

b. A summer team or individual camp or clinic held at a member or associate member school facility shall not conflict with sports in season. Coaching activities between June 1 and the first day of fall sports practices shall not conflict with sports in season. The associations in their discretion may establish a dead period up to 14 calendar days in length. During a dead period coaches will not be allowed to have contact with students.

c. Rescinded IAB 4/20/11, effective 5/25/11.

d. Penalty. A school whose volunteer or compensated coaching personnel violate this rule is ineligible to participate in a governing organization-sponsored event in that sport for one year with the violator(s) coaching.

ARC 4817C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to repairing transportation equipment for transporting students and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 98, "Financial Management of Categorical Funding," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 298A.

Purpose and Summary

Chapter 98 outlines the financial management of categorical funding. Subrule 98.64(2) addresses appropriate expenditures in the physical plant and equipment levy (PPEL) fund.

The proposed amendment expands "repairing" of transportation equipment for transporting students to include retrofitting when such retrofitting is aligned to school bus construction standards in 281—Chapter 44. Additionally, the amendment stipulates this provision is retroactive to October 2, 2019. This date aligns to the effective date of the recently adopted amendments to 281—Chapter 44.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 7, 2020. Comments should be directed to:

Nicole Proesch
Department of Education
Grimes State Office Building, Second Floor
Des Moines, Iowa 50319-0416
Phone: 515.281.8661
Email: nicole.proesch@iowa.gov

Public Hearing

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

January 7, 2020 10 to 11 a.m.	State Board Room, Second Floor Grimes State Office Building East 14th Street and Grand Avenue Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend paragraph **98.64(2)"l"** as follows:

l. Purchase of transportation equipment for transporting students and for repairing such transportation equipment when the cost of the repair exceeds $2,500. "Repairing," for purposes of this paragraph, means restoring an existing item of transportation equipment to its original condition, as near as may be, after gradual obsolescence of physical and functional use due to wear and tear, corrosion and decay, or partial destruction, and includes maintenance that meets the definition of equipment and repair and the cost of which exceeds $2,500. Effective October 2, 2019, "repairing" also means retrofitting transportation equipment when such retrofitting aligns to the school bus construction standards in 281—Chapter 44.

ARC 4816C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

The State Board of Education hereby proposes to rescind Chapter 103, "Corporal Punishment Ban; Restraint; Physical Confinement and Detention," and to adopt a new Chapter 103, "Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact with Students," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 256B.3 and 280.21.

Purpose and Summary

The Iowa Department of Education received an amended petition for rule making, which was submitted on September 18, 2018, and filed pursuant to Iowa Code section 17A.7. That petition seeks revisions to Chapter 103, the Department's administrative rules on corporal punishment, physical restraint, and physical confinement and detention, commonly known as the Department's "seclusion and restraint" rules. The amended petition was received after several meetings between the petitioners, other interested parties, and key Department staff regarding the content of the original petition. After reviewing the proposed rules, the Department recommended that the rules be submitted to the State Board of Education as a Notice of Intended Action to update the current rules to allow all interested parties an opportunity for public comment.

After publication of the Notice (**ARC 4276C**, IAB 2/13/19) and receipt of public comment, the Department revised the rules to address public comments and presented the rules to the State Board for adoption. The State Board did not adopt the rules and instructed the Department to continue to collect feedback on three points of contention in the rules. The three areas of contention in the rules were as follows: (1) commenters objected to the use of the term "serious physical" injury and felt the term would result in educators second guessing their actions when situations may call for seclusion and restraint, (2) commenters objected to the requirement that educators contact parents within ten minutes of both the commencement and conclusion of the seclusion or physical restraint because the commenters felt this was not practical under the circumstances and that educators need to be able to handle the situation, (3) commenters objected to the requirements on the size of seclusion rooms and requested that some rooms be grandfathered into use. The Department conducted six meetings at six different AEAs to collect more input on the rules. This rule making reflects changes made after input was received at the six meetings. (1) The term "serious physical" injury was replaced with "bodily" injury, (2) the ten-minute time frame for notifying parents was changed to "as soon as practical after the situation is under control but no later than one hour or the end of a school day, whichever occurs first" and finally (3) room sizes were modified and districts were given more time to come into compliance with room requirements.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 7, 2020. Comments should be directed to:

Nicole Proesch
Department of Education
Grimes State Office Building, Second Floor
Des Moines, Iowa 50319-0416
Phone: 515.281.8661
Email: nicole.proesch@iowa.gov

Public Hearing

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

January 7, 2020 11 a.m. to 12 noon	State Board Room, Second Floor Grimes State Office Building East 14th Street and Grand Avenue Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

Rescind 281—Chapter 103 and adopt the following **new** chapter in lieu thereof:

CHAPTER 103
CORPORAL PUNISHMENT, PHYSICAL RESTRAINT, SECLUSION, AND OTHER PHYSICAL CONTACT WITH STUDENTS

281—103.1(256B,280) Purpose and objectives. The purpose of this chapter is to provide uniform definitions and policies for public school districts, accredited nonpublic schools, and area education agencies regarding the application of physical contact or force to enrolled students. These rules clarify that corporal punishment, prone restraint, and mechanical restraint are prohibited; explain the parameters and protocols for the use of physical restraint and seclusion; and describe other limits on physical contact with students. The applicability of this chapter to physical restraint, seclusion, or behavior management interventions does not depend on the terminology employed by the organization to describe the activity or space. These rules are intended to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies and best practices to reduce the occurrence of challenging behaviors; increase meaningful instructional time for all students; ensure that seclusion and physical restraint are used only in specified circumstances and are subject to assessment, monitoring, documentation, and reporting by trained employees; and give clear guidance on whether a disciplinary or behavioral management technique is prohibited or may be used.

281—103.2(256B,280) Definitions. For the purposes of this chapter:

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Corporal punishment" means the intentional physical punishment of a student. "Corporal punishment" includes the use of unreasonable or unnecessary physical force, or physical contact made with the intent to harm or cause pain.

"Debriefings" are meetings to collaboratively examine and determine what caused an incident or incidents resulting in the use of physical restraints or seclusion, how the incident or the use of physical restraints or seclusion or both could have been avoided and how future incidents could be avoided, and to plan for and implement positive and preventative supports. The debriefing process is intended to improve future outcomes by reducing the likelihood of future problem behavior and the subsequent use of physical restraint or seclusion.

"Mechanical restraint" means the use of a device as a means of restricting a student's freedom of movement. "Mechanical restraint" does not mean a device used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a device was designed and, if applicable, prescribed, including restraints for medical immobilization, adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports, and vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

"Parent" means an individual included in the definition of "parent" in rule 281—41.30(256B,34CFR300), and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

"Physical restraint" means a personal restriction that immobilizes or reduces the ability of a child to move the child's arms, legs, body, or head freely. "Physical restraint" does not mean a technique used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a technique was designed and, if applicable, prescribed. "Physical restraint" does not include instructional strategies, such as physically guiding a student during an educational task, hand-shaking, hugging, or other nondisciplinary physical contact.

"Prone restraint" means any restraint in which the child is held face down on the floor.

"Reasonable and necessary force" is that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 281—103.5(256B,280).

"School" includes public school districts, accredited nonpublic schools, and area education agencies.

"Seclusion" means the involuntary confinement of a child in a seclusion room or area from which the child is prevented or prohibited from leaving; however, preventing a child from leaving a classroom or school building shall not be considered seclusion. "Seclusion" does not include instances when a school employee is present within the room and providing services to the child, such as crisis intervention or instruction.

"Seclusion room" means a room, area, or enclosure, whether within or outside the classroom, used for seclusion.

281—103.3(256B,280) Ban on corporal punishment and prone and mechanical restraints. An employee shall not inflict, or cause to be inflicted, corporal punishment upon a student or use prone restraints or mechanical restraints upon a student.

281—103.4(256B,280) Activities that are not considered corporal punishment. Corporal punishment does not include the following:

1. Verbal recrimination or chastisement directed toward a student;
2. Reasonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular athletics;
3. Actions consistent with and included in an individualized education program (IEP) developed under the Individuals with Disabilities Education Act, as reauthorized, Iowa Code chapter 256B, and

281—Chapter 41; a behavior intervention plan (BIP); individual health plan (IHP); or safety plan. However, under no circumstance shall an IEP, BIP, IHP, or safety plan violate the provisions of this chapter;

4. Reasonable periods of detention, not in excess of school hours, or brief periods of detention before or after school, in a seat, classroom, or other part of a school facility;

5. Actions by an employee subject to these rules toward a person who is not a student of the school or receiving the services of a school employing or utilizing the services of the employee.

281—103.5(256B,280) Use of reasonable and necessary force.

103.5(1) Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from:

a. Using reasonable and necessary force, not designed or intended to cause pain, in order to accomplish any of the following:

(1) To quell a disturbance or prevent an act that threatens physical harm to any person.

(2) To obtain possession of a weapon or other dangerous object within a student's control.

(3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.

(4) To remove a disruptive student from class or any area of the school's premises or from school-sponsored activities off school premises.

(5) To prevent a student from the self-infliction of harm.

(6) To protect the safety of others.

(7) To protect property as provided for in Iowa Code section 704.4 or 704.5.

b. Using incidental, minor, or reasonable physical contact to maintain order and control.

103.5(2) An employee subject to these rules is not privileged to use unreasonable force to accomplish any of the purposes listed above.

281—103.6(256B,280) Reasonable force.

103.6(1) In determining the reasonableness of the physical force used by a school employee, the following factors shall be applied:

a. The size and physical, mental, and psychological condition of the student;

b. The nature of the student's behavior or misconduct resulting in the use of physical force;

c. The instrumentality used in applying the physical force;

d. The extent and nature of resulting injury to the student, if any, including mental and psychological injury;

e. The motivation of the school employee using the physical force.

103.6(2) Reasonable physical force, privileged at its inception, does not lose its privileged status by reasons of an injury to the student not reasonably foreseeable or otherwise caused by intervening acts of another, including the student.

281—103.7(256B,280) Reasonable and necessary force—use of physical restraint or seclusion.

103.7(1) Physical restraint or seclusion is reasonable and necessary only:

a. To prevent or terminate an imminent threat of bodily injury to the student or others; or

b. To prevent serious damage to property of significant monetary value or significant nonmonetary value or importance; or

c. When the student's actions seriously disrupt the learning environment or when physical restraint or seclusion is necessary to ensure the safety of the student and others; and

d. When less restrictive alternatives to seclusion or physical restraint would not be effective, would not be feasible under the circumstances, or have failed in preventing or terminating the imminent threat or behavior; and

e. The physical restraint or seclusion complies with all the rules of this chapter.

103.7(2) If seclusion or physical restraint is utilized, the following provisions shall apply:

a. The seclusion or physical restraint must be imposed by an employee who:

(1) Is trained in accordance with rule 281—103.8(256B,280); or

(2) Is otherwise available and a trained employee is not immediately available due to the unforeseeable nature of the occurrence.

b. A school must attempt to notify the student's parent using the school's emergency contact system as soon as practicable after the situation is under control but no later than one hour or the end of the school day, whichever occurs first.

c. The seclusion or physical restraint must only be used for as long as is necessary, based on research and evidence, to allow the student to regain control of the student's behavior to the point that the threat or behavior necessitating the use of the seclusion or physical restraint has ended, or when a medical condition occurs that puts the student at risk of harm.

Unless otherwise provided for in the student's written, approved IEP, BIP, IHP, or safety plan, if the seclusion or physical restraint continues for more than 15 minutes:

(1) The student shall be provided with a break to attend to personal and bodily needs, unless doing so would endanger the child or others.

(2) An employee shall obtain approval from an administrator or administrator's designee to continue the seclusion or physical restraint beyond 15 minutes. After the initial approval, an employee must obtain additional approval every 30 minutes thereafter for the continuation of the seclusion or physical restraint. Approval must be documented in accordance with rule 281—103.8(256B,280).

(3) The student's parent and the school may agree to more frequent notifications than is required by this subrule.

(4) Schools and employees must document and explain in writing the reasons why it was not possible for them to obtain approval, notify parents, or take action under paragraphs 103.7(2)*"b"* and *"c"* within the prescribed time limits.

(5) Schools and employees who initiate and then end the use of nonapproved restraints must document and explain in writing the reasons why they had no other option but to use this type of behavioral intervention. This subparagraph is not intended to excuse or condone the use of nonapproved restraints.

d. The area of seclusion shall be a designated seclusion room that complies with the seclusion room requirements of rule 281—103.9(256B,280) unless the nature of the occurrence makes the use of the designated seclusion room impossible; in that event, the school must document and explain in writing the reasons why a designated seclusion room was not used.

e. An employee must continually visually monitor the student for the duration of the seclusion or physical restraint.

f. An employee shall not use any physical restraint that obstructs the airway of the student.

g. If an employee restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of physical restraint, unless doing so is not feasible in view of the threat posed.

h. Seclusion or physical restraint shall not be used:

(1) As punishment or discipline;

(2) To force compliance or to retaliate;

(3) As a substitute for appropriate educational or behavioral support;

(4) To prevent property damage except as described in paragraph 103.7(1)*"b"*;

(5) As a routine school safety measure; or

(6) As a convenience to staff.

103.7(3) An employee must document the use of the seclusion or physical restraint in accordance with rule 281—103.8(256B,280).

103.7(4) Nothing in this rule shall be construed as limiting or eliminating any immunity conferred by Iowa Code section 280.21 or any other provision of law.

103.7(5) An agency covered by this chapter shall investigate any complaint or allegation that one or more of its employees violated one or more provisions of this chapter. If an agency covered by this chapter determines that one or more of its employees violated one or more of the provisions of this chapter, the agency shall take appropriate corrective action. If any allegation involves a specific student,

the agency shall transmit to the parents of the student the results of its investigation, including, to the extent permitted by law, any required corrective action.

103.7(6) If a child's IEP, BIP, IHP, or safety plan includes either or both physical restraint or seclusion measures, those measures must be individualized to the child; described with specificity in the child's IEP, BIP, IHP, or safety plan; and be reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances.

103.7(7) These rules must be complied with whether or not a parent consents to the use of physical restraint or seclusion for the child.

103.7(8) If any alleged violation of this chapter is also an allegation of "abuse" as defined in rule 281—102.2(280), the procedures in 281—Chapter 102 shall be applicable.

103.7(9) Schools must provide a copy of this chapter and any school-adopted or school-used related policies, procedures and training materials to any individual who is not an employee but whose duties could require the individual to participate in or be present when physical restraints are or seclusion is being used. Schools must invite these individuals to participate in training offered to employees pursuant to this chapter.

281—103.8(256B,280) Training, documentation, debriefing, and reporting requirements.

103.8(1) *Training.* An employee must receive training prior to using any form of physical restraint or seclusion. Training shall cover the following topics:

a. The rules of this chapter;

b. The school's specific policies and procedures regarding the rules of this chapter;

c. Student and staff debriefing requirements;

d. Positive behavior interventions and supports, and evidence-based approaches to student discipline and classroom management;

e. Research-based alternatives to physical restraint and seclusion;

f. Crisis prevention, crisis intervention, and crisis de-escalation techniques;

g. Duties and responsibilities of school resource officers and other responders, and the techniques, strategies and procedures used by responders; and

h. Safe and effective use of physical restraint and seclusion.

103.8(2) *Documentation and reporting.* Schools must maintain documentation for each occurrence of physical restraint and seclusion. Documentation must contain at least the following information:

a. The name of the student;

b. The names and job titles of employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints, including the administrator or individual who approved continuation of the seclusion or physical restraint pursuant to subparagraph 103.7(2)*"c"*(2);

c. The date of the occurrence;

d. The beginning and ending times of the occurrence;

e. The date the employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints last completed training required by subrule 103.8(1);

f. A description of the actions of the student before, during, and after the seclusion or physical restraint;

g. A description of the actions of the employee(s) involved before, during, and after the seclusion or physical restraint;

h. Documentation of approvals for continuation of the seclusion or physical restraint period generated in accordance with subrule 103.7(2);

i. A description of the less restrictive means attempted as alternatives to seclusion or physical restraint;

j. A description of any injuries, whether to the student or others, and any property damage;

k. A description of future approaches to address the student's behavior, including any consequences or disciplinary actions that may be imposed on the student; and

l. The time and manner by which the school notified the student's parent of the use of physical restraint or seclusion.

Schools must provide the student's parent with a written copy of the report by the end of the third school day following the occurrence. The report shall be accompanied by a letter inviting the parent to participate in a debriefing meeting, if necessary under subrule 103.8(3), to be held within five school days of the day the report and letter are mailed to or provided to the parent. The letter must include the date, time and place of the meeting and the names and titles of employees and other individuals who will attend the meeting. The parent may elect to receive the report and the letter via electronic mail or facsimile or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the letter and report to the parent by first-class mail, postage prepaid, postmarked by end of the third school day after the occurrence.

103.8(3) *Debriefing.*

a. Schools must hold a debriefing meeting as soon as practicable whenever required by paragraph 103.8(3)*"f"* but within five school days of the day the report and letter are mailed or provided to the parent, unless a parent who wants to participate personally or through a representative asks for an extension of time, or the parent and school agree to an alternate date and time. The student may attend the meeting with the parent's consent. The parent may elect to be accompanied by other individuals or representatives. The meeting must include employees who administered the physical restraint or seclusion, an administrator or employee who was not involved in the occurrence, the individual or administrator who approved continuation of the physical restraint or seclusion, other relevant personnel designated by the school (such as principal, counselor, classroom teacher, special education teacher), and, if indicated by the student's behavior in the instances prompting the debriefing, an expert in behavioral health, mental health, or another appropriate discipline. The meeting, and the debriefing report that is to be provided to the parent after the meeting, must include the following information and subjects:

(1) The date and location of the meeting, and the names and titles of the participants;

(2) The documentation and report completed in compliance with subrule 103.8(2);

(3) A review of the student's BIP, IHP, safety plan, and IEP as applicable;

(4) Identification of patterns of behavior and proportionate response, if any, in the student and the employees involved;

(5) Determination of possible alternative responses to the incident/less restrictive means, if any;

(6) Identification of additional resources that could facilitate those alternative responses in the future;

(7) Planning for follow-up actions, such as behavior assessments, revisions of school intervention plans, medical consultations, and reintroduction plans.

b. Schools must complete the debriefing report and provide a copy of the report to the parent of the student within three school days of the debriefing meeting. The parent may elect to receive the report via electronic mail, or facsimile, or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the debriefing report to the parent by first-class mail, postage prepaid, postmarked no later than three school days after the debriefing meeting.

c. If the debriefing session results in a recommendation that a child might be eligible for a BIP, IHP, safety plan, or IEP, the public agencies shall promptly determine the child's eligibility in accordance with the procedures required for determining eligibility.

d. Any recommended change to a student's BIP, IHP, safety plan, or IEP, or a student's educational placement, shall be made in accordance with the procedures required for amending said plan or changing said placement.

e. Nothing in this subrule shall be construed to require employers to include information about employees that would be legally protected personnel information, including employee disciplinary information under Iowa Code chapters 279 and 284, or to allow discussion of that personnel information in debriefing meetings.

f. For purposes of this subrule, a debriefing session is required:

(1) Upon the first instance of seclusion or physical restraint during a school year;

(2) Whenever any personal injury occurs as a part of the use of seclusion or physical restraint;

(3) Whenever a reasonable educator would determine a debriefing session is necessary;

(4) Whenever suggested by a student's IEP team (if any);

(5) Whenever agreed by the parent and the school officials.

However, in any case a debriefing session shall occur after seven instances of seclusion or physical restraint. Nothing in this paragraph shall be construed to prevent a school from offering more debriefing meetings.

103.8(4) *Confidentiality.* Schools must comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), Iowa Code chapter 22, "Examination of Public Records (Open Records)," and other applicable federal and state laws when taking action pursuant to this rule.

103.8(5) *Reporting to department.* Schools shall report to the Iowa department of education, in a manner prescribed by the department, an annual count of all instances of seclusion or restraint, an annual count of the number of students who were subjected to seclusion or restraint, and any other data required for the department to implement the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, Public Law 114-95.

281—103.9(256B,280) Seclusion room requirements. Schools must meet the following standards for the structural and physical requirements for rooms used for seclusion:

103.9(1) The room must meet and comply with all applicable building, fire, safety, and health codes and standards and with the other requirements of this rule.

103.9(2) The dimensions of the room shall be of adequate width, length, and height to allow the student to move about and recline safely and comfortably, considering the age, size, and physical and mental condition of the student being secluded. The interior of the room must be no less than 54 square feet, and the distance between opposing walls must be no less than 7 feet across.

103.9(3) The room must not be isolated from school employees or the facility.

103.9(4) Any wall that is part of the room must be part of the structural integrity of the room (not free-standing cells or portable units attached to the existing wall or floor).

103.9(5) The room must provide a means of continuous visual and auditory monitoring of the student.

103.9(6) The room must be adequately lighted with switches to control lighting located outside the room.

103.9(7) The room must be adequately ventilated with switches to control fans or other ventilation devices located outside the room.

103.9(8) The room must maintain a temperature within the normal human comfort range and consistent with the rest of the building with temperature controls located outside of the room.

103.9(9) The room must be clean and free of objects and fixtures that could be potentially dangerous to a student, including protruding, exposed, or sharp objects or exposed pipes, electrical wiring, or other objects in the room that could be used by students to harm themselves or to climb up a wall.

103.9(10) The room must contain no free-standing furniture.

103.9(11) The room must be constructed of materials safe for its intended use, including wall and floor coverings designed to prevent injury to the student. Interior finish of the seclusion room shall comply with the state and local building and fire codes and standards.

103.9(12) Doors must open outward. The door shall not be fitted with a lock unless it releases automatically when not physically held in the locked position by personnel on the outside of the door and permits the door to be opened from the inside. Doors, when fully open, shall not reduce the required corridor width by more than 7 inches. Doors in any position shall not reduce the required width by more than one-half.

103.9(13) The room must be able to be opened from the inside immediately upon the release of a security mechanism held in place by constant human contact.

103.9(14) Windows, if any, must be transparent and made of unbreakable or shatterproof glass or plastic.

103.9(15) By July 1, 2021, schools must consult with appropriate state and local building, fire, safety, and health officials to ensure the room complies with all applicable codes and standards (for example, heating, ventilation, lighting, accessibility, dimensions, access, entry, exit, and fire suppression).

103.9(16) Assuming approval pursuant to subrule 103.9(15), a school may continue to use a room that otherwise complies with this rule but for subrule 103.9(2) for a period of five years from the effective date of this chapter, or whenever the portion of the school containing the room is renovated or remodeled, whichever occurs first.

These rules are intended to implement Iowa Code section 280.21.

ARC 4819C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to assertive community treatment rates and brain injury waiver budget maximum and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

Legislation from the 2019 Legislative Session directed the Department to eliminate the monthly budget maximum or cap for individuals eligible for the Medicaid home- and community-based services (HCBS) brain injury waiver. Legislation also appropriated additional funds to adjust the per diem rates for assertive community treatment (ACT) services. These proposed amendments implement those changes.

Fiscal Impact

Based on June 2018 data, annualized ACT costs were estimated at $5,794,035. The cost per unit was increased by approximately 9.32 percent to achieve the $211,332 state share target. Based on a previously completed fiscal note, no fiscal impact is expected from eliminating the monthly budget maximum or cap for individuals eligible for the brain injury waiver. During calendar year 2018, the Iowa Medicaid Enterprise received 126 exception-to-policy (ETP) requests for brain injury waiver members to exceed the monthly cap for services, and of these, only two requests were denied. Since the ETP process is an existing practice, costs related to exceptions would already be incorporated into the base data used to set managed care organization rates.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 7, 2020. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule **79.1(2)**, provider category of "Assertive community treatment," as follows:

Provider category	Basis of reimbursement	Upper limit
Assertive community treatment	Fee schedule	~~$51.08 per day for each day on which a team meeting is held.~~ Fee schedule in effect 7/1/2019. Maximum of 5 days per week.

ITEM 2. Rescind paragraph **83.82(2)"d."**

ARC 4818C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to medical assistance advisory council and providing an opportunity for public comment

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

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

These proposed amendments update Medical Assistance Advisory Council (MAAC) and executive committee meeting rules regarding MAAC membership, voting and duties and removal of the executive committee and responsibilities.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 7, 2020. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule 79.7(1) as follows:

79.7(1) *Officers.*

~~*a.* Definitions.~~

~~*"Co-chairpersons"* means the public health director co-chairperson and the public co-chairperson.~~

~~*"Public co-chairperson"* means the individual selected by the other publicly appointed members of the council to serve as a co-chairperson of the council.~~

~~*"Public health director co-chairperson"* means the director of the department of public health, who serves as a co-chairperson of the council.~~

~~*b.*~~ *a.* The public co-chairperson's term of office shall be two years. A public co-chairperson shall serve no more than two consecutive terms.

~~*c.*~~ *b.* The public co-chairperson shall have the right to vote on any issue before the council. The public health director co-chairperson serves as a nonvoting member of the council.

~~*d.*~~ *c.* The position of public co-chairperson shall be held by one of the ~~ten publicly appointed~~ five public council members. Ballots will be distributed to the public council members at the quarterly meeting closest to the beginning of the next state fiscal year and will be collected in paper and electronic format and administered by department of human services staff. The initial ballot following July 1, 2019, will be distributed by email prior to the first meeting in that fiscal year in order to identify the public co-chairperson prior to the council's first meeting.

~~*e.*~~ *d.* The co-chairpersons shall appoint members to other committees approved by the council.

~~*f.* The co-chairpersons shall also serve on the executive committee and will serve as the co-chairpersons of that committee.~~

~~*g.*~~ *e.* Responsibilities.

(1) The co-chairpersons shall be responsible for development of the agendas for meetings of the ~~full~~ council. Agendas will be developed and distributed in compliance with the advance notice requirements of Iowa Code section 21.4. Agendas will be developed in consultation with the staff and director of human services, taking into consideration the following:

1. Workplans. Items will be added to the council's agenda as various tasks for the council are due to be discussed based on calendar requirements. Council deliberations are to be conducted within a time frame to allow the ~~executive committee~~ council to receive ~~the council's feedback~~ and make recommendations to the director and for the director to consider those recommendations as budgets and policy for the medical assistance program are developed for the review of the council on human services and the governor, as well as for the upcoming legislative session.

2. Requests from the director of human services.

3. Discussion and action items from council members. The co-chairpersons will review any additional suggestions from council members at any time, including after the draft agenda has been distributed. The agenda will be distributed in draft form five business days prior to the council meeting, and the final agenda will be distributed no later than 24 hours prior to the council meeting.

(2) The co-chairpersons shall preside over all council ~~and executive committee~~ meetings, calling roll, determining a quorum, counting votes, and following the agenda for the meeting.

(3) The co-chairpersons shall consult with the department of human services on other administrative tasks to oversee the council and shall participate in workgroups and subcommittees as appropriate.

ITEM 2. Rescind subrule 79.7(2) and adopt the following **new** subrule in lieu thereof:

79.7(2) *Membership.* The membership of the council shall be as prescribed in Iowa Code section 249A.4B.

a. Council membership of professional and business entities shall number five and be identified from a vote among those entities outlined in Iowa Code section 249A.4B(3). Professional and business entities shall vote every year to identify the entities and their subsequent representatives that will represent the body of professional and business stakeholders on the council. Professional and business entities will also report their contact information to the department of human services.

(1) An initial election in SFY 2020 of five professional and business members shall be held. From this initial election of five members, three members with the most votes shall serve a three-year term and the other two members shall serve a two-year term. Once these members have served their initial term, the length of term for all following elected members shall be two years.

(2) Elections shall be organized along the following guidelines.

1. Ballots will be distributed at the quarterly meeting closest to the beginning of the next state fiscal year and will be collected in paper and electronic format and counted by department of human services staff.

2. The entities that receive the most votes shall serve on the council.

(3) Should any vacancy occur on the council, the entity that received the next highest number of votes in the most recent election shall serve on the council.

(4) If a voting entity's representative does not attend more than three consecutive meetings, the department of human services will notify the entity and representative and verify whether an alternative contact is needed. If a fourth consecutive meeting is missed after the notification, the voting entity's seat will be considered vacant and will be filled as outlined in subparagraph 79.7(2)*"a"*(3).

b. Council membership of public representatives shall consist of five representatives, of which one must be a recipient of medical assistance. All five public representatives will be appointed by the governor for staggered terms of two years each. All five public representatives will be voting members of the council.

c. A member of the hawki board, created in Iowa Code section 514I.5, selected by the members of the hawki board, shall be a member of the council. The hawki board member representative will be a nonvoting member of the council.

d. Council membership shall also consist of state agency and medical school partners, including representatives from the department of public health, the department on aging, the office of the long-term care ombudsman, Des Moines University and the University of Iowa College of Medicine.

(1) Partner agency and medical school representatives will be nonvoting members of the council.

(2) If an agency's or school's representative does not attend more than three consecutive meetings, the department of human services will notify the agency or school.

(3) Partner agencies and medical schools shall determine the length of appointment of their representatives. The department of human services will confirm each representative's participation every two years.

e. The following members of the general assembly shall be members of the council, each for a term of two years as provided in Iowa Code section 69.16B. Members appointed from the general assembly will serve as nonvoting members of the council.

(1) Two members of the house of representatives, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives from their respective parties.

(2) Two members of the senate, one appointed by the president of the senate after consultation with the majority leader of the senate and one appointed by the minority leader of the senate from their respective parties.

ITEM 3. Amend subrules 79.7(3) to 79.7(5) as follows:

79.7(3) *Responsibilities, duties and meetings.* The responsibility of the medical assistance advisory council is to provide recommendations on the medical assistance program to the department of human services ~~through the executive committee of the council~~.

a. *Recommendations.* Recommendations made by ~~the executive committee from~~ the council shall be advisory and not binding upon the department of human services or the professional and business entities represented. The director of the department of human services shall consider the recommendations in the director's preparation of medical assistance budget recommendations to the council on human services, pursuant to Iowa Code section 217.3 and implementation of medical assistance program policies.

b. *Council.* The council shall be provided with information to deliberate and provide input on the medical assistance program. ~~The executive committee will use that input in making final recommendations to the department of human services.~~ The council will use that input in making final recommendations to the department of human services.

(1) to (5) No change.

~~(6) The council shall review the recommendations submitted by the executive committee regarding feedback received at the IA Health Link statewide public comment meetings outlined in 2016 Iowa Acts, chapter 1139, section 102.~~

~~*c.* *Executive committee.*~~

~~(1) Executive committee meetings.~~

~~1. The executive committee shall meet on a monthly basis.~~

~~2. Meetings may be called by the co-chairpersons; upon written request of at least 50 percent of executive committee members; or by the director of the department of human services.~~

~~3. Meetings shall be held in the Des Moines, Iowa, area unless other notification is given. Meetings will also be made available via teleconference, when available.~~

~~4. In a month when a council meeting is held, the executive committee shall meet after the council meeting, allowing committee members to discuss and make recommendations based on the topics discussed by council members.~~

~~(2) Based on the deliberations of the full council, the executive committee shall make recommendations to the director of human services regarding the budget, policy, and administration of the medical assistance program. Such recommendations may include:~~

~~1. Recommendations on the reimbursement for medical services rendered by providers of services.~~

~~2. Identification of unmet medical needs and maintenance needs which affect health.~~

~~3. Recommendations for objectives of the program and for methods of program analysis and evaluation, including utilization review.~~

~~4. Recommendations for ways in which needed medical supplies and services can be made available most effectively and economically to program recipients.~~

~~5. Advice on such administrative and fiscal matters as the director of human services may request.~~

~~(3) Pursuant to 2016 Iowa Acts, chapter 1139, section 102, the executive committee shall review the compilation of the input and recommendations from the public meetings convened statewide and shall submit recommendations based upon the compilation to the director of human services on a quarterly basis through December 31, 2017.~~

79.7(4) *Procedures.*

~~*a.* Procedures shall apply to both the council and the executive committee.~~

~~*b.*~~ *a.* A quorum shall consist of 50 percent (five persons) of the current voting members.

~~*c.*~~ *b.* Where a quorum is present, a position is carried by two-thirds of the present council members ~~present~~.

~~*d.*~~ *c.* Minutes of council meetings and other written materials developed by the council shall be distributed by the department to each member of the ~~full~~ council.

~~*e.*~~ *d.* In cases not covered by these rules, Robert's Rules of Order shall govern.

79.7(5) *Expenses, staff support, and technical assistance.* Expenses of the council ~~and executive committee~~, such as those for clerical services, mailing, telephone, and meeting place, shall be the responsibility of the department of human services. The department shall arrange for a meeting place, related services, and accommodations. The department shall provide staff support and independent technical assistance to the council ~~and the executive committee~~.

a. to *c.* No change.

d. The department shall maintain a current list of members on the council ~~and executive committee~~.

e. The department shall be responsible for the organization of all council ~~and executive committee~~ meetings and notice of meetings.

f. As required in Iowa Code section 21.3, minutes of the meetings of the council ~~and of the executive committee~~ will be kept by the department. The ~~co-chairpersons~~ council will review minutes before distribution to the public.

~~*g.* The department shall compile input and recommendations received at the public meetings established in 2016 Iowa Acts, chapter 1139, section 102, and submit the information to the executive committee for review.~~

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INSURANCE DIVISION[191]

Notice of Intended Action

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

The Insurance Division hereby proposes to amend Chapter 10, "Insurance Producer Licenses and Limited Licenses," Chapter 11, "Continuing Education for Insurance Producers," Chapter 13, "Consent for Prohibited Persons to Engage in the Business of Insurance," and Chapter 48, "Viatical and Life Settlements," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 505.8, 508E.19, 522A.7, 522B.18 and 522E.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 252J, 261, 505, 508E, 522A, 522B and 522E.

Purpose and Summary

The proposed amendments to these chapters are a result of the Division's five-year review of rules. The amendments generally update the chapters by removing unnecessary language, removing duplicative definitions, and reflecting current practices. The most significant changes to Chapter 48 are due to aligning the requirements for viatical settlement brokers to those for producers in Chapters 10 and 11 to establish a uniform process and changing the license and continuing education term to align with the statutes. A reissuance fee is proposed to be added to Chapters 10 and 48 to correspond to the reinstatement fee. The Division processes only a few of these reissuances each year. Finally, the proposed rule making updates the reinstatement procedures to prohibit reinstatement prior to the end of a suspension period regardless of the timing of the licensure term since this requirement is not expressly stated in the rules and has caused confusion among producers.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. While these rules do add a reissuance fee, the Division has only processed five such reissuances since 2017.

Jobs Impact

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

Waivers

These rules do not include a provision for the waiver of a rule because the Division's general waiver rules of 191—Chapter 4 apply.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Division no later than 4:00 p.m. on January 7, 2020. Comments should be directed to:

Tracy Swalwell
Iowa Insurance Division
Two Ruan Center
601 Locust Street, Fourth Floor
Des Moines, Iowa 50309
Phone: 515.725.1249
Fax: 515.281.3059
Email: tracy.swalwell@iid.iowa.gov

Public Hearing

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

January 7, 2020 10 to 11 a.m.	Division Offices, Fourth Floor Two Ruan Center 601 Locust Street Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 10.1(2) as follows:

10.1(2) These rules are authorized by Iowa Code section 505.8 and are intended to implement Iowa Code chapters 252J, ~~261~~ 272D and 522B.

ITEM 2. Amend rule 191—10.2(522B) as follows:

191—10.2(522B) Definitions. In addition to the definitions in 191—1.1(502,505), the following definitions apply:

"Appointment" means a notification filed with the division or its designated vendor that an insurer has established an agency relationship with a producer. A company filing such a request must verify that the producer is licensed for the appropriate line(s) of authority.

"Birth month" means the month in which a producer was born.

"Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

~~*"Commissioner"* means the Iowa insurance commissioner.~~

~~*"CSAC"* means college student aid commission.~~

"CSRU" means child support recovery unit.

~~*"Division"* means the Iowa insurance division.~~

"Home state" means the District of Columbia ~~and~~ or any state or territory of the United States in which a producer maintains the producer's principal place of residence or principal place of business and is licensed to act as a producer.

"Individual" means a private or natural person, as distinguished from a partnership, corporation or association.

"Insurance" means any of the lines of insurance listed in ~~subrule 10.7(1)~~ rule 191—10.7(522B).

"License" means the division's authorization for a person to act as a producer for the authorized lines of insurance.

"License number" means the National Insurance Producer Registry (NIPR) national producer number (NPN) issued to all licensees whose license records exist in the state producer licensing database (SPLD). For purposes of this definition, "state producer licensing database (SPLD)" means the national database of producers maintained by the National Association of Insurance Commissioners (NAIC), its affiliates or subsidiaries.

"National Insurance Producer Registry" or *"NIPR"* means the nonprofit affiliate of the National Association of Insurance Commissioners (NAIC). The NIPR's ~~Web site~~ website is www.NIPR.com.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract provided that the person engaged in that act either sells insurance or obtains insurance for purchasers.

"NIPR Gateway" means the communication network developed and operated by NIPR that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information regarding license applications, license renewals, appointments and terminations.

"Nonresident" means a person whose home state is not Iowa.

"Notification" means a written or electronic communication from a producer to the division.

"Person" means an individual or a business entity.

"Producer" or *"insurance producer"* means a person required to be licensed in this state to sell, solicit or negotiate insurance.

"Producer renewal notice" means an electronic communication issued by the division to inform a producer about license renewal.

"Resident" means a person whose home state is Iowa.

"Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

"Solicit" or *"solicitation"* means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

"Termination" means that an insurer has ended its agency relationship with a producer.

"Termination for cause" means that an insurer has ended its agency relationship with a producer for one of the reasons set forth in Iowa Code section 522B.11.

"Uniform application" means the National Association of Insurance Commissioners' uniform application for resident and nonresident insurance producer licensing, as it appears on the NAIC ~~Web site~~ website.

ITEM 3. Amend subrule 10.3(3) as follows:

10.3(3) A person shall not advise an Iowa resident to cancel, not renew, or otherwise change an existing insurance policy unless that person holds an Iowa producer license regarding the line of insurance for which the advice is given. This subrule ~~shall~~ does not apply to a licensed attorney or certified public accountant who does not sell or solicit insurance.

ITEM 4. Amend subrule 10.4(2) as follows:

10.4(2) Examinations are conducted by the outside testing service on contract with the division. Applications and fees for examinations and for initial producer licensing will be submitted either to the outside testing service on contract with the division or as directed by the division. Instructions are available ~~at~~ on the division's ~~Web site: www.iid.state.ia.us~~ website.

ITEM 5. Amend subrule 10.4(5) as follows:

10.4(5) Amendments to producer licenses shall be done either by an outside vendor or by the division, as directed by the division. Any licensed producer desiring to become licensed in an additional line of authority ~~shall~~ must:

a. Submit a completed uniform application form through the NIPR Gateway or as directed by the division, specifying the line(s) of authority requested to be added. Instructions are available ~~at~~ on the division's ~~Web site: www.iid.state.ia.us~~ website; and

b. For each line of authority requested to be added, pass any required examination.

ITEM 6. Amend subrule 10.4(7) as follows:

10.4(7) To receive a license for excess and surplus lines, the applicant must have successfully completed the excess and surplus lines examination and also have successfully completed either: (1) the examinations for property and casualty lines of authority; or (2) the ~~examination~~ examinations for personal lines of authority and the commercial insurance subject examination.

ITEM 7. Amend rule 191—10.6(522B) as follows:

191—10.6(522B) Issuance of license.

10.6(1) ~~A~~ In order to be issued a producer license, a person ~~who meets~~ must meet the requirements of Iowa Code sections 522B.4 and 522B.5, or section 522B.7, ~~and of~~ and rule 191—10.5(522B), unless otherwise denied licensure pursuant to Iowa Code section 522B.11 or rule 191—10.20(522B)~~, shall be issued a producer license~~. ~~A~~ The initial term of a producer license ~~shall remain in effect for an initial term of~~ is three years and ends after the last day of the applicant's birth month of the year the license was issued, unless revoked or suspended. A license may be continually renewed pursuant to rule 191—10.8(522B) as long as the proper fees are paid and home state continuing education requirements are met. A renewal term is three years. If not renewed, a producer license automatically terminates on the last day of the month of the initial or renewal term.

10.6(2) No change.

10.6(3) The license shall contain the producer's name, address, license number, date of issuance, date of expiration, the line(s) of authority held, and any other information the division deems necessary. The license number shall be the same as the producer's National Insurance Producer Registry (NIPR) national producer number (NPN).

10.6(4) If the division issues or renews a producer license and subsequently determines that payment for the license or renewal was returned to the division by a bank without payment, or that the credit card company does not approve, ~~or~~ cancels, or refuses amounts charged to the credit card, the license ~~shall~~ must be immediately suspended until the payments are made and any fees or penalties charged by the division are paid, at which time the license may be reinstated. The individual may request a hearing within 30 days of receipt of the division's notice ~~by the division~~ that the license was suspended.

ITEM 8. Amend rule 191—10.7(522B) as follows:

191—10.7(522B) License lines of authority. In addition to the lines of authority listed in Iowa Code subsection 522B.6(2), the following lines of authority also are available for issuance in Iowa: crop~~;~~, surety~~;~~, and reciprocal (any other line of insurance issued in another state and for which Iowa grants authority to sell, solicit or negotiate in this state).

ITEM 9. Amend rule 191—10.8(522B) as follows:

191—10.8(522B) License renewal.

10.8(1) Upon request by a licensed producer, the division ~~shall~~ must electronically transmit a producer renewal notice to ~~a licensed producer at~~ the producer's last-known electronic mail address as it appears in division records. If the division has received notification that the electronic address of record is no longer valid, no renewal notice will be transmitted.

10.8(2) A producer must apply for license renewal ~~within 60~~ during the 90 days prior to the expiration date of the license. Failure to apply to renew a license and pay appropriate fees prior to the expiration date of the license will result in expiration of the license.

10.8(3) and **10.8(4)** No change.

10.8(5) Nonresident producer licenses may only be renewed ~~only~~ through the NIPR Gateway, or as otherwise directed by the division.

ITEM 10. Amend rule 191—10.9(522B) as follows:

191—10.9(522B) License reinstatement.

10.9(1) A resident producer may reinstate an expired license up to 12 months after the license expiration date by proving that during the ~~CE~~ applicable continuing education (CE) term the producer met the CE requirements found in 191—Chapter 11~~,~~ and by paying a reinstatement fee and a license renewal ~~fees~~ fee. A resident producer who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

10.9(2) A nonresident producer may reinstate an expired license up to 12 months after the expiration date by submitting a request through the NIPR Gateway and by paying a reinstatement fee and a license renewal fee. ~~After the 12-month period, a~~ A nonresident producer ~~must apply for a new license~~ who fails to apply for a license reinstatement within 12 months of the license expiration date must apply for license reissuance.

10.9(3) No change.

ITEM 11. Amend rule 191—10.10(522B) as follows:

191—10.10(522B) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

10.10(1) *Terminology.* The term "reinstatement" as used in this rule means the reinstatement of a suspended license. The term "reissuance" as used in this rule means the issuance of a new license following ~~either~~ the revocation of a license, the suspension and subsequent termination of a license, or the forfeiture of a license in connection with a disciplinary matter, including but not limited to proceedings pursuant to rules 191—10.21(252J)~~, 191—10.22(261)~~ and 191—10.23(~~82GA,SF2428~~ 272D). This rule does not apply to the reinstatement of an expired license or the issuance of a new license that is not in connection with a disciplinary matter.

10.10(2) *Application required.* Any producer whose license has been revoked or suspended by order~~,~~ or who forfeited a license in connection with a disciplinary matter~~, may~~ must apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

a. All proceedings for reinstatement or reissuance ~~shall~~ must be initiated by the applicant, who shall file with the commissioner an ~~application for reinstatement or reissuance of a license~~ Iowa Insurance Producer Application for Reinstatement or an Iowa Insurance Producer Application for Reissuance. An applicant is not eligible for reinstatement or reissuance until the applicant has satisfied the other prescribed requirements of rule 191—10.4(522B), including the timing requirements of subrule 10.4(4).

b. An application for reinstatement or reissuance ~~shall~~ must allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension, or forfeiture of the applicant's license no longer exists and ~~that it will be in the public interest for the application to be granted~~ must disclose whether the producer has engaged in any conduct that is listed as a cause for licensing action under Iowa Code section 507B.4 or 522B.11(1) that was not included in the order for suspension, revocation, or forfeiture.

c. An application for reinstatement or reissuance must allege sufficient facts to enable the commissioner to determine that it will be in the public interest for the application to be granted. The commissioner may determine it is not in the public interest if the producer has engaged in any conduct that is listed as a cause for licensing action under Iowa Code section 507B.4 or 522B.11(1) that was not included in the order for suspension, revocation, or forfeiture.

INSURANCE DIVISION[191](cont'd)

d. The burden of proof to establish such facts shall be on the applicant.

~~*c.*~~ *e.* A producer may request reinstatement of a suspended license prior to the end of the suspension term; however, reinstatement will not be effected until the suspension period has ended.

~~*d.*~~ *f.* Unless otherwise provided by law, if the order of revocation, ~~or~~ suspension, or acceptance of forfeiture did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding paragraph ~~10.10(2)*"c"*~~ 10.10(2)*"e"*), revocation, or acceptance of the forfeiture of a license.

10.10(3) *Proceedings.* All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the ~~original~~ license was suspended, revoked, or forfeited, if a case exists.

10.10(4) *Order.* An order of reinstatement or reissuance ~~shall~~ must be ~~based upon~~ a written decision ~~which~~ that incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner's designee deems ~~desirable~~ appropriate, which may include one or more of the types of disciplinary sanctions provided by Iowa Code section 522B.11. The order ~~shall be~~ is a public record~~, available to the public,~~ and may be disseminated in accordance with Iowa Code chapter 22.

10.10(5) *Voluntary forfeiture.* A ~~request for~~ submission of voluntary forfeiture of a license ~~shall~~ must be made in writing ~~to~~ as prescribed by the commissioner. Forfeiture of a license is effective upon the submission ~~of the request~~ unless a contested case proceeding is pending at the time ~~the request is submitted~~ of the submission. If a contested case proceeding is pending ~~at the time of the request~~, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered a disciplinary action and ~~shall~~ must be published in the same manner as is applicable to any other form of disciplinary order.

10.10(6) *Suspension in relation to expiration date.* When a producer's license has been suspended for a period of time ~~which~~ that extends beyond the producer's license expiration date, the license ~~will terminate~~ terminates at the license expiration date, and the producer must request ~~reinstatement~~ reissuance pursuant to subrule 10.10(2). However, reissuance will not be effected until the suspension period has ended. If suspension for a period of time ends prior to the producer's license expiration date and the producer has met all applicable requirements, the ~~division shall~~ commissioner must reinstate the license ~~at~~ as soon as practicable but no earlier than the end of the suspension period. ~~The~~ However, the commissioner is not prohibited from denying an application for reinstatement or reissuance or bringing an additional immediate action if the producer has engaged in ~~misconduct during the period of suspension~~ any additional violation of Iowa Code section 507B.4 or 522B.11(1) or otherwise failed to meet all of the applicable requirements.

ITEM 12. Amend rules 191—10.11(522B) to 191—10.13(522B) as follows:

191—10.11(522B) Temporary licenses. An Iowa resident may apply for a temporary license pursuant to Iowa Code section 522B.10. The applicant ~~should~~ must submit a written request to the division ~~which~~ that includes the reason for the request and the length of time for which the temporary license is requested. Temporary licenses will be issued for 90 days, with extensions allowed, but in no event for longer than 180 days, pursuant to Iowa Code section 522B.10.

191—10.12(522B) Change in name, address or state of residence.

10.12(1) If a producer's name is changed, the producer must file notification with the division through the NIPR Gateway at www.NIPR.com, unless the division instructs otherwise, within 30 days of the name change. The notification must include the producer's:

a. Prior name;

b. License number; and

c. New name.

~~Notification shall be filed through the NIPR Gateway at www.NIPR.com, unless the division instructs the producer otherwise.~~

10.12(2) ~~Address change.~~ If a resident or nonresident producer's address is changed, the producer must file notification with the division through the NIPR Gateway at www.NIPR.com, unless the division instructs otherwise, within 30 days of the address change. The notification must include the producer's:

a. Name;

b. License number;

c. Previous address; and

d. New address. A producer may designate a business address instead of a resident address at the option of the producer.

~~Notification shall be filed through the NIPR Gateway at www.NIPR.com, unless the division instructs the producer otherwise.~~

10.12(3) No change.

10.12(4) Issuance of an Iowa nonresident producer license is contingent on proper licensure in the nonresident producer's home state. Termination of the producer's resident license will be deemed termination of the Iowa nonresident producer license unless the producer ~~timely~~ files a change of address pursuant to this rule.

10.12(5) If a producer has provided an ~~E-mail~~ email address to the division, the division ~~has the option to~~ may send information to the producer through the ~~E-mail~~ email address rather than through the mail.

191—10.13(522B) Reporting of actions.

10.13(1) A producer ~~shall~~ must report to the division any actions required to be reported by Iowa Code section 522B.16.

10.13(2) A producer ~~shall~~ must report to the division all ~~CSAC or~~ CSRU or centralized collection unit of the department of revenue actions taken under or in connection with Iowa Code chapter ~~261 or~~ 252J or 272D and all court orders entered in such actions.

10.13(3) No change.

ITEM 13. Amend subrule 10.15(2) as follows:

10.15(2) Insurers ~~shall~~ must file and pay for initial appointments using the NIPR Gateway, except that insurers authorized under Iowa Code chapter 518 or 518A ~~shall~~ must file appointments directly with the division ~~by arrangement with the division~~.

ITEM 14. Amend subrule 10.15(7) as follows:

10.15(7) Insurance companies ~~are required to~~ must file the name, address, and electronic address of a contact person for the company, to whom the billing statements will be sent. Insurance companies ~~are required to~~ must notify the division if a there is a change of the person appointed as the contact person or if a change of the address of such contact occurs. If ~~a~~ an insurance company fails to notify the division of such a change, ~~the division shall charge~~ the insurance company must pay a $100 fee.

ITEM 15. Amend rules 191—10.16(522B) to 191—10.21(252J) as follows:

191—10.16(522B) Appointment renewal.

10.16(1) On or about December 1 of each year, the division or its designee will deliver reminders to insurance companies that appointment renewals are imminent. Appointments ~~shall~~ must be renewed electronically via the NIPR Gateway at www.NIPR.com.

10.16(2) On or about January 2 of each year, a list of the producers currently appointed with each insurance company and a billing statement will be provided to each insurance company via the NIPR Gateway. The billing statement ~~may~~ must not be altered, amended or used for appointing or terminating producers.

10.16(3) and **10.16(4)** No change.

10.16(5) Insurance companies ~~are required to~~ must file the name, address, and electronic address of a contact person for the company, to whom the appointment renewals will be sent. Insurance companies

~~are required to~~ must notify the division if a change of the address of such contact occurs. If ~~a~~ an insurance company fails to notify the division of such a change of address, ~~the division shall charge~~ the insurance company must pay a $100 fee.

191—10.17(522B) Appointment terminations.

10.17(1) When an insurance company terminates its relationship with a producer, the company ~~shall~~ must notify the division using the NIPR Gateway. The termination must be filed within 30 days of the date the insurer terminated its agency relationship with the producer. The company ~~shall~~ must also notify the producer that the producer's appointment has been ~~canceled~~ terminated.

10.17(2) and **10.17(3)** No change.

10.17(4) When an insurer terminates an appointment for cause pursuant to Iowa Code section 522B.14, the notification of termination may be filed according to subrule 10.17(1). The supporting documents required by Iowa Code section 522B.14 ~~shall~~ must be submitted to the division within ten days of the filing of the notification. The documents ~~shall~~ must include a certification by an officer or authorized representative of the insurer.

191—10.18(522B) Licensing of a business entity.

10.18(1) *Application.* A business entity may apply for an Iowa insurance license. For purposes of this rule, upon approval of an application by the division, the business entity ~~shall~~ will be classified as a producer and ~~shall be~~ is subject to all standards of conduct and reporting requirements applicable to producers.

10.18(2) *Requirements.*

a. To qualify for such a license, the business entity must:

(1) File a completed NAIC uniform business entity application through the NIPR Gateway or as directed by the division. For purposes of this subrule, "uniform business entity application" means the National Association of Insurance Commissioners' uniform business entity application for resident and nonresident business entities, as the application appears on the NAIC ~~Web site~~ website;

(2) to (4) No change.

b. The designated responsible producer ~~shall~~ must maintain an active Iowa producer license. If the license of the designated responsible producer terminates or lapses for any reason, the business entity must supply the division with a substitute designated responsible producer within ten days. If the business entity does not provide a substitute, the division ~~shall~~ must immediately terminate the license, and the entity ~~shall~~ must submit a new application and pay the appropriate license fee.

10.18(3) *License term.* A business entity license issued under this rule ~~shall be~~ is effective for three years and one month, including the year of application, beginning on the first day of the month of the business entity's formation date and ending with the last day of the month of the business entity's formation date. By arrangement with the division, a business entity may choose a different month for its license term.

10.18(4) *License renewal.* Upon request by a business entity, the division ~~shall~~ must electronically transmit a renewal notice to the electronic mail address of the business entity on file with the division on or before the first day of the month preceding the renewal month. The renewal fee must be received by the division or its designated vendor on or before the license expiration date. All business entities must renew their licenses through the NIPR Gateway or as otherwise directed by the division.

10.18(5) and **10.18(6)** No change.

191—10.19(522B) Use of senior-specific certifications and professional designations in the sale of life insurance and annuities.

10.19(1) No change.

10.19(2) *Scope.* This rule ~~shall apply~~ applies to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by a producer.

10.19(3) *Authority.*

a. This rule is promulgated under the authority of Iowa Code chapters 507B and 522B.

b. Nothing in this rule ~~shall limit~~ limits the division's authority to enforce existing provisions of law.

10.19(4) No change.

191—10.20(522B) Violations and penalties.

10.20(1) A producer who sells, solicits or negotiates insurance, directly or indirectly, in violation of this chapter ~~shall be~~ is deemed to be in violation of Iowa Code section 522B.2 and is subject to the penalties provided in Iowa Code section 522B.17.

10.20(2) No change.

10.20(3) Any company or company representative who aids and abets a producer in the above-described violation ~~shall be~~ is deemed to be in violation of Iowa Code section 522B.2 and is subject to the penalties provided in Iowa Code section 522B.17.

10.20(4) No change.

10.20(5) If a producer fails to provide to the division any notification required either by Iowa Code chapter 522B or by this chapter, including but not limited to notification of a change of address, notification of change of name, or notification of administrative criminal action as required by rules 191—10.12(522B) and 191—10.13(522B), within the required time, the producer ~~shall~~ must pay a late fee of $100 for each notification unless otherwise ordered pursuant to Iowa Code section 522B.6(7) or 522B.17. A business entity that fails to make a notification to the division as required by rule 191—10.18(522B) within the required time ~~shall~~ must pay a late fee of $100 for each notification unless otherwise ordered pursuant to Iowa Code section 522B.6(7) or 522B.17.

10.20(6) In the event that the division denies a request to renew a producer license or denies an application for a producer license, the commissioner ~~shall~~ must provide written notification to the producer or applicant of the denial or failure to renew, including the reason therefor. The producer or applicant may request a hearing within 30 days of receipt of the notice to determine the reasonableness of the division's action. The hearing ~~shall~~ must be held within 30 days of the date of the receipt of the written demand by the applicant, unless otherwise agreed to by the producer, and ~~shall~~ be held pursuant to 191—Chapter 3.

10.20(7) No change.

191—10.21(252J,272D) Suspension for failure to pay child support or state debt.

10.21(1) The commissioner must deny the producer's application for license issuance, renewal, reinstatement, or reissuance; suspend a current license; or revoke a currently suspended license upon receipt of a certificate of noncompliance from the CSRU according to the procedures in Iowa Code chapter 252J or upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapters 252J and 272D, this rule applies.

~~**10.21(1)**~~ **10.21(2)** Upon receipt of a certificate of noncompliance ~~from the child support recovery unit (CSRU)~~, the commissioner ~~shall~~ must issue a notice to the producer that ~~the producer's pending application for licensure, pending request for renewal, or current license will be suspended~~ the division will, unless the certificate of noncompliance is withdrawn, deny the producer's application for license issuance, renewal, reinstatement, or reissuance; suspend a current license; or revoke a currently suspended license 30 days after the ~~date~~ mailing of the notice. Notice ~~shall~~ must be sent to the producer's last-known address by ~~regular mail~~ restricted certified mail, return receipt requested, or in accordance with the division's rules for service.

~~**10.21(2)**~~ **10.21(3)** The notice ~~shall~~ must contain the following items:

a. A statement that the commissioner intends to ~~suspend the producer's application, request for renewal or current insurance license~~ deny the producer's application for license issuance, renewal, reinstatement, or reissuance; suspend a current license; or revoke a currently suspended license in 30 days unless the certificate of noncompliance is withdrawn.

b. A statement that the producer must contact the ~~CSRU~~ the agency that issued the certificate of noncompliance ("the issuing agency") to request a withdrawal ~~of the certificate of noncompliance~~;

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~~*c.* A statement that the producer's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;~~

~~*d.*~~ *c.* A statement that the producer does not have a right to a hearing before the division, but that the producer may file an application for a hearing in district court pursuant to Iowa Code section 252J.9 or 272D.9, as applicable;

~~*e.*~~ *d.* A statement that the filing of an application with the district court will stay the proceedings of the division; and

~~*f.*~~ *e.* A copy of the certificate of noncompliance.

10.21(4) Producers must keep the commissioner informed of all actions taken by the district court or the issuing agency in connection with the certificate of noncompliance. Producers must provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to an application of hearing, of all court orders entered in such actions, and of all withdrawals of certificates of noncompliance.

~~**10.21(3)**~~ **10.21(5)** ~~The filing of an application for hearing with the district court will stay all~~ In the event an applicant or licensed producer timely files an application for hearing in district court and the division is notified of such a filing, the commissioner's denial, suspension, or revocation proceedings will be stayed until the division is notified by the district court, the issuing agency, the licensee, or the applicant of the resolution of the application. Upon receipt of a court order lifting the stay or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice.

~~**10.21(4)**~~ **10.21(6)** If the ~~division~~ commissioner does not receive a withdrawal of the certificate of noncompliance from the ~~CSRU~~ issuing agency or a notice from a clerk of court, the issuing agency, the licensee, or the applicant that an application for hearing has been filed, the ~~division shall suspend the producer's application, request for renewal or current license~~ commissioner must deny the producer's application for license issuance, renewal, reinstatement, or reissuance; suspend a current license; or revoke a currently suspended license 30 days after the notice is issued.

~~**10.21(5)**~~ **10.21(7)** Upon receipt of a withdrawal of the certificate of noncompliance from the ~~CSRU~~ issuing agency, suspension or revocation proceedings ~~shall~~ must halt and the named producer ~~shall~~ must be notified that the proceedings have been halted. If the producer's license has already been suspended, the producer must apply for reinstatement and the license ~~shall~~ must be reinstated if the producer is otherwise in compliance with division rules. If the producer's application for licensure was stayed, application processing must resume. All fees required for license renewal, ~~or license~~ reinstatement, or reissuance must be paid by producers and all continuing education requirements must be met before a producer license will be renewed or reinstated after a license suspension or revocation pursuant to this ~~subrule~~ chapter.

10.21(8) The commissioner must notify the producer in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a producer license, and must similarly notify the producer when the producer license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

10.21(9) Notwithstanding any statutory confidentiality provision, the division may share information with the CSRU or the centralized collection unit of the department of revenue for the sole purpose of identifying producers subject to enforcement under Iowa Code chapter 252J or 272D.

ITEM 16. Rescind and reserve rule **191—10.22(261)**.

ITEM 17. Rescind and reserve rule **191—10.23(82GA,SF2428)**.

ITEM 18. Amend rules 191—10.24(522B) to 191—10.26(522B) as follows:

191—10.24(522B) Administration of examinations.

10.24(1) The division ~~will~~ may enter into a contractual relationship with an outside testing service, in compliance with Iowa law, to provide the licensing examinations for all lines of authority which require an examination.

10.24(2) ~~The~~ If contracted, the outside testing service ~~will~~ must administer all examinations for license applicants.

10.24(3) Any contract to implement subrule 10.24(1) ~~shall~~ must require the outside testing service to:

a. to *e.* No change.

191—10.25(522B) Forms. An original of each form necessary for the producer's licensure, appointment and termination may be downloaded from the NAIC ~~Web site~~ website, and the division's ~~Web site (www.iid.state.ia.us)~~ website will provide a link to that site. Exact, readable, high-quality copies may be made therefrom. ~~A self-addressed, stamped envelope must be submitted with each request.~~

191—10.26(522B) Fees.

10.26(1) Fees may be paid by check, money order, or credit card.

10.26(2) The fee for an examination ~~shall~~ may be set by the outside testing service under contract with the division and must be approved by the division.

10.26(3) and **10.26(4)** No change.

10.26(5) The fee for reinstatement or reissuance of a producer license is ~~a total of the renewal fee plus~~ $100. In addition, applicable issuance or renewal fees will be assessed.

10.26(6) and **10.26(7)** No change.

ITEM 19. Rescind **191—Chapter 10**, implementation sentence, following rule 191—10.26(522B).

ITEM 20. Amend rule 191—10.51(522A,86GA,SF487) as follows:

191—10.51(522A,~~86GA,SF487~~ 522E) Limited licenses.

10.51(1) *Limited licenses for vehicle rental companies and counter employees.*

a. No change.

b. *Definitions.* For purposes of this subrule, in addition to the definitions in rule 191—1.1(502,505), the definitions of Iowa Code chapter 522A ~~and the following definitions shall~~ apply~~:~~.

~~*"Division"* means the commissioner of insurance and the Iowa insurance division.~~

~~*"Division Web site"* means the Web site for the division, www.iid.iowa.gov.~~

~~*"File"* means to submit information to the division. A submission is considered filed when it is received by the division.~~

~~*"Vehicle rental counter employee limited license"* means a license issued to an individual employed by a rental company authorized as a limited licensee as defined by Iowa Code section 522A.2.~~

~~*"Vehicle rental counter employee limited license application"* means the form used by an individual to apply for a counter employee license, pursuant to Iowa Code section 522A.3.~~

~~*"Vehicle rental limited license"* means a license issued to a rental company authorized as a limited licensee as defined by Iowa Code section 522A.2.~~

~~*"Vehicle rental limited license application"* means the form used by a vehicle rental company to apply for a limited license, pursuant to Iowa Code section 522A.3.~~

c. *Requirement to hold a license.*

(1) A rental company that desires to offer or sell insurance set forth in Iowa Code section 522A.3 in connection with the rental of a vehicle ~~shall~~ must file a vehicle rental limited license application with the division and, at the discretion of the division, receive a vehicle rental limited license.

(2) A counter employee who desires to offer or sell insurance products ~~shall~~ must file a vehicle rental counter employee limited license application with the division and, at the discretion of the division, receive a vehicle rental counter employee limited license.

d. *Limited license application process for vehicle rental company.*

(1) To obtain a limited license, a vehicle rental company ~~shall~~ must file a completed vehicle rental limited license application with the division and pay a fee of $50 for a license. The vehicle rental limited license application form is available on the ~~division Web site~~ division's website.

(2) If the vehicle rental limited license application is approved, the division ~~shall~~ must issue a vehicle rental limited license. The vehicle rental limited license term ~~shall be~~ is from the date of approval through the third December 31 after the vehicle rental limited license is issued.

e. Limited license application process for counter employees.

(1) No change.

(2) To obtain a vehicle rental counter employee limited license, an individual ~~shall~~ must successfully complete an examination and submit to the division a completed vehicle rental counter employee limited license application, pursuant to Iowa Code section 522A.3. The vehicle rental counter employee limited license application form is available on the ~~division Web site~~ division's website.

(3) If the application is approved, the division ~~shall~~ must issue a vehicle rental counter employee limited license. Vehicle rental counter employee limited license applications ~~shall~~ will be deemed approved if not disapproved by the division within 30 days of receipt by the division. The vehicle rental counter employee limited license term ~~shall be~~ is from the date of approval through the third December 31 after the license is issued.

(4) The vehicle rental counter employee limited license ~~shall~~ will automatically terminate:

1. and 2. No change.

f. Duties of vehicle rental limited licensees.

(1) No change.

(2) A vehicle rental limited licensee ~~shall~~ must obtain and administer an examination for all vehicle rental counter employee limited license candidates. The content of the examination and the manner of its administration must be approved by the division.

(3) and (4) No change.

(5) The vehicle rental limited licensee must notify the division of the termination of employment of any of its vehicle rental counter employee limited licensees. The vehicle rental limited licensee ~~shall~~ must file reports of terminations semiannually on January 1 and July 1.

g. License renewal.

(1) All vehicle rental limited licenses and vehicle rental counter employee limited licenses ~~shall~~ must be issued with an expiration date of the December 31 at the end of the license terms and must be renewed before the end of the license terms.

(2) Each year, the division ~~shall~~ must mail to the vehicle rental limited licensee's latest electronic mail or mailing address appearing in the division's records a renewal form for use in renewing the vehicle rental limited license and all of the vehicle rental counter employee limited licenses that will expire that year.

(3) The vehicle rental limited licensee ~~shall~~ must complete the renewal form for its license if applicable and for all of the vehicle rental counter employee limited licenses that will expire that year and ~~shall~~ must return the completed renewal form and applicable fee to the division on or before December 31 of the renewal year or all licenses listed on the renewal form ~~shall~~ will expire.

(4) No change.

h. Limitation on fees. A vehicle rental limited licensee ~~shall~~ is not ~~be~~ required to pay license and renewal fees of more than $1,000 in aggregate in any calendar year.

i. Change in name or address.

(1) Vehicle rental limited licensees ~~shall~~ must file written notification with the division of a change in name or address within 30 days of the change. This requirement applies to any change in any locations at which the vehicle rental limited licensee is doing business.

(2) Vehicle rental limited licensees ~~shall~~ must file written notification with the division of changes in names or addresses of vehicle rental counter employee limited licensees. If the change of name is by a court order, a copy of the order shall be included with the notification. The limited licensee ~~shall~~ must file reports of name and address changes semiannually on January 1 and July 1.

j. Violations and penalties.

(1) A rental company or counter employee who sells insurance in violation of this rule ~~shall be deemed to be~~ is in violation of Iowa Code chapter 522A and is subject to the penalties provided in Iowa Code section 522A.3.

(2) No change.

10.51(2) *Limited licenses for persons who sell portable electronics insurance.*

a. Purpose. The purpose of this subrule is to govern the qualifications of and procedures for the licensing of persons offering or selling any form of portable electronics insurance in this state, pursuant to ~~2015 Iowa Acts, Senate File 487~~ Iowa Code chapter 522E.

b. Definitions. For purposes of this subrule, in addition to the definitions in rule 191—1.1(502,505), the definitions of ~~2015 Iowa Acts, Senate File 487, and the following definitions shall~~ Iowa Code chapter 522E apply~~:~~.

~~*"Division"* means the commissioner of insurance and the Iowa insurance division.~~

~~*"Division Web site"* means the Web site for the division, www.iid.iowa.gov.~~

~~*"File"* means to submit information to the division. A submission is considered filed when it is received by the division.~~

~~*"Portable electronics insurance limited license"* means a portable electronics insurance license as defined by 2015 Iowa Acts, Senate File 487, section 1.~~

~~*"Portable electronics insurance limited license application"* means the form used by a portable electronics vendor to apply for a portable electronics insurance limited license.~~

c. Requirement to hold a portable electronics insurance limited license. A person that desires to offer or sell any form of portable electronics insurance in this state ~~shall~~ must:

(1) Be licensed as an insurance producer pursuant to Iowa Code chapter 522B;

(2) Submit an application to the division and, at the discretion of the division, receive a portable electronics insurance limited license pursuant to ~~2015 Iowa Acts, Senate File 487, sections 2, 3 and 4,~~ Iowa Code sections 522E.2, 522E.3, and 522E.4 and this subrule; or

(3) Be an endorsee in compliance with ~~2015 Iowa Acts, Senate File 487, sections 6 and 7,~~ Iowa Code sections 522E.6 and 522E.7 and this subrule.

d. Application process for portable electronics insurance limited license.

(1) To obtain a portable electronics insurance limited license, a portable electronics vendor ~~shall~~ must submit to the division a completed portable electronics insurance limited license application and the appropriate fee, as required by ~~2015 Iowa Acts, Senate File 487, section 3~~ Iowa Code section 522E.3.

(2) If the application is approved, the division ~~shall~~ must issue a portable electronics insurance limited license. The portable electronics insurance limited license term ~~shall be~~ is from the date of approval through the third December 31 after the portable electronics insurance limited license was issued.

e. Portable electronics insurance limited license renewal.

(1) All portable electronics insurance limited licenses ~~shall~~ must be issued for a license period as defined in ~~2015 Iowa Acts, Senate File 487, section 1,~~ Iowa Code section 522E.1 and must be renewed triennially.

(2) Not less than 60 days before the end of the license period, the division ~~shall~~ must mail a renewal form to the portable electronics insurance limited licensee at the last-known electronic mail or mailing address appearing in the division's records.

(3) The portable electronics insurance limited licensee ~~shall~~ must complete and return to the division the completed renewal form and the applicable fee, as required by ~~2015 Iowa Acts, Senate File 487, section 5~~ Iowa Code section 522E.5, on or before the expiration date of the portable electronics insurance limited license, or the licensee's portable electronics insurance limited license ~~shall~~ will expire and the authority of all endorsees to sell under the portable electronics insurance limited license also ~~shall~~ will expire.

f. Change in name or address. A portable electronics insurance limited licensee ~~shall~~ must file written notification with the division of a change in name or address within 30 days of the change. This requirement applies to any change in any location at which the portable electronics insurance limited licensee is doing business.

g. Violations and penalties. A portable electronics vendor or endorsee that sells insurance in violation of this rule ~~shall be deemed to be~~ is in violation of ~~2015 Iowa Acts, Senate File 487,~~ Iowa

Code chapter 522E and is subject to the penalties in ~~2015 Iowa Acts, Senate File 487, section 8~~ Iowa Code chapter 522E.

~~This rule is~~ These rules are intended to implement Iowa Code ~~chapter~~ chapters 252J, 272D, 522A, 522B, and ~~2015 Iowa Acts, Senate File 487~~ 522E.

ITEM 21. Amend rules 191—11.1(505,522B) to 191—11.5(505,522B) as follows:

191—11.1(505,522B) Statutory authority—purpose—applicability.

11.1(1) These rules are adopted pursuant to the general rule-making authority of the ~~insurance~~ commissioner in Iowa Code chapters 505 and 522B to establish continuing education requirements for resident and nonresident insurance producers.

11.1(2) No change.

11.1(3) These rules do not apply to:

a. No change.

b. A resident producer who holds qualification in ~~one of the following~~ the surety or credit lines of authority~~: surety; or credit life, accident and health insurance~~.

c. Licensed attorneys who are also producers who submit proof of completion of continuing legal education for the appropriate calendar years during the CE term~~, pay the continuing education fee set forth in subrule 11.14(1)~~ and otherwise comply with the producer license renewal procedures set forth in 191—Chapter 10.

d. and *e.* No change.

191—11.2(505,522B) Definitions. In addition to the definitions in rules 191—1.1(502,505) and 191—10.2(522B), the following definitions apply:

"Approved subject" or *"approved course"* means any educational presentation which has been approved by the division.

"Attendance record" means a record on which a CE provider requires attendees of a CE course to sign in at the time of entrance to the course.

"CE" means continuing education as ~~defined~~ referenced in Iowa Code chapter 522B.

"CE provider" means any individual or entity that is approved to offer continuing education courses in Iowa.

"CE term" means the period of time that begins either on the date when a new producer's insurance license is issued or on the date after the expiration date of an existing producer's license and that ends on the following license expiration date.

"Credit" means continuing education credit. One credit is 50 minutes of instruction or reading material in an acceptable topic.

~~*"License"* means the division's authorization for a person to act as an insurance producer for the authorized lines of insurance.~~

~~*"National Insurance Producer Registry"* or *"NIPR"* means the nonprofit affiliate of the National Association of Insurance Commissioners (NAIC). Its Web site is www.licenseregistry.com.~~

~~*"NIPR Gateway"* means the communication network developed and operated by NIPR that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information regarding license applications, license renewals, appointments and terminations.~~

"Proctored" or *"independently proctored"* means the supervision by a CE provider or disinterested third party over the conduct of a producer while that producer is completing an examination that is part of a self-study CE course.

~~*"Producer"* or *"insurance producer"* means a person required to be licensed in this state to sell, solicit or negotiate insurance.~~

~~*"Resident"* means a person residing permanently in Iowa.~~

"Roster" means a listing of all licensed attendees at an approved course and includes the Iowa course number, the National Insurance Producer Registry (NIPR) National Producer Number (NPN), the date the course was completed, and the actual number of credits earned by each producer.

"Self-study course" means an educational program that consists of a self-study manual and comprehensive examination. A self-study course may be an ~~on-line~~ online course.

191—11.3(505,522B) Continuing education requirements for producers.

11.3(1) Every licensed resident producer must complete a minimum of 36 credits for each CE term in courses approved by the division. Three of these credits must be in the subject of ethics. By the end of the last business day of the producer's CE term, the division must receive from the producer proof of completion of the CE courses ~~and payment of the CE fee~~.

11.3(2) to **11.3(6)** No change.

11.3(7) A producer may elect to comply with the CE requirements by taking and passing the appropriate licensing examination for each qualification held by the producer.

~~*a.* A producer who holds property and casualty lines of authority must successfully complete the commercial insurance subject examination.~~

~~*b.* A producer who holds an excess and surplus line of authority must successfully complete the examination for the excess and surplus line of authority and the commercial insurance subject examination.~~

11.3(8) ~~For a~~ A resident producer who only holds qualification ~~only~~ for a crop insurance line of authority ~~and who is requesting renewal of a producer license on or after January 1, 2010, the producer must be able to~~ needs only to demonstrate the following ~~each time renewal of a license is requested~~ to renew:

a. No change.

b. The producer has completed 18 credits of continuing education, 3 of which must be in the area of ethics~~, except that a producer who is requesting renewal of a producer license during 2010 must demonstrate that the producer has completed 9 credits of continuing education, 3 of which must be in the area of ethics~~.

191—11.4(505,522B) Proof of completion of continuing education requirements.

11.4(1) *Producer duties.*

a. Producers ~~are required to~~ must demonstrate compliance with the CE requirements at the time of license renewal. Procedures for completing the license renewal process are outlined in 191—Chapter 10.

b. Producers ~~are required to~~ must maintain a record of all CE courses completed by keeping the original certificates of completion for four years after the end of the year of attendance.

11.4(2) *Insurer duties regarding federal flood insurance.* An insurer authorized to do business in Iowa ~~shall~~ must demonstrate to the division, upon the division's request, that producers appointed by the insurer have complied with all continuing education guidelines as established by the National Flood Insurance Program (NFIP).

191—11.5(505,522B) Course approval.

11.5(1) No change.

11.5(2) Any approved active CE provider ~~shall~~ must submit a request for approval of any course, program of study, or subject for continuing education credit to the division on an NAIC uniform form. If an outside vendor is retained by the division for course reviews, requests for approval ~~shall~~ must be filed directly with the vendor.

11.5(3) Requests for course approval ~~which~~ that do not include all required information will be returned as incomplete.

11.5(4) Except as provided in subrule 11.5(5), requests for approval ~~shall~~ must be submitted at least 30 days prior to the beginning of the course. A request for renewal of a previously approved course ~~shall~~ must be submitted at least 30 days prior to the end of the 24-month approval period. Requests received later may be disapproved.

11.5(5) A request for approval of any self-study course that is part of a recognized national designation program may be filed within 60 days after the course is completed. This course will be

reviewed and may be approved for up to the number of credits awarded for passage of the national examination in topics that are otherwise approvable under these rules. ~~This subrule applies only to national designation programs such as AAI, ARM, CIC, CEBS, ChFC, CFP, CLU, CPCU, FLMI, LUTCF, RHU and similar courses as determined by the division.~~

11.5(6) An insurance producer who attends a classroom course offered by a college, university or governmental agency that has not been approved by the division may make application for approval of the provider and course for CE credit. The application must be filed within 60 days of attendance at the course and must contain sufficient materials to allow for a thorough evaluation of the provider, course content, and instructor qualifications. To be eligible for CE credit, the course must meet all division guidelines for course approval. All course review fees must be paid by the producer.

11.5(7) A CE course must be offered for a minimum of one credit. Fractional credits will not be awarded. The total credit ~~which~~ that may be awarded for a CE course is limited to 36 credits, except that credit for a self-study course as defined in paragraph 11.3(4)*"b"* ~~shall be~~ is limited to 18 CE credits.

11.5(8) and **11.5(9)** No change.

11.5(10) Within 30 days of course approval, CE providers ~~shall~~ must inform the division or its vendor, as directed by the division, of the dates and locations that the course will be offered. Failure to timely file the dates and locations ~~will subject~~ subjects the CE provider to penalty and suspension or rescission of course approval.

11.5(11) No change.

ITEM 22. Strike "shall" wherever it appears in rules **191—11.10(505,522B)** and **191—11.11(505,522B)** and insert "must" in lieu thereof.

ITEM 23. Amend rule 191—11.12(505,522B) as follows:

191—11.12(505,522B) Outside vendor. The division may enter into a contractual arrangement with a qualified outside vendor to assist the division with any or all continuing education services. ~~Fees charged by the outside vendor will be subject to division approval and will be paid by the CE provider. Course approval fees are nonrefundable.~~

ITEM 24. Amend subrule 11.14(1) as follows:

11.14(1) The fees for approval and renewal of CE providers, CE courses and registration of instructors shall be set by the outside vendor retained by the division and are subject to approval by the division. Course approval fees are nonrefundable.

ITEM 25. Amend rule 191—13.1(505,522B) as follows:

191—13.1(505,522B) Purpose and authority. The purpose of these rules is to implement the provisions of 18 U.S.C. Section 1033 and Iowa Code section 522B.16B. The Iowa insurance commissioner has jurisdiction under 18 U.S.C. Section 1033 to grant requests for consent to engage in the business of insurance. ~~Insurance companies, producers, and individuals shall comply with these rules beginning January 1, 2010.~~

ITEM 26. Amend rule 191—13.2(505,522B), introductory paragraph, as follows:

191—13.2(505,522B) Definitions. For the purpose of this chapter, the definitions in rule 191—1.1(502,505) and the following definitions ~~shall~~ apply:

ITEM 27. Rescind the definitions of "Commissioner" and "Division" in rule **191—13.2(505,522B)**.

ITEM 28. Amend rule 191—13.4(505,522B) as follows:

191—13.4(505,522B) Applications for consent. The prohibited person must file with the division an application for consent as set forth in this rule.

13.4(1) Except as provided in subrule 13.4(2), a prohibited person who is, or seeks to be, employed in any capacity in the business of insurance in Iowa ~~shall~~ must complete and file an application for consent ~~using the "Short Form Application for Written Consent to Engage in the Business of Insurance~~

Pursuant to 18 U.S.C. § 1033 and 1034." The form is, in a format prescribed by the division, available on the division's Web site at www.iid.state.ia.us website or is available by request from the division.

13.4(2) No change.

13.4(3) An application must include:

a. Two 2″ × 2″ recent passport-type identical photographs attached to the upper right-hand corner of the first page of as indicated on the application for consent.

b. A certified copy of the applicant's criminal history record both from the applicant's state of residence and from the state in which the felony was committed if different from the state of residence. A Record Check Request form may be obtained from the Iowa division of criminal investigation at: www.state.ia.us/government/dps/dci/crimhist.htm www.dps.state.ia.us.

c. A certified copy of all court documents that demonstrate completion and performance of all conditions imposed by the court.

d. and *e.* No change.

13.4(4) No change.

ITEM 29. Amend rule 191—13.6(505,522B) as follows:

191—13.6(505,522B) Review of application by the division.

13.6(1) A completed application shall be reviewed by the commissioner, and the following shall be considered The commissioner must consider the following when reviewing a completed application:

a. to *c.* No change.

13.6(2) and **13.6(3)** No change.

13.6(4) If the commissioner determines that the applicant does seem to constitute a significant threat to the public, the commissioner shall deny the application. Notice of the denial shall must be sent to the applicant via certified mail to the address on record with the division, return receipt requested. The prohibited person shall have may request a hearing with the commissioner within 30 days to request a hearing with the commissioner from the date of mailing of the division's notice.

13.6(5) The application and materials supplied with the application or, provided at the request of the division and any information, or obtained by the division during the course of its review, including materials and testimony received at a hearing regarding an application, shall be considered information submitted to the insurance division or obtained by the insurance division in the course of an investigation for purposes of Iowa Code section 505.8(8), and the commissioner shall keep such information confidential. A consent issued by the commissioner shall be deemed is a public record for purposes of Iowa Code chapter 22; however, Iowa Code section 505.8(9) also shall apply.

ITEM 30. Amend rule 191—13.8(505,522B) as follows:

191—13.8(505,522B) Change in circumstances.

13.8(1) *Failure to disclose.* In the event that the division determines that the prohibited person receiving the consent made materially false or misleading statements, or failed to disclose material information in the application for consent, the consent shall be suspended or revoked. The prohibited person shall have may request a hearing with the commissioner within 30 days to request a hearing with the commissioner from the date of mailing of the division's notice.

13.8(2) *New felony.*

a. A prohibited person who previously received consent from the commissioner to participate in the business of insurance shall must immediately notify the division if that person is subsequently convicted of an offense under the Act, or of any felony offense involving dishonesty or breach of trust.

b. The entry of a new conviction shall automatically terminate terminates the prior consent.

c. When the division becomes aware of the new conviction, it will must inform the prohibited person in writing, via certified mail to the address on record with the division, return receipt requested, that the consent previously issued has been revoked.

d. No change.

13.8(3) *Violation of terms of consent.* If the commissioner determines that a prohibited person has violated the terms of a consent, the commissioner shall immediately terminate the consent. The division must inform the prohibited person in writing, via certified mail to the address on record with the division, return receipt requested, that the consent previously issued has been terminated. The prohibited person ~~shall have~~ may request a hearing with the commissioner within 30 days ~~to request a hearing with the commissioner~~ from the date of mailing of the division's notice.

13.8(4) No change.

ITEM 31. Amend rule 191—13.10(505,522B) as follows:

191—13.10(505,522B) Violations and penalties. A prohibited person who engages in the business of insurance without the consent of the commissioner or otherwise in violation of this chapter shall be deemed to be in violation of Iowa Code section 522B.2 and ~~shall be~~ is subject to the penalties provided in Iowa Code section 522B.17.

ITEM 32. Amend rules 191—48.2(508E) and 191—48.3(508E) as follows:

191—48.2(508E) Definitions. For purposes of this chapter, the definitions in Iowa Code chapter 508E are incorporated by reference. In addition to those definitions and the definitions in rule 191—1.1(502,505), the following definitions ~~shall~~ apply:

~~*"Commissioner's Web site"* means the Web site of the commissioner and of the Iowa insurance division, www.iid.state.ia.us.~~

"Life settlement" means a viatical settlement in which the viator has not been diagnosed as terminally or chronically ill. For purposes of these rules, unless otherwise distinguished, the term "life settlement" shall be synonymous with viatical settlement.

"Renewal year" means the last year of the viatical settlement license three-year term.

191—48.3(508E) License requirements.

48.3(1) *Viatical settlement provider.*

a. To be considered for licensure as a viatical settlement provider pursuant to Iowa Code section 508E.3, a person must ~~complete the viatical settlement provider application form found at the commissioner's Web site,~~ file with the commissioner ~~the~~ a completed viatical settlement provider application in the format prescribed by the commissioner, ~~and include the payment of~~ pay an application fee in the amount of $100~~. An application shall not be deemed filed until all information necessary to process the application has been received by the commissioner. In addition to complying with Iowa Code section 508E.3, the applicant also shall~~, and provide the following:

(1) to (8) No change.

b. A form for the antifraud plan that is required to be submitted with an application pursuant to Iowa Code section 508E.3, to meet the requirements of Iowa Code section 508E.15, can be found on the ~~commissioner's Web site~~ division's website.

c. and *d.* No change.

48.3(2) *Viatical settlement broker.*

a. To be considered for licensure as a viatical settlement broker pursuant to Iowa Code section 508E.3, a person must ~~complete the viatical settlement broker application form found at the commissioner's Web site,~~ file ~~the~~ a completed viatical settlement broker application in the format prescribed by the commissioner~~,~~ and ~~include the payment of~~ pay an application fee in the amount of $100. In addition to finding compliance with Iowa Code section 508E.3, the commissioner also shall find that the applicant:

(1) to (3) No change.

b. A form for the antifraud plan that is required to be submitted with an application pursuant to Iowa Code section 508E.3, to meet the requirements of Iowa Code section 508E.15, can be found on the ~~commissioner's Web site~~ division's website.

c. No change.

48.3(3) No change.

48.3(4) *License term.*

a. No change.

b. A viatical settlement provider license is valid for ~~one year~~ three years and automatically terminates on the last day of the month of the anniversary of the issue date unless renewed pursuant to subrule 48.3(6).

c. A viatical settlement broker license is valid for an initial term of ~~one year~~ three years from the last day of the applicant's anniversary month following the issuance of the license, and automatically terminates on the last day of the month of the initial term unless renewed pursuant to subrule 48.3(6).

d. and *e.* No change.

48.3(5) *Continuing education for viatical settlement broker.*

a. An individual licensed as a viatical settlement broker ~~shall~~ must complete ~~15~~ 36 credits of approved continuing education during every ~~two~~ license ~~terms~~ term. A license term is as set forth in paragraph ~~48.3(4)"c," and, for purposes of this rule, the two-term continuing education requirement shall be called the "CE reporting term."~~ 48.3(4)*"c."*

b. The required continuing education credits shall include a minimum of:

(1) ~~Thirteen~~ Thirty-three credits related to life insurance, viatical settlements and viatical settlement transactions; and

(2) ~~Two~~ Three credits in ethics.

c. No change.

d. The license of a viatical settlement broker who fails to comply with this continuing education requirement ~~shall~~ will terminate.

e. No change.

f. A viatical settlement broker cannot carry over excess continuing education credits from one ~~CE reporting~~ license term to the next ~~continuing education credits earned in excess of the viatical settlement broker's CE reporting term requirements~~.

g. and *h.* No change.

i. A viatical settlement broker cannot receive continuing education credit for the same course twice in one ~~CE reporting~~ license term. A viatical settlement broker cannot receive continuing education credit both for the classroom portion and for the examination portion of a national designation program as defined in 191—subrule 11.5(5).

j. to *m.* No change.

48.3(6) *License renewal.* A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of $100 within ~~60~~ 90 days prior to the expiration date of the license and by demonstration that the viatical settlement provider continues to meet the requirements of Iowa Code section 508E.3 and subrule 48.3(1), has provided biographical affidavits not older than one year prior to the renewal date on all persons listed in subparagraph 48.3(1)*"a"*(4), has provided business character reports for any new persons listed in subparagraph 48.3(1)*"a"*(4), and has provided the reports required by rule ~~48.7(508E)~~ 191—48.7(508E).

(1) If renewal is approved, the license will be renewed effective the last day of the month of the anniversary of the issue date in the renewal year, will be valid for ~~one year~~ three years, and will automatically terminate on the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to this subrule ~~48.3(6)~~.

(2) No change.

b. A viatical settlement broker license may be renewed by demonstration of completion of continuing education as required in subrule 48.3(5) and payment of $100 within ~~60~~ 90 days prior to the expiration date of the license. If renewal is approved, the license will be renewed effective the last day of the month of the anniversary of the issue date in the renewal year, will be valid for ~~one year~~ three years, and will automatically terminate on the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to this subrule ~~48.3(6)~~.

c. to *e.* No change.

48.3(7) *License reinstatement.*

a. A viatical settlement broker may reinstate an expired license up to 12 months after the license expiration date by proving that during the ~~CE reporting~~ license term the viatical settlement broker met the CE requirements found in subrule 48.3(5), and by paying to the commissioner a reinstatement fee and license renewal fee. A viatical settlement broker who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

b. No change.

48.3(8) *Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.*

a. The term "reinstatement" as used in this subrule means the reinstatement of a suspended license. The term "reissuance" as used in this subrule means the issuance of a new license following either the revocation of a license, the suspension and subsequent termination of a license, or the forfeiture of a license in connection with a disciplinary matter. This subrule does not apply to the reinstatement of an expired license or the issuance of a new license after the reinstatement period has passed that is not in connection with a disciplinary matter.

b. Any viatical settlement broker whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, ~~may~~ must apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

(1) and (2) No change.

(3) A viatical settlement broker may request reinstatement of a suspended license prior to the end of the suspension term; however, reinstatement will not be effected until the suspension period has ended.

(4) No change.

c. All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the ~~original~~ license was suspended, revoked, or forfeited, if a case exists.

d. An order of reinstatement or reissuance ~~shall~~ must be ~~based upon~~ a written decision ~~which~~ that incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner's designee deems ~~desirable~~ appropriate, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E. The order ~~shall be~~ is a public record~~, available to the public,~~ and may be disseminated in accordance with Iowa Code chapter 22.

e. A ~~request for~~ submission of voluntary forfeiture of a license ~~shall~~ must be made in writing ~~to~~ in the format prescribed by the commissioner. Forfeiture of a license is effective upon the submission ~~of the request~~ unless a contested case proceeding is pending at the time ~~the request is submitted~~ of the submission. If a contested case proceeding is pending ~~at the time of the request~~, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered a disciplinary action and ~~shall~~ must be published in the same manner as is applicable to any other form of disciplinary order.

f. No change.

g. When a viatical settlement broker's license has been suspended for a period of time ~~which~~ that extends beyond the viatical settlement broker's license expiration date, the license ~~will terminate~~ terminates at the license expiration date, and the viatical settlement broker must request ~~reinstatement~~ reissuance pursuant to this subrule ~~48.3(7)~~. However, reissuance will not be effected until the suspension period has ended. If suspension for a period of time ends prior to the viatical settlement broker's license expiration date, and the viatical settlement broker has met all applicable requirements, the commissioner ~~shall~~ must reinstate the license ~~at~~ as soon as practicable but no earlier than the end of the suspension period pursuant to paragraph 48.3(8)*"b."* The commissioner is not prohibited from denying an application for

reinstatement or reissuance or bringing an additional immediate action if the viatical settlement broker has engaged in misconduct during the period of suspension.

48.3(9) to **48.3(11)** No change.

48.3(12) *Fees.*

a. Fees shall be paid by check, money order, or credit card.

b. The fee for an examination ~~shall~~ may be set by the outside testing service under contract with the division and must be approved by the division.

c. The ~~annual~~ fee for issuance or renewal of a viatical broker, legal entity or provider license is $100.

d. The fee for reinstatement or reissuance of a viatical broker, legal entity or provider license is ~~the sum of the renewal fee plus~~ $100. In addition, applicable issuance or renewal fees will be assessed.

e. No change.

ITEM 33. Rescind rule 191—48.11(252J) and adopt the following **new** rule in lieu thereof:

191—48.11(252J,272D) Suspension for failure to pay child support or state debt. The division must follow the procedures in rule 191—10.21(252J,272D) relating to producer suspension for failure to pay child support or state debt for viatical settlement brokers, replacing "producer" with "viatical settlement broker."

ITEM 34. Rescind and reserve rule **191—48.12(261)**.

ITEM 35. Rescind and reserve rule **191—48.13(272D)**.

ITEM 36. Amend **191—Chapter 48**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 508E, 252J, ~~261~~ and 272D.

ARC 4820C

MEDICINE BOARD[653]

Notice of Intended Action

Proposing rule making related to training for identifying and reporting child abuse and dependent adult abuse and providing an opportunity for public comment

The Board of Medicine hereby proposes to amend Chapter 11, "Continuing Education and Training Requirements," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 272C.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, chapter 91.

Purpose and Summary

During the 2019 Legislative Session, Iowa Code sections 232.69 and 235B.16 were amended to revise the training requirements for persons required to report child abuse and dependent adult abuse. Those amendments direct the Iowa Department of Human Services to create and provide this training and increase the frequency with which this training must be completed. This proposed rule making implements this legislation as it pertains to physicians, surgeons, acupuncturists, and genetic counselors licensed by the Board.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on January 7, 2020. Comments should be directed to:

Joseph Fraioli
Iowa Board of Medicine
400 S.W. Eighth Street, Suite C
Des Moines, Iowa 50309
Phone: 515.281.3614
Email: joseph.fraioli@iowa.gov

Public Hearing

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

January 8, 2020 9 to 10 a.m.	Board Office, Suite C 400 S.W. Eighth Street Des Moines, Iowa

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

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

The hearing will also be accessible by operator assisted conference call by dialing 866.685.1580 and entering the code 971-913-4151.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 11.4(1) as follows:

11.4(1) *Continuing education and training requirements.*

a. Continuing education for permanent license or administrative medicine license renewal. Except as provided in these rules, a total of 40 hours of category 1 credit or board-approved equivalent shall be required for biennial renewal of a permanent license or an administrative medicine license. This may include up to 20 hours of credit carried over from the previous license period and category 1 credit acquired within the current license period.

(1) To facilitate license renewal according to birth month, a licensee's first license may be issued for less than 24 months. The number of hours of category 1 credit required of a licensee whose license has been issued for less than 24 months shall be reduced on a pro-rata basis.

(2) A licensee desiring to obtain credit for carryover hours shall report the carryover, not to exceed 20 hours of category 1 credit, on the renewal application.

b. Continuing education for special license renewal. A total of 20 hours of category 1 credit shall be required for annual renewal of a special license. No carryover hours are allowed.

c. Training for identifying and reporting child and dependent adult abuse for permanent or special license renewal. The licensee in Iowa shall complete the training for identifying and reporting child and dependent adult abuse as part of a category 1 credit or an approved training program. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)*"a."*

(1) Training to identify child abuse. A licensee who regularly provides primary health care to children in Iowa must complete at least two hours of training provided by the department of human services pursuant to Iowa Code section 232.69(3)*"c"* in child abuse identification and reporting every ~~five~~ three years. If a licensee completes at least one hour of additional child abuse identification and reporting training prior to the three-year expiration period, the licensee shall be deemed in compliance with the training requirements of this subparagraph for an additional three years. "A licensee who regularly provides primary health care to children" means all emergency physicians, family physicians, general practice physicians, pediatricians, and psychiatrists, and any other physician who regularly provides primary health care to children.

(2) Training to identify dependent adult abuse. A licensee who regularly provides primary health care to adults in Iowa must complete at least two hours of training provided by the department of human services pursuant to Iowa Code section 235B.16(5)*"c"* in dependent adult abuse identification and reporting every ~~five~~ three years. If a licensee completes at least one hour of additional dependent adult abuse identification and reporting training prior to the three-year expiration period, the licensee shall be deemed in compliance with the training requirements of this subparagraph for an additional three years. "A licensee who regularly provides primary health care to adults" means all emergency physicians, family physicians, general practice physicians, internists, obstetricians, gynecologists, and psychiatrists, and any other physician who regularly provides primary health care to adults.

~~(3) Combined training to identify child and dependent adult abuse. A licensee who regularly provides primary health care to adults and children in Iowa must complete at least two hours of training in the identification and reporting of abuse in dependent adults and children every five years. The training may be completed through separate courses as identified in subparagraphs 11.4(1)"c"(1) and (2) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. "A licensee who regularly provides primary health care to children and adults" means all emergency physicians, family physicians, general practice physicians, internists, and psychiatrists, and any other physician who regularly provides primary health care to children and adults.~~

d. Training for chronic pain management for permanent or special license renewal. The licensee shall complete the training for chronic pain management as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)*"a."*

(1) A licensee who has prescribed opioids to a patient during the previous license period must complete at least two hours of category 1 credit regarding the United States Centers for Disease Control and Prevention (CDC) guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, every five years. A licensee may attest as part of the license renewal process that the licensee is not subject to the requirement to receive continuing medical education credits pursuant to this paragraph, due to the fact that the licensee did not prescribe opioids to a patient during the previous licensure cycle.

(2) A licensee who had a permanent or special license on January 1, 2019, has until January 1, 2024, to complete the chronic pain management training and shall then complete the training once every five years thereafter.

e. Training for end-of-life care for permanent or special license renewal. The licensee shall complete the training for end-of-life care as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)*"a."*

(1) A licensee who regularly provides direct patient care to actively dying patients in Iowa must complete at least two hours of category 1 credit for end-of-life care every five years.

(2) A licensee who had a permanent or special license on January 1, 2019, has until January 1, 2024, to complete the end-of-life care training and shall then complete the training once every five years thereafter.

ITEM 2. Amend paragraph **11.4(2)"b,"** introductory paragraph, as follows:

b. The requirements for training on ~~identifying and reporting abuse,~~ chronic pain management and end-of-life care for license renewal shall be suspended for a licensee who provides evidence for:

ITEM 3. Amend subrule 11.4(7) as follows:

11.4(7) *Audits.* The board may audit continuing education and training documentation at any time within the ~~five-year~~ five- or three-year period, as applicable. If the board conducts an audit of continuing education and training, a licensee shall respond to the board and provide all materials requested, within 30 days of a request made by board staff or within the extension of time if one has been granted.

ARC 4806C

MEDICINE BOARD[653]

Notice of Intended Action

Proposing rule making related to the prohibition of licensing sanctions for student loan debt default or delinquency and providing an opportunity for public comment

The Board of Medicine hereby proposes to amend Chapter 2, "Public Records and Fair Information Practices," to rescind Chapter 16, "Student Loan Default or Noncompliance," and to amend Chapter 20, "Licensure of Genetic Counselors," and Chapter 23, "Grounds for Discipline," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 147.76 and 2019 Iowa Acts, Senate File 304.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 304.

Purpose and Summary

During the 2019 Legislative Session, changes were made to the Iowa Code that resulted in the repeal of Iowa Code sections 261.121 through 261.127 on July 1, 2019, and prohibited the suspension or revocation of a license issued by the Board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency. This rule making implements the legislative changes as they pertain to the licensing of physicians, surgeons, acupuncturists, and genetic counselors in Iowa.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on January 8, 2020. Comments should be directed to:

Joseph Fraioli
Iowa Board of Medicine
400 S.W. Eighth Street, Suite C
Des Moines, Iowa 50309
Phone: 515.281.3614
Email: joseph.fraioli@iowa.gov

Public Hearing

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

January 8, 2020 9 to 10 a.m.	Board Office, Suite C 400 S.W. Eighth Street Des Moines, Iowa

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

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

The hearing will also be accessible via operated assisted conference call by dialing 866.685.1580 and entering the code 971-913-4151.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 2.13(4) as follows:

2.13(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit~~,~~ and the department of revenue~~, and the college student aid commission~~ through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J, ~~261,~~ 272D or 598.

ITEM 2. Rescind and reserve **653—Chapter 16**.

ITEM 3. Rescind rule 653—20.17(272C) and adopt the following **new** rule in lieu thereof:

653—20.17(272C) Student loan default or delinquency—prohibited grounds for discipline. The board shall not suspend or revoke a license issued by the board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

ITEM 4. Rescind and reserve subrule **20.20(27)**.

ITEM 5. Amend rule 653—23.1(272C), introductory paragraph, as follows:

653—23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 252J, ~~261,~~ or 272C or 2008 Iowa Acts, Senate File 2428, division II, or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed $10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 6. Rescind and reserve subrule **23.1(35)**.

ITEM 7. Adopt the following **new** rule 653—23.2(272C):

653—23.2(272C) Student loan default or delinquency—prohibited grounds for discipline. The board shall not suspend or revoke a license issued by the board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

ARC 4805C

MEDICINE BOARD[653]

Notice of Intended Action

Proposing rule making related to expedited licensure for spouses of active duty military service members and providing an opportunity for public comment

The Board of Medicine hereby proposes to amend Chapter 18, "Military Service and Veteran Reciprocity," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 272C.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 288.

Purpose and Summary

During the 2019 Legislative Session, a change was made to the Iowa Code to require agencies to establish procedures to expedite the licensing of an individual who is licensed in a similar profession or occupation in another state and who is the spouse of an active duty member of the military forces of the United States. These amendments implement this change as it pertains to physicians, surgeons, acupuncturists, and genetic counselors.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on January 8, 2020. Comments should be directed to:

Joseph Fraioli
Iowa Board of Medicine
400 S.W. Eighth Street, Suite C
Des Moines, Iowa 50309
Phone: 515.281.3614
Email: joseph.fraioli@iowa.gov

Public Hearing

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

January 8, 2020 9 to 10 a.m.	Board Office, Suite C 400 S.W. Eighth Street Des Moines, Iowa

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

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

The hearing will also be accessible via operated assisted conference call by dialing 866.685.1580 and entering the code 971-913-4151.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 653—18.1(85GA,ch1116) as follows:

653—18.1(~~85GA,ch1116~~ 272C) Definitions. As used in this chapter:

"License" means a license issued by the board, including a permanent medical license, resident physician license, special physician license, temporary physician license or licensed acupuncturist license.

"Military service" means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

"Military service applicant" means an individual who is requesting credit toward licensure that is subject to the jurisdiction of the board for military education, training, or service obtained or completed in military service including, but not limited to, a medical physician or surgeon, osteopathic physician or surgeon, or licensed acupuncturist.

"Provisional license" means a license that is issued by the board to a veteran who is licensed in another jurisdiction in which licensure requirements are not substantially equivalent to those required in Iowa and that will allow the veteran an opportunity to obtain additional experience or education required for licensure in Iowa. A provisional license may be issued for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare or safety of the public.

"Spouse" means the spouse of an active duty member of the military forces of the United States.

"Veteran" means an individual who meets the definition of "veteran" in Iowa Code section 35.1(2).

ITEM 2. Amend rule 653—18.3(85GA,ch1116) as follows:

653—18.3(~~85GA,ch1116~~ 272C) Veteran and spouse reciprocity.

18.3(1) A veteran or spouse with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran or spouse must pass any examinations required for licensure to be eligible for licensure through reciprocity. A fully completed application for licensure submitted by ~~a veteran~~ an applicant under this subrule shall be given priority and shall be expedited.

18.3(2) An application for licensure by reciprocity shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including but not limited to completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. In addition, the applicant shall provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2) or as a spouse.

18.3(3) Upon receipt of a fully completed licensure application, the board shall promptly determine if the professional or occupational licensing requirements of the jurisdiction where the veteran or spouse is licensed are substantially equivalent to the licensing requirements in Iowa. The board may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, and postgraduate experiences.

18.3(4) The board shall promptly grant a license to the veteran or spouse if the veteran or spouse is licensed in the same or similar profession in another jurisdiction whose licensure requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example, the applicant's disciplinary or malpractice history or criminal background.

18.3(5) If the board determines that the licensing requirements in the jurisdiction in which the veteran or spouse is licensed are not substantially equivalent to those required in Iowa, the board shall promptly inform the ~~veteran~~ applicant of the additional experience, education, or examinations required for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or malpractice history or criminal background, the following shall apply:

a. If ~~a veteran~~ the applicant has not passed the required examination(s) for licensure, the ~~veteran~~ applicant may request that the application be placed in pending status.

b. to *d.* No change.

18.3(6) A veteran or spouse who is aggrieved by the board's decision to deny an application for a reciprocal license or a provisional license or is aggrieved by the terms under which a provisional license will be granted may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's

decision. There shall be no fees or costs assessed against the veteran or spouse in connection with a contested case conducted pursuant to this subrule.

ITEM 3. Amend **653—Chapter 18**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 147, 148, 148E, and 272C ~~and 2014 Iowa Acts, chapter 1116, division VI~~.

ARC 4807C

RACING AND GAMING COMMISSION[491]

Amended Notice of Intended Action

Providing for a public hearing on rule making related to sports wagering and fantasy sports contests

The Racing and Gaming Commission hereby proposes to amend Chapter 1, "Organization and Operation," Chapter 3, "Fair Information Practices," Chapter 4, "Contested Cases and Other Proceedings," Chapter 5, "Track, Gambling Structure, and Excursion Gambling Boat Licensees' Responsibilities," Chapter 6, "Occupational and Vendor Licensing," and Chapter 8, "Pari-Mutuel Wagering, Simulcasting and Advance Deposit Wagering," and to adopt new Chapter 13, "Sports Wagering," and Chapter 14, "Fantasy Sports Contests," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 99D.7 and 99F.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 99D, 99E and 99F.

Purpose and Summary

The amendments proposed in this rule making implement 2019 Iowa Acts, Senate File 617, which became effective May 13, 2019, and which authorizes sports wagering and fantasy sports contests in Iowa. This rule making is intended to provide a framework and guidance to all industry participants and to protect the public and ensure the integrity of licensed facilities and participants. These amendments also reconcile existing rules with the new legislation and provide two new chapters of rules, Chapters 13 and 14.

Reason for Amendment of Notice of Intended Action

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 28, 2019, as **ARC 4617C**. The Notice is being amended to make nonsubstantive changes based on input received from stakeholders. The changes are in 5.2(5), 5.2(7), 5.4(10)"d"(2), 13.5(2)"d," 13.5(4), 13.5(6), 13.6(3), 491—14.1(99E), 14.6(5), 14.7(4), 14.8(5)"a," 14.9(1), and 14.9(2)"g." In addition, a few grammatical corrections and changes to improve consistency of terminology have been made.

Fiscal Impact

The Commission will use existing budget and resources to implement these rules, including specific appropriations made during the 2019 Legislative Session for such purposes.

Jobs Impact

After analysis and review of this rule making, the Commission finds that the rule making is likely to have a positive jobs impact, which is difficult to measure at this time.

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on January 7, 2020. Comments should be directed to:

Barb Blake
Iowa Racing and Gaming Commission
1300 Des Moines Street
Des Moines, Iowa 50309
Email: barb.blake@iowa.gov

Public Hearing

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

January 7, 2020 9 a.m.	Commission Office, Suite 100 1300 Des Moines Street Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 491—1.1(99D,99F) as follows:

491—1.1(99D,99E,99F) Function. The racing and gaming commission was created by Iowa Code chapter 99D and is charged with the administration of the Iowa pari-mutuel wagering Act and excursion boat gambling Act, sports wagering, and internet fantasy sports contests. Iowa Code chapters 99D, 99E and 99F mandate that the commission shall have full jurisdiction over and shall supervise all race meetings, ~~and~~ gambling operations, sports wagering, and internet fantasy sports contests governed by Iowa Code chapters 99D, 99E and 99F.

ITEM 2. Adopt the following **new** subrules 1.5(10) to 1.5(13):

1.5(10) *Sports wagering for excursion gambling boat, gambling structure or racetrack enclosure application.* This form shall contain, at a minimum, the full name of the applicant, disclosure of agreements involving sports wagering, a guarantee bond in an amount as determined by the commission, and a notarized certification of truthfulness. The applicant shall pay a nonrefundable application fee in the amount of $45,000 to the commission.

1.5(11) *Renewal application for sports wagering for excursion gambling boat, gambling structure or racetrack enclosure.* This form shall contain, at a minimum, the full name of the applicant, a $10,000 annual fee, disclosure of agreements involving sports wagering, sports wagering operations, internal controls, a guarantee bond in an amount as determined by the commission, a gambling treatment program, and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

1.5(12) *Advance deposit sports wagering operator application.* This form shall contain, at a minimum, the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, agreement with licensed facility or description of proposed operation, a gambling treatment program, and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

1.5(13) *Internet fantasy sports contest application.* This form shall contain, at a minimum, the full name of the applicant, board members, all ownership interests, balance sheets and profit-and-loss statements for the fiscal year immediately preceding the application, pending legal action, proof of satisfactory segregation of internet fantasy sports contest player contest funds as determined by the commission, a description of the proposed operation and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

ITEM 3. Amend rule 491—1.7(99D,99F) as follows:

491—1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates. The commission sets forth the following criteria which the commission will consider when deciding whether to issue a license to conduct racing or gaming or sports wagering in Iowa. The various criteria may not have the same importance in each instance, and other factors may present themselves in the consideration of an application for a license. The criteria are not listed in order of priority. After the initial consideration for issuing a license, applicable criteria need only be considered when an applicant has demonstrated a deficiency.

1.7(1) *Compliance.* The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9 or 99F.4. The commission will also consider whether the proposed facility is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

1.7(2) *Gaming integrity.* The commission will consider whether the proposed operation would ensure that gaming ~~is~~ and sports wagering are conducted with a high degree of integrity in Iowa and that the officers, directors, partners, or shareholders of the operation are of good repute and moral character. The commission shall decide what weight and effect evidence about an officer, director, partner, or shareholder should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. For the purposes of this chapter, the term "directors" shall also include managers of limited liability companies and the term "shareholders" shall also include members of limited liability companies.

1.7(3) to **1.7(7)** No change.

ITEM 4. Amend subrule 3.10(1) as follows:

3.10(1) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. to *f.* No change.

g. Information reported pursuant to Iowa Code sections 99E.8 and 99F.12 to any sports team or governing body having jurisdiction over sports teams.

ITEM 5. Amend subrule 3.13(2) as follows:

3.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. to *h.* No change.

i. Information gathered during an investigation during pendency of the investigation or information requested for inspection by the commission or a representative of the commission. (Iowa Code sections 99D.7(9), 99D.19(3), 99E.3(2), 99E.8(2), 99F.4(6), 99F.12(2), and 99F.12(4))

j. No change.

k. Security plans, surveillance system plans and records, network audits, internal controls, and compliance records of the licensees that are made available to the commission that would enable law violators to avoid detection and give a clearly improper advantage to persons who are in an adverse position to the agency. (Iowa Code sections 17A.2, 17A.3, 22.7(18), 99D.19(3), 99E.8(4), 99F.12(2)*"b"* and 99F.12(4))

l. Promotional play receipts records and marketing expenses. (Iowa Code sections 99D.19(3), 99E.8(4) and 99F.12(4))

m. Patron and customer records. (Iowa Code sections 99D.19(3), 99E.8(4) and 99F.12(4))

n. Supplemental schedules to the certified audit that are obtained by the commission in connection with the annual audit under Iowa Code sections 99D.20, 99E.9 and 99F.13. (Iowa Code sections 99D.19(3) and 99F.12(4))

o. No change.

ITEM 6. Amend rule 491—3.14(17A,22) as follows:

491—3.14(17A,22) Personally identifiable information. The commission maintains systems of records which contain personally identifiable information.

3.14(1) *Board of stewards or gaming board hearings and contested case records.* Records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the board of stewards or gaming board hearing or contested case records as well as summary lists of enforcement activities.

Records are collected by authority of Iowa Code chapters 99D, 99E and 99F. None of the information stored in a data processing system is compared with information in any other data processing system.

3.14(2) *Occupational licensing.* Records associated with occupational licensing conducted under Iowa Code chapters 99D, 99E and 99F are maintained by this commission. The licensing system of records includes numerous files and crossfiles which include but are not limited to: computer storage of licensing records and photos, fingerprint cards, and license applications. The records associated with occupational licenses, which contain personally identifiable information, are open for public inspection only upon the approval of the administrator or the administrator's designee. The information stored in a data processing system is not compared with information in any other data processing system.

3.14(3) No change.

ITEM 7. Amend rule **491—4.2(17A)**, definition of "Gaming board," as follows:

"Gaming board" means a board established by the administrator to review conduct by occupational, excursion gambling boat, gambling structure, sports wagering, fantasy sports contest and gambling game licensees that may constitute violations of the rules and statutes relating to gaming. The administrator may serve as a board of one.

ITEM 8. Amend rule 491—4.4(99D,99F) as follows:

491—4.4(99D,99E,99F) Gaming representatives—licensing and regulatory duties.

4.4(1) No change.

4.4(2) The gaming representative or the administrator's designee shall monitor, supervise, and regulate the activities of occupational, pari-mutuel racetrack, sports wagering, fantasy sports contest, gambling game, excursion gambling boat, and gambling structure licensees. A gaming representative or the administrator's designee may investigate any questionable conduct by a licensee for any violation of the rules or statutes. A gaming representative or the administrator's designee may refer an investigation to the gaming board upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

a. and *b.* No change.

4.4(3) A gaming representative or the administrator's designee shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the gaming representative or the administrator's designee determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D, 99E or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the gaming representative shall take one of the following courses of action:

a. to *c.* No change.

4.4(4) to **4.4(8)** No change.

ITEM 9. Amend rule 491—4.5(99D,99F), parenthetical implementation statute, as follows:

491—4.5(99D,99E,99F) Gaming board—duties.

ITEM 10. Amend rule 491—4.7(99D,99F), introductory paragraph, as follows:

491—4.7(99D,99E,99F) Penalties (gaming board and board of stewards). All penalties imposed will be promptly reported to the commission and facility or other licensed entity in writing. The board may impose one or more of the following penalties: eject and exclude an individual from a facility; revoke a license; suspend a license for up to five years from the date of the original suspension; place a license on probation; deny a license; impose a fine of up to $1000; or order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board may set the dates for which the suspension must be served. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by a state racing or gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission.

ITEM 11. Amend rule 491—4.8(99D,99F), parenthetical implementation statute, as follows:

491—4.8(99D,99E,99F) Effect of another jurisdiction's order.

ITEM 12. Amend rule 491—4.9(99D,99F), parenthetical implementation statute, as follows:

491—4.9(99D,99E,99F) Service of administrative actions.

ITEM 13. Amend rule 491—4.10(99D,99F), parenthetical implementation statute, as follows:

491—4.10(99D,99E,99F) Appeals of administrative actions.

ITEM 14. Amend rule 491—5.1(99D,99F) as follows:

491—5.1(99D,99F) In general. For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license. This chapter applies to a license to race or operate a gaming facility unless otherwise noted.

ITEM 15. Amend rule 491—5.2(99D,99F) as follows:

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13.

5.2(1) The audit of financial transactions and condition of licensee's operation shall include:

a. No change.

b. Documentation that the ~~county board of supervisors selected the auditing firm~~ audit shall be conducted by certified public accountants authorized to practice in the state of Iowa under Iowa Code chapter 542;

c. and *d.* No change.

5.2(2) to **5.2(4)** No change.

5.2(5) ~~Consolidated financial statements may be filed by commonly owned or operated establishments~~ For a licensed subsidiary of a parent company, an audit of the parent company may be filed with the following conditions:

a. No change.

~~*b.* The auditing firm must audit and issue a report on the separate financial statements that expresses an opinion for each individual entity licensed in Iowa.~~

~~*c.*~~ *b.* Any internal audit staff assisting with the audit shall report any material errors, irregularities or illegal acts that come to the staff's attention during the course of an audit to the licensee's audit committee or senior management as required by the rules of professional conduct. The licensee shall report such material errors, irregularities or illegal acts to the commission in a timely manner following reporting to the licensee's audit committee or senior management.

~~*d.*~~ *c.* All other requirements in this rule are met and included for each entity licensed in Iowa unless an exception is granted in writing by the commission (or administrator).

5.2(6) No change.

5.2(7) The annual audit report required by Iowa Code section 99F.13 shall include:

a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, and county endowment fund; and regulatory fees.

b. A report on whether material weaknesses in internal accounting control exist. ~~A report shall be filed for each individual entity licensed in Iowa if a consolidated audit is provided.~~

5.2(8) No change.

ITEM 16. Amend rule 491—5.4(99D,99F) as follows:

491—5.4(99D,99F) Uniform requirements.

5.4(1) to **5.4(6)** No change.

5.4(7) *Video recording.* Licensees shall conduct continuous surveillance with the capability of video recording all on-site gambling activities under Iowa administrative rules 661—Chapter 141, promulgated by the department of public safety.

a. "Gambling activities" means participating in ~~or~~ any form of wagering ~~on gambling games on the gaming floor~~ as defined by Iowa Code chapter 99F and approved by the commission; the movement, storage, and handling of uncounted gambling revenues; manual exchange of moneys for forms of wagering credit on the gaming floor; entrance of the public onto the gaming floor; and any other activity as determined by the commission administrator or administrator's designee.

b. to *e.* No change.

5.4(8) and **5.4(9)** No change.

5.4(10) *Taxes and fees.*

a. No change.

b. *Submission of gambling game taxes and fees.*

(1) to (3) No change.

c. No change.

d. *Submission of sports wagering net receipts taxes.*

(1) A tax is imposed on the sports wagering net receipts received each fiscal year from sports wagering. "Sports wagering net receipts" means the gross receipts less winnings paid to wagerers on sports wagering. Voided and canceled transactions are not considered receipts for the purpose of this calculation. Any offering used to directly purchase a wager shall be considered receipts for the purpose of this calculation.

(2) All moneys collected for and owed to the state of Iowa under Iowa Code chapter 99F for the payment of sports wagering taxes shall be accounted for and itemized on a monthly basis, in a format approved by the commission, by noon on Wednesday following a gaming week's end in which the completed gaming week includes the last day of the month. All sports wagering taxes owed shall be received in the treasurer's office by 11 a.m. on the Thursday after accounting and itemization is due in the commission office. If sports wagering net receipts for a month are negative, a credit for sports wagering taxes may be given in the subsequent month.

(3) Licensees under Iowa Code section 99F.7 or 99F.7A are responsible for the payment of all sports wagering taxes.

(4) Controls which easily allow for the designation and recording of sports wagering net receipts to an individual licensee and the redemption of winnings to the respective licensee shall be established by the licensee and approved by the administrator.

5.4(11) No change.

5.4(12) *Problem gambling.*

a. The holder of a license to operate gambling games and the holder of a license to accept simulcast wagering shall adopt and implement policies and procedures designed to:

(1) No change.

(2) Comply with the process established by the commission to allow a person to be voluntarily excluded from the gaming floor of an excursion gambling boat, from the wagering area as defined in Iowa Code section 99D.2, from the sports wagering area as defined in Iowa Code section 99F.1(24), and from the gaming floor of all other licensed facilities or gambling activities regulated under Iowa Code chapters 99D and 99F; and

(3) No change.

b. and *c.* No change.

d. Money forfeited by a voluntarily excluded person pursuant to Iowa Code sections 99D.7(23) and 99F.4(22) shall be withheld by the licensee and remitted to the general fund of the state by the licensee under Iowa Code chapters 99D and 99F.

5.4(13) to **5.4(21)** No change.

ITEM 17. Amend rule 491—6.1(99D,99F) as follows:

491—6.1(99D,99E,99F) Definitions.

"Applicant" means an individual applying for an occupational license.

"Beneficial interest" means any and all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

"Board" means either the board of stewards or the gaming board, as appointed by the administrator, whichever is appropriate. The administrator may serve as a board of one.

"Commission" means the Iowa racing and gaming commission.

"Commission representative" means a gaming representative, steward, or any person designated by the commission or commission administrator.

"Conviction" means the act or process of judicially finding someone guilty of a crime; the state of a person's having been proved guilty; the judgment that a person is guilty of a crime or criminal offense, which includes a guilty plea entered in conjunction with a deferred judgment, and a juvenile who has been adjudicated delinquent. The date of conviction shall be the date the sentence and judgment is entered.

"Deceptive practice" means any deception or misrepresentation made by the person with the knowledge that the deception or misrepresentation could result in some benefit to the person or some other person.

"Facility" means an entity licensed by the commission to conduct pari-mutuel wagering, ~~or~~ gaming or sports wagering operations in Iowa.

"Internet fantasy sports contest service provider" means a person, including a licensee under Iowa Code chapter 99D or 99F, who conducts an internet fantasy sports contest as authorized by Iowa Code chapter 99E.

"Jockey" means a person licensed to ride a horse in a race.

"Kennel/stable name " means any type of name other than the legal name or names used by an owner or lessee and registered with the commission.

"Licensee" means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license for a person to work in the pari-mutuel, gambling structure, ~~or~~ excursion gambling boat, sports wagering or internet fantasy sports contest industry in Iowa.

"Occupation" means a license category listed on the commission's occupational license application form.

"Owner" means a person or entity that holds any title, right or interest, whole or partial, in a racing animal.

"Rules" means the rules promulgated by the commission to regulate the racing and gaming industries, sports wagering, and internet fantasy sports contests.

"Sports wagering" means the acceptance of wagers on an authorized sporting event by any system of wagering as authorized by the commission. "Sports wagering" does not include placing a wager on the performance or nonperformance of any individual athlete participating in a single game or match of a collegiate sporting event in which a collegiate team from this state is a participant, or placing a wager on the performance of athletes in an individual international sporting event governed by the international olympic committee in which any participant in the international sporting event is under 18 years of age.

"Theft" includes, but is not limited to:

1. The act of taking possession or control of either facility property or the property of another without the express authorization of the owner;
2. The use, disposition, or destruction of property in a manner which is inconsistent with or contrary to the owner's rights in such property;
3. Misappropriation or misuse of property the person holds in trust for another; or
4. Any act which constitutes theft as defined by Iowa Code chapter 714. No specific intent requirement is imposed by rule 491—6.5(99D,99E,99F) nor is it required that there be any showing that the licensee received personal gain from any act of theft.

"Year" means a calendar year.

ITEM 18. Amend rule 491—6.2(99D,99F,252J) as follows:

491—6.2(99D,99E,99F,252J) Occupational licensing.

6.2(1) All licensees for internet fantasy sports contests and all persons participating in any capacity at a racing or gaming facility, with the exception of certified law enforcement officers while they are working for the facility as uniformed officers, are required to be properly licensed by the commission.

a. to *h.* No change.

i. Participation in racing and gaming, sports wagering, and internet fantasy sports contests in the state of Iowa is a privilege and not a right. The burden of proving qualifications to be issued any license is on the applicant at all times. An applicant must accept any risk of adverse public notice, embarrassment, criticism, or other action, as well as any financial loss that may result from action with respect to an application.

j. to *p.* No change.

6.2(2) All facility board members and internet fantasy sports contest service provider board members shall undergo a background investigation and be licensed immediately upon appointment. For

the purposes of this chapter, the term "board members" shall also include managers of limited liability companies.

6.2(3) to **6.2(6)** No change.

ITEM 19. Amend rule 491—6.3(99D,99F), parenthetical implementation statute, as follows:

491—6.3(99D,99E,99F) Waiver of privilege.

ITEM 20. Amend rule 491—6.4(99D,99F), parenthetical implementation statute, as follows:

491—6.4(99D,99E,99F) License acceptance.

ITEM 21. Amend rule 491—6.5(99D,99F) as follows:

491—6.5(99D,99E,99F) Grounds for denial, suspension, or revocation of a license or issuance of a fine. The commission or commission representative shall deny an applicant a license or, if a license is already issued, a licensee shall be subject to probation, fine, suspension, revocation, or other disciplinary measures, if the applicant or licensee:

6.5(1) Does not qualify under the following screening policy:

a. to *d.* No change.

e. A license shall be temporarily denied or suspended until the outcome of any pending charges is known if conviction would disqualify the applicant and the commission representative determines that the applicant poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D, 99E or 99F.

f. to *k.* No change.

l. A license shall be denied if the applicant is a board member of an internet fantasy sports contest service provider and is under the age of 21.

6.5(2) Has not demonstrated financial responsibility or has failed to meet any monetary obligation in the following circumstances connected with racing, ~~or~~ gaming, sports wagering, or an internet fantasy sports contest:

a. to *c.* No change.

6.5(3) Has been involved in any fraudulent or corrupt practices, including, but not limited to:

a. Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person licensed by the commission to violate these rules or the laws of the state related to racing, ~~or~~ gaming, sports wagering or internet fantasy sports contests.

b. No change.

c. Soliciting by any licensee, except the facility, licensed advance deposit sports wagering operator or licensed internet fantasy sports contest service provider of bets by the public.

d. No change.

e. Theft or deceptive practice of any nature on the premises of a facility or in the performance of duties associated with advance deposit sports wagering or internet fantasy sports contests.

f. No change.

g. Failing to comply with any request for information or any order or ruling issued by the commission representative pertaining to a racing, ~~or~~ gaming, sports wagering or internet fantasy sports contest matter.

h. No change.

i. Conduct in Iowa or elsewhere that has been dishonest, undesirable, or detrimental to, or reflects negatively on, the integrity or best interests of racing, ~~and~~ gaming, sports wagering or internet fantasy sports contests.

j. to *l.* No change.

m. Improperly influencing or attempting to improperly influence the results of a race, ~~or~~ a gambling game, a sporting event that is subject to sports wagering, or an internet fantasy sports contest, singularly or in combination with any person.

n. Failing to report any attempt to improperly influence the result of a race, ~~or~~ a gambling game, a sporting event that is subject to sports wagering, or an internet fantasy sports contest as in 6.5(3)*"m"* above.

o. to *w.* No change.

x. Communicating with or contacting a person who is voluntarily excluded pursuant to Iowa Code chapter 99D or 99F for ~~gaming-related~~ gaming-, wagering-, or internet fantasy sports contest-related activities.

ITEM 22. Amend rule 491—6.6(99D,99F), parenthetical implementation statute, as follows:

491—6.6(99D,99E,99F) Applications for license after denial, revocation, or suspension.

ITEM 23. Amend rule 491—6.7(99D,99F), parenthetical implementation statute, as follows:

491—6.7(99D,99E,99F) Probationary period placed on a license.

ITEM 24. Amend rule 491—6.8(99D,99F), parenthetical implementation statute, as follows:

491—6.8(99D,99E,99F) Duration of license.

ITEM 25. Amend rule 491—6.9(99D,99F), parenthetical implementation statute, as follows:

491—6.9(99D,99E,99F) Licensed employees moving from one location to another.

ITEM 26. Amend rule 491—6.10(99D,99F) as follows:

491—6.10(99D,99E,99F) Required report of discharge of licensed employee. Upon discharge of any licensed employee by any licensed employer for violation of rules or laws within the jurisdiction of the commission, the employer must report that fact in writing, within 72 hours, to the local commission office, including the name and occupation of the discharged licensee. In the case of discharge of a board member of an internet fantasy sports contest service provider, the employer must report that fact in writing, within 72 hours, to the Des Moines commission office, including the name and occupation of the discharged licensee.

ITEM 27. Amend **491—Chapter 8**, title, as follows:

PARI-MUTUEL WAGERING, SIMULCASTING AND ADVANCE DEPOSIT WAGERING

ITEM 28. Amend rule **491—8.1(99D)**, definitions of "Account," "Advance deposit wagering center" and "Advance deposit wagering operator," as follows:

"Account" means an account approved by the commission for pari-mutuel advance deposit wagering with a complete record of credits, wagers and debits established by a licensee account holder and managed by a licensee or ADWO.

"Advance deposit wagering center" means an actual location, the equipment, and the staff of a licensee, ADWO, or both involved in the management, servicing and operation of the pari-mutuel advance deposit wagering for the licensee.

"Advance deposit wagering operator" or *"ADWO"* means an advance deposit wagering operator licensed by the commission who has entered into an agreement with the licensee of the horse racetrack in Polk County and the Iowa Horsemen's Benevolent and Protective Association to provide pari-mutuel advance deposit wagering.

ITEM 29. Amend paragraph **8.6(2)"a"** as follows:

a. A person must have an established account in order to place advance deposit wagers. An account may be established in person at the licensee's facility or with the ADWO by mail or electronic means. For establishing an account, the application must be signed or otherwise authorized in a manner acceptable to the commission and shall include the applicant's full legal name, principal residence address, telephone number, and date of birth and any other information required by the commission. The licensee and ADWO shall have a process to verify that the player is not on the statewide self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account. The licensee and ADWO

shall review and deactivate accounts of newly enrolled participants of the statewide self-exclusion program and comply with all other requirements set forth by the commission and in Iowa Code section 99F.4(22).

ITEM 30. Adopt the following **new** 491—Chapter 13:

CHAPTER 13
SPORTS WAGERING

491—13.1(99F) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

"Administrator" means the administrator of the racing and gaming commission or the administrator's designee.

"Advance deposit sports wagering" means a method of sports wagering in which an eligible individual may, in an account established with a licensee under Iowa Code section 99F.7A, deposit moneys into the account and use the account balance to pay for sports wagering. Prior to January 1, 2021, an account must be established by an eligible individual in person with a licensee.

"Advance deposit sports wagering operator" means an advance deposit sports wagering operator licensed by the commission who has entered into an agreement with a licensee under Iowa Code section 99F.7A to provide advance deposit sports wagering.

"Authorized sporting event" means a professional sporting event, collegiate sporting event, international sporting event, or professional motor race event. "Authorized sporting event" does not include a race as defined in Iowa Code section 99D.2, a fantasy sports contest as defined in Iowa Code section 99E.1, minor league sporting event, or any athletic event or competition of an interscholastic sport as defined in Iowa Code section 9A.102.

"Collegiate sporting event" means an athletic event or competition of an intercollegiate sport as defined in Iowa Code section 9A.102.

"Commission" means the racing and gaming commission created under Iowa Code section 99D.5.

"Designated sports wagering area" means an area, as designated by a licensee and approved by the commission, in which sports wagering is conducted.

"Eligible individual" means an individual who is at least 21 years of age or older who is located within this state.

"Facility" means an entity licensed by the commission to conduct pari-mutuel wagering, gaming or sports wagering operations in Iowa.

"International sporting event" means an international team or individual sporting event governed by an international sports federation or sports governing body, including but not limited to sporting events governed by the international olympic committee and the international federation of association football.

"Licensee" means any person licensed under Iowa Code section 99F.7 or 99F.7A.

"Minor league sporting event" means a sporting event conducted by a sports league which is not regarded as the premier league in the sport as determined by the commission.

"Professional sporting event" means an event, excluding a minor league sporting event, at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.

"Sports wagering" means the acceptance of wagers on an authorized sporting event by any system of wagering as authorized by the commission. "Sports wagering" does not include placing a wager on the performance or nonperformance of any individual athlete participating in a single game or match of a collegiate sporting event in which a collegiate team from this state is a participant, or placing a wager on the performance of athletes in an individual international sporting event governed by the international olympic committee in which any participant in the international sporting event is under 18 years of age.

"Sports wagering net receipts" means the gross receipts less winnings paid to wagerers on sports wagering.

491—13.2(99F) Conduct of all sports wagering.

13.2(1) *Commission policy.* It is the policy of the commission to require that all industry participants conduct sports wagering in a manner suitable to protect the public health, safety, morals, good order, and general welfare of the state. Responsibility for selecting, implementing, and maintaining suitable methods of operation rests with the facility, vendor, and advance deposit sports wagering operator. Willful or persistent use or toleration of methods of operation deemed unsuitable in the sole discretion of the commission will constitute grounds for disciplinary action, up to and including revocation.

13.2(2) *Activities prohibited.* A facility, vendor, or advance deposit sports wagering operator is expressly prohibited from the following activities:

a. Failing to conduct advertising and public relations activities in accordance with decency, dignity, good taste, and honesty.

b. Failing to comply with or make provision for compliance with all federal, state, and local laws and rules pertaining to the operation of a facility or advance deposit sports wagering operation including, but not limited to, payment of license fees, withholding payroll taxes, and violations of alcoholic beverage laws or regulations.

c. Permitting cheating, failing to discover cheating that should have been discovered with reasonable inquiry, or failing to take action to prevent cheating.

d. Failing to conduct sports wagering operations in accordance with proper standards of custom, decorum, and decency; or permitting any type of conduct that reflects negatively on the state or commission or acts as a detriment to the sports wagering industry.

e. Performing any type of sports wagering activity, at any time, that is contrary to the representation made to the commission, commission representatives, or the public.

f. Denying a commissioner or commission representative, upon proper and lawful demand, information, documents, or access to inspect any portion of the sports wagering operation.

13.2(3) *Wagers.* Wagers may only be made by persons 21 years of age or older and on activities authorized pursuant to Iowa Code chapter 99F which are approved by the commission.

13.2(4) *Public notice.* The public shall have access to the sports wagering rules, available wagers, odds or payouts, the payout period, and the source of the information used to determine the outcome of a sports wager. All licensees and advance deposit sports wagering operators shall require participants to follow the rules of play. The sports wagering rules shall be:

a. Displayed in the licensee's sports wagering area.

b. Posted on the internet site or mobile application used to conduct advance deposit sports wagering.

c. Included in any terms and conditions disclosure statements of the advance deposit sports wagering system.

13.2(5) *Bond.* A licensee shall post a bond or irrevocable letter of credit, at an amount determined by the commission, to the state of Iowa to guarantee that the licensee and any vendor or advance deposit sports wagering operator licensed in conjunction with the licensee faithfully makes the payments, keeps its books and records and makes reports, and conducts its gambling games and sports wagering in conformity with Iowa Code chapter 99F and the rules adopted by the commission.

13.2(6) *Reserve.* A reserve in the form of cash or cash equivalents segregated from operational funds, an irrevocable letter of credit, payment processor reserves and receivables, a bond, or a combination thereof, shall be maintained in the amount necessary to cover the outstanding sports wagering liability. An accounting of this reserve shall be made available for inspection to the commission upon request. The method of reserve shall be submitted to and approved by the administrator prior to implementation.

13.2(7) *Internal controls.* Licensees and advance deposit sports wagering operators shall submit a description of internal controls to the administrator. The submission shall be made at least 30 days before sports operations are to commence unless otherwise approved by the administrator. All internal controls must be approved by the administrator prior to commencement of sports operations. The operator shall submit to the administrator any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by the administrator. It shall be the affirmative responsibility and continuing duty of each licensee and advance deposit sports wagering

operator and their employees to follow and comply with all internal controls. The submission shall include controls and reasonable methods that provide for the following:

a. To prohibit wagering by coaches, athletic trainers, officials, players, or other individuals who participate in an authorized sporting event in which wagers may be accepted.

b. To prohibit wagering by persons who are employed in a position with direct involvement with coaches, players, athletic trainers, officials, athletes or participants in an authorized sporting event in which wagers may be accepted.

c. To promptly report to the commission any criminal or disciplinary proceedings commenced against the licensee or its employees.

d. To promptly report to the commission any abnormal wagering activity or patterns that may indicate a concern about the integrity of an authorized sporting event or events, and any other conduct with the potential to corrupt a wagering outcome of an authorized sporting event for purposes of financial gain, including but not limited to match fixing, and suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification. Integrity-monitoring procedures shall also provide for the sharing of information with other licensees, other governing authorities, and accredited sports governing entities by participating in an integrity-monitoring association or group or by another method as approved by the administrator.

e. To report within 72 hours any incident where an employee or customer is detected violating a provision of Iowa Code chapter 99F, a commission rule or order, or internal controls. In addition to the written report, the licensee or advance deposit sports wagering operator shall provide immediate notification to the commission if an incident involves employee theft, criminal activity, Iowa Code chapter 99F violations or sports wagering receipts.

f. The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

g. User access controls for all sensitive and secure, physical and virtual, areas and systems within a sports wagering operation.

h. Treatment of problem gambling by:

(1) Identifying problem gamblers.

(2) Complying with the process established by the commission pursuant to Iowa Code section 99F.4(22) and 491—subrule 5.4(12).

(3) Cooperating with the Iowa gambling treatment program in creating and establishing controls.

(4) Making available to customers, patrons, and bettors a substantial number of the Iowa gambling treatment program advertisements and printed materials.

i. Setoff winnings of customers who have a valid lien established under Iowa Code chapter 99F.

13.2(8) *Revenue reporting.* Reports generated from the sports wagering system shall be made available as determined by the commission. The reporting system shall be capable of issuing reports by wagering day, wagering month, and wagering year. Wagering data shall not be purged unless approved by the commission. The reporting system shall provide for a mechanism to export the data for the purposes of data analysis and auditing or verification. The reporting system shall be able to provide, at a minimum, the following sports wagering information:

a. The date and time each event started and ended.

b. Total amount of wagers collected.

c. Total amount of winnings paid to players.

d. Total amount of wagers canceled, voided, and expired.

e. Commission or fees collected.

f. Total value of promotional play or free play used to purchase or execute a sports wager.

g. Event status.

h. Total amount held by the operator for the player accounts.

i. Total amount of wagers placed on future events.

j. Total amount of winnings owed but unpaid by the operator on winning wagers.

13.2(9) *Unclaimed winnings and abandoned accounts.* Unclaimed winnings and abandoned accounts are subject to the following requirements:

a. Unclaimed winnings of over 90 days at the close of a licensee's fiscal year shall be disallowed as a deduction from gross receipts for the calculation of sports wagering net receipts for the sports wagering tax.

b. Abandoned player accounts under this rule are subject to Iowa Code chapter 556.

c. Player accounts are considered abandoned if no activity by the account holder has occurred for three years. Player activity includes making a wager, making an account deposit, or withdrawing funds.

d. No licensee or advance deposit sports wagering operator shall charge an administration fee or maintenance fee for any inactive player account derived from state of Iowa residents at any time for any reason.

491—13.3(99F) Approval of sports wagers.

13.3(1) *Approval.* Prior to offering a sports wager, a facility or advance deposit sports wagering operator shall request that the administrator investigate and approve the sports wager for compliance with commission rules and any other standards as required by the commission. The administrator may require the facility or advance deposit sports wagering operator, at the facility's or operator's own expense, to provide additional information as deemed necessary to make a determination. Prior to approval, the administrator may require a trial period of any sports wager offering. Once a sports wager is approved by the administrator, unless it is subsequently disapproved for any reason deemed appropriate by the administrator, the sports wager is available for all operators under the conditions approved and subject to subrule 13.3(2).

13.3(2) *Sports wager submissions.* Prior to conducting a sports wager approved pursuant to subrule 13.3(1), a licensee or advance deposit sports wagering operator shall submit proposals for the wager, including but not limited to wagering rules, payout information, source of the information used to determine the outcome of the sports wager, and any restrictive features of the wager. The sports wager submission, or requests for modification to an approved wager, shall be submitted in writing and approved by the administrator prior to implementation.

13.3(3) *Sports promotional contests, tournaments, or promotional activities.* Sports promotional contests, tournaments, or promotional activities may be permitted by the licensee, vendor, or advance deposit sports wagering operator providing the following:

a. Rules shall be made available to participants for review prior to registering. Rules shall include, at a minimum: all conditions registered players must meet to qualify to enter or advance through the event, available prizes or awards, fees, and distribution of prizes or awards based on specific outcomes.

b. Rules are followed. Changes to rules shall not be made after participants have registered.

c. Results shall be made available for the registered players to review at the same location at which or in the same manner in which players registered. Results shall include, at a minimum: name of the event, date of the event, total number of entries, amount of entry fees, total prize pool, and amount paid for each winning category.

d. Fees collected, less cash prizes paid, are subject to the wagering taxes pursuant to Iowa Code section 99F.11(4). In determining sports wagering net receipts, to the extent that cash prizes paid out exceed fees collected, the licensee or advance deposit sports wagering operator shall be deemed to have paid the fees for the participants.

e. There is compliance with all other federal, state, and local laws and rules outside of the commission's jurisdiction.

491—13.4(99F) Designated sports wagering area. A floor plan identifying the designated sports wagering area, including the location of any wagering kiosks, shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. A sign shall denote that the area is not accessible to persons under the age of 21. Exceptions to this rule must be approved in writing by the administrator. The sports wagering area is subject to compliance with 491—subrule 5.4(7).

491—13.5(99F) Advance deposit sports wagering.

13.5(1) *Authorization to conduct advance deposit sports wagering.* A licensee or advance deposit sports wagering operator shall receive specific authorization from the commission to conduct advance deposit sports wagering prior to conducting advance deposit sports wagering. The granting of an advance deposit sports wagering license or approval of any agreements between a licensee and an advance deposit sports wagering operator to conduct advance deposit sports wagering does not constitute authorization. Any entity authorized to conduct advance deposit sports wagering is expected to comply with all requirements of this chapter, except for rule 491—13.4(99F), and all other applicable federal, state, local, and commission requirements.

13.5(2) *Account registration.* A person must have an established account in order to place advance deposit sports wagers. Prior to January 1, 2021, an account shall be established at the facility as required by Iowa Code section 99F.9(3A) with a process approved by the administrator. To establish an account, an application for an account shall be signed or otherwise authorized in a manner approved by the administrator and shall include the applicant's full legal name, principal residential address, date of birth, and any other information required by the administrator. The account registration process shall also include:

a. Age verification to prevent persons under the legal age for sports wagering from establishing an account.

b. Player verification of legal name, physical address, and age to correctly identify account holders.

c. Verification that the player is not on the statewide self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

d. Availability and acceptance of a set of terms and conditions that is also readily accessible to the player before and after registration and noticed when updated. Notices shall include, at a minimum, the following:

(1) Explanation of rules in which any unrecoverable malfunctions of hardware/software are addressed including, but not limited to, if the unrecoverable malfunction, wagering event cancellation, or other catastrophic malfunction results in the voiding of any wagers.

(2) Procedures to deal with interruptions caused by the suspension of data flow from the network server during an event.

(3) Specifications advising players to keep their account credentials secure.

(4) Statement that no underage individuals are permitted to participate in wagering.

(5) Explanation of conditions under which an account is declared inactive and actions undertaken on the account once this declaration is made.

e. Availability and acceptance of a privacy policy that is also readily accessible to the player before and after registration and noticed when updated and that includes, at a minimum, the following:

(1) Statement of information that is collected, the purpose for information collection, and the conditions under which information may be disclosed.

(2) Statement that any information obtained in respect to player registration or account establishment must be done in compliance with the privacy policy.

(3) Requirement that any information about player accounts which is not subject to disclosure pursuant to the privacy policy must be kept confidential, except where the release of that information is required by law.

(4) Requirement that all player information must be securely erased from hard disks, magnetic tapes, solid state memory, and other devices before the device is properly disposed of by the licensee. If erasure is not possible, the storage device must be destroyed.

13.5(3) *Operation of an account.* The advance deposit sports wagering operator or a licensee shall submit controls, approved by the commission, that include the following for operating an account:

a. Specific procedures and technology partners to fulfill the requirements set forth in subrule 13.5(2).

b. Location detection procedures to reasonably detect and dynamically monitor the location of a player attempting to place any wager. A player outside the permitted boundary shall be rejected, and the player shall be notified. The confidence radius shall be entirely located within the permitted boundary.

c. Specific controls set forth in subrule 13.2(7).

d. Limitation of one active account, per individually branded website, at a time unless otherwise authorized by the commission.

e. Authentication for log in through a username and password or other secure alternative means as authorized by the commission. Processes for retrieving lost usernames and passwords shall be available, secure, and clearly disclosed to the player. Players shall be allowed to change their passwords.

f. Immediate notification to the player when changes are made to any account used for financial transactions or to registration information or when financial transactions are made unless other notification preferences are established by the player.

g. Process to immediately notify a player and lock an account in the event that suspicious activity is detected. A multifactor authentication process must be employed for the account to be unlocked.

h. Process to easily and prominently impose limitations or notifications for wagering parameters including, but not limited to, deposits and wagers. Upon receipt, any self-imposed limitations must be employed correctly and immediately as indicated to the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours.

i. Process to easily and prominently self-exclude from wagering for a specified period of time or indefinitely and easily and obviously direct participants, via a link, to exclude themselves pursuant to Iowa Code section 99F.4(22). Upon receipt, any self-exclusion limitations must be employed correctly and immediately as indicated to the player. No changes can be made to reduce the severity of the self-exclusion limitations for at least 24 hours. In the event of indefinite self-exclusion, the advance deposit sports wagering operator or licensee must ensure that the players are paid in full for their account balance within a reasonable time provided that the advance deposit sports wagering operator or licensee acknowledges that the funds have cleared. This control does not supersede the requirements set forth in Iowa Code section 99F.4(22).

j. Process to review and deactivate accounts of newly enrolled participants of the statewide self-exclusion program set forth in Iowa Code section 99F.4(22). The operator must ensure that players are paid in full for their account balance within a reasonable time provided that the operator acknowledges that the funds have cleared.

k. Provide for an easy and obvious method for a player to make a complaint and to enable the player to notify the commission if such complaint has not been or cannot be addressed by the advance deposit sports wagering operator or licensee.

13.5(4) *Account funds.* The following requirements apply to the maintenance of funds associated with a player account:

a. Positive player identification, including any personal identification number (PIN) entry or other approved secure methods, must be completed before the withdrawal of any moneys held by the advance deposit sports wagering operator or licensee can be made.

b. Payments from an account are to be paid directly to an account with a financial institution in the name of the player or made payable to the player and forwarded to the player's address or through another method that is not prohibited by state or federal law.

c. An advance deposit sports wagering operator or licensee must have in place security or authorization procedures to ensure that only authorized adjustments can be made to player accounts and that changes are auditable.

d. It shall not be possible to transfer funds between two player accounts.

e. An advance deposit sports wagering operator or licensee shall provide a transaction log or account statement history at no cost to players upon request. Information provided shall include sufficient information to allow players to reconcile the statement or log against their own financial records.

f. Requests for withdrawals shall not be unreasonably withheld and shall be completed in a timely manner.

g. An advance deposit sports wagering operator or licensee shall provide a fee-free method for players to deposit or withdraw funds from player accounts.

13.5(5) *Annual audit.* An audit of the advance deposit sports wagering operations for the advance deposit sports wagering operator or licensee or parent company of the advance deposit sports wagering operator or licensee shall be conducted by certified public accountants authorized to practice in the state of Iowa and provided to the commission within 90 days of the licensee's fiscal year and meet the following conditions:

a. Inclusion of an internal control letter, audited balance sheet, and audited profit-and-loss statement including a breakdown of expenditures and subsidiaries of advance deposit sports wagering activities.

b. Inclusion of a supplement schedule indicating financial activities on a calendar-year basis if the advance deposit sports wagering operator's or licensee's fiscal year does not correspond to the calendar year.

c. Report of any material errors or irregularities that may be discovered during the audit.

d. Availability, upon request, of an engagement letter for the audit between the advance deposit sports wagering operator or licensee or parent company of the advance deposit sports wagering operator or licensee and the auditing firm.

13.5(6) *Wagers.* An advance deposit sports wagering operator shall display a player's wagers in a readily accessible manner.

491—13.6(99F) Testing.

13.6(1) *Initial testing.* All equipment and systems integral to the conduct of sports wagering and advance deposit sports wagering shall be tested and certified for compliance with commission rules and the standards required by a commission-designated independent testing laboratory. Certification and commission approval must be received prior to the use of any equipment or system to conduct sports wagering. The commission may designate more than one independent testing laboratory.

13.6(2) *Change control.* The licensees and advance deposit sports wagering operators shall submit change control processes that detail evaluation procedures for all updates and changes to equipment and systems to the administrator for approval. These processes shall include details for identifying criticality of updates and determining of submission of updates to an independent testing laboratory for review and certification.

13.6(3) *Annual testing.*

a. A system integrity and security risk assessment shall be performed annually on the advance deposit sports wagering system.

(1) The testing organization must be independent of the licensee and shall be qualified by the administrator.

(2) The system integrity and security risk assessment shall be conducted no later than 90 days after the start of the licensee's fiscal year.

(3) Results from the risk assessment shall be submitted to the administrator no later than 30 days after the assessment is conducted.

b. At the discretion of the administrator, additional assessments or specific testing criteria may be required.

491—13.7(99F) Licensing.

13.7(1) *Application and payment of fee.* The commission shall, upon payment of an initial license fee of $45,000 and submission of an application consistent with the requirements of Iowa Code section 99F.6, issue a license to conduct sports wagering to a facility.

13.7(2) *Application procedure for a facility.* Application for a license for a facility to conduct sports wagering shall be made to the commission. In addition to the application, the following must be completed and presented when the application is filed:

a. Name of the entity to be licensed by the commission to conduct sports wagering operations in Iowa.

b. Disclosure of agreements with entities to manage or operate sports wagering with or on behalf of the facility.

c. Disclosure of operating agreements for up to two individually branded internet sites to conduct advance deposit wagering for the facility.

d. Compliance with Iowa Code section 99F.6(4)*"a"*(2) and (3) requirements for qualified sponsoring organizations or horse racing purses.

e. A bond or irrevocable letter of credit on behalf of the facility in an amount to be determined by the commission.

f. A bank or cashier's check made payable to Iowa Racing and Gaming Commission for $45,000 for an initial license or $10,000 for a renewal license.

13.7(3) *Application procedure for an advance deposit sports wagering operator.* Application for a license for an advance deposit sports wagering operator with an agreement with a facility shall be made to the commission for approval by the administrator. In addition to the application, the following must be completed and presented when the application is filed:

a. Disclosure of ownership interest, directors, or officers of applicant.

(1) An applicant or licensee shall notify the administrator of the identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require.

For purposes of this rule, the term "beneficial interest" includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

(2) For ownership interests of less than 5 percent, the administrator may request a list of these interests. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subparagraph 13.7(3)*"a"*(1) above.

b. Investigative fees.

(1) Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning investigation.

(2) Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

c. A copy of each of the following:

(1) List of employees of the aforementioned who may have contact with persons within the state of Iowa.

(2) Agreement with facility to operate or manage the advance deposit sports wagering operation.

d. Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

e. The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, or professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

f. Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

g. Public disclosure is made for the benefit of the public, and documents pertaining to the ownership filed with the administrator shall be available for public inspection in accordance with 491—Chapter 3.

13.7(4) *Supplementary information.* Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the requested information within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

13.7(5) *Temporary license certificates.*

a. A temporary license certificate may be issued at the discretion of the administrator.

b. Any temporary license certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue. Failure to obtain a permanent license within the designated time may result in revocation of license eligibility, fine, or suspension.

13.7(6) *Withdrawal of application.* A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

13.7(7) *Record keeping.*

a. Record storage required. Licensees and advance deposit sports wagering operators shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and advance deposit sports wagering operators and any of their customers who are applicants or licensees under Iowa Code chapter 99F.

(3) A personnel file on each employee of the licensee and advance deposit sports wagering operator, including sales representatives.

(4) Financial records of all transactions with facilities and all other licensees and advance deposit sports wagering operators under these rules.

b. Record retention. Records other than those listed in subrule 13.2(8) shall be retained as required by 491—subrule 5.4(14).

13.7(8) *Violation of laws or regulations.* Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee or advance deposit sports wagering operator, or any combination of the above. The commission has the discretion to suspend mobile gaming operations of its licensees by written order if necessary.

These rules are intended to implement Iowa Code chapters 99D and 99F.

ITEM 31. Adopt the following **new** 491—Chapter 14:

CHAPTER 14
FANTASY SPORTS CONTESTS

491—14.1(99E) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

"Administrator" means the administrator of the racing and gaming commission or the administrator's designee.

"Applicant" means an internet fantasy sports contest service provider applying for a license to conduct internet fantasy sports contests under this chapter.

"Commission" means the state racing and gaming commission created under Iowa Code section 99D.5.

"Entry fee" means cash or cash equivalent that is required to be paid by an internet fantasy sports contest player to an internet fantasy sports contest service provider in order to participate in a fantasy sports contest.

"Fantasy sports contest" or *"contest"* means a fantasy or simulated game or contest in which:

1. The fantasy sports contest operator is not a participant in the game or contest;
2. The value of all prizes and awards offered to winning participants are established and made known to the participants in advance of the contest;
3. All winning outcomes reflect the relative knowledge and skill of the participants;
4. The outcome shall be determined by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events; and
5. No winning outcome is solely based on the score, point spread, or any performance or performances of any single actual team or solely on any single performance of an individual athlete or player in any single actual event. However, until May 1, 2020, "fantasy sports contest" does not include any fantasy or simulated game or contest in which any winning outcomes are based on statistical results from a collegiate sporting event as defined in Iowa Code section 99F.1.

"Fantasy sports contest service provider" means a person, including a licensee under Iowa Code chapter 99D, 99E or 99F, who conducts an internet fantasy sports contest as authorized by this chapter.

"Highly experienced player" means a person who has entered more than 1,000 contests conducted by a single fantasy sports contest service provider or has won more than three fantasy sports contest prizes of $1,000 or more from a single fantasy sports contest service provider. A fantasy sports contest provider may declare other players a "highly experienced player" so long as the provider's criteria for declaration would include players previously declared a "highly experienced player" by the provider.

"Internal controls" means the fantasy sports contest service provider's system of internal controls.

"Licensee" means any person licensed under Iowa Code section 99E.5 to conduct internet fantasy sports contests.

"Location percentage" means, for each internet fantasy sports contest, the percentage, rounded to the nearest tenth of a percent, equal to the total charges and fees collected from all internet fantasy sports contest players located in this state divided by the total charges and fees collected from all participants in the internet fantasy sports contest.

"Net revenue" means an amount equal to the total entry and administrative fees collected from all participants entering fantasy sports contests less winnings paid to participants in the contest, multiplied by the location percentage.

"Player" or *"customer"* means a person who is at least 21 years of age and participates in an internet fantasy sports contest operated by an internet fantasy sports contest service provider.

"Prize" means anything of value, including cash or a cash equivalent, contest credits, merchandise or entry to another contest in which a prize may be awarded.

"Script" means a list of commands that a fantasy sports-related computer program can execute and is created by fantasy sports players, or by third parties for the use of all players, to automate processes on a fantasy sports contest internet platform.

491—14.2(99E) Application for fantasy sports contest service provider license and licensing. A fantasy sports contest service provider must be licensed by the commission to offer an internet fantasy sports contest under Iowa Code chapter 99E. Any individuals who are required to be occupationally licensed by the commission shall comply with the license requirements of Iowa Code section 99E.5 and rules 491—6.2(99D,99E,99F,252J) to 491—6.13(99D,99F,272D). Occupational licensees are also subject to 491—Chapter 4.

14.2(1) *Licensing standards.* Standards which shall be considered when determining the qualifications of an applicant shall include, but are not limited to, financial stability; business ability and experience; good character and reputation of the applicant as well as all directors, officers, partners, and employees and integrity of financial backers. For the purposes of this rule, the term "applicant" includes each member of the board of directors or other governing body of an applicant.

a. The commission shall not grant a license to an applicant if there is substantial evidence that any of the following apply:

(1) A license issued to the applicant to conduct internet fantasy sports contests in another jurisdiction has been revoked, or a request for a license to conduct internet fantasy sports contests in

another jurisdiction has been denied, by an entity licensing persons to conduct such contests in that jurisdiction.

(2) The applicant has not demonstrated financial responsibility sufficient to adequately meet the requirements of the enterprise proposed.

(3) The applicant does not adequately disclose the true owners of the enterprise proposed.

(4) The applicant has knowingly made a false statement of a material fact to the commission.

(5) The applicant has failed to meet a monetary obligation in connection with conducting an internet fantasy sports contest.

(6) The applicant is not of good repute and moral character or the applicant has pled guilty to, or has been convicted of, a felony.

(7) Any member of the board of directors or governing body of the applicant is not 21 years of age or older.

b. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

14.2(2) *Application procedure.* Application for an internet fantasy sports contest service provider license shall be made to the commission on the form prescribed and published by the commission. In addition to the application, the following must be completed and presented when the application is filed:

a. Disclosure of ownership interest, directors, or officers of applicant.

b. The identity and date of birth of each member of the board of directors or other governing body of the applicant.

c. The identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require. For purposes of this rule, the term "beneficial interest" includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

d. For ownership interests of less than 5 percent, the administrator may request a list of these interests. At a minimum, the list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subrule 14.2(1).

e. A list of employees of the aforementioned who may be conducting business directly or indirectly on behalf of the applicant in the state of Iowa.

f. A bond or irrevocable letter of credit on behalf of the applicant or other satisfactory evidence, as determined by the commission, of a safe and reliable means of fulfilling the applicant's obligations to customers and the state of Iowa in an amount determined by the commission.

14.2(3) *Investigative fee.*

a. Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning the investigation.

b. Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

14.2(4) *Application fee.* A bank or cashier's check shall be made payable to Iowa Racing and Gaming Commission for $5,000.

14.2(5) *Reporting of changes.* Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

14.2(6) *Ineligibility.* The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, or professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships

with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

14.2(7) *Disclosure.* Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

14.2(8) *Public disclosure.* Disclosure is made for the benefit of the public, and all documents pertaining to the ownership filed with the administrator shall be available for public inspection.

14.2(9) *Supplementary information.* Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the requested information within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

14.2(10) *Requirements placed upon applicants and licensees.* For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

491—14.3(99E) Temporary license certificates.

14.3(1) A temporary license certificate may be issued at the discretion of the administrator.

14.3(2) Any temporary license certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue. Failure to obtain a permanent license within the designated time may result in revocation of license eligibility, fine, or suspension.

491—14.4(99E) Withdrawal of application. A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

491—14.5(99E) Fees.

14.5(1) *Initial license.* Once the commission is satisfied that the requirements of this chapter have been met, an applicant will be granted an initial license for up to three years.

14.5(2) *Annual license fee.* After the initial licensing period, a licensee shall pay an annual fee of $1,000 for licensees with a yearly adjusted gross revenue under $150,000 or $5,000 for licensees with a yearly adjusted gross revenue of $150,000 or greater. The administrator shall set the time period for determining a licensee's adjusted gross revenue. Licenses must be renewed annually in a manner established by the commission.

491—14.6(99E) Taxes.

14.6(1) The licensee shall pay a tax rate pursuant to Iowa Code section 99E.6 on adjusted revenue from fantasy sports contests. "Adjusted revenue" means the amount equal to the total charges and fees collected from all participants entering the fantasy sports contest less winnings paid to participants in the contest, multiplied by the location percentage defined in Iowa Code section 99E.1.

14.6(2) Voided and canceled transactions are not considered receipts for the purpose of this calculation.

14.6(3) Any offering used to directly participate in a contest shall be considered receipts for the purpose of this calculation.

14.6(4) Any other fee collected to participate in a fantasy sports contest shall be subject to the wagering tax pursuant to Iowa Code section 99E.6.

14.6(5) All moneys collected for and owed to the state of Iowa under Iowa Code chapter 99E for the payment of fantasy sports contests shall be accounted for and itemized on a monthly basis, in a format approved by the commission, by noon on Wednesday following a gaming week's end as defined by 491—subparagraph 5.4(10)*"b"*(1) in which the completed gaming week includes the last day of the month. All fantasy sports contest fees owed shall be received in the treasurer's office by 11 a.m. on the Thursday after accounting and itemization is due in the commission office.

491—14.7(99E) Account registration. A person must have an established account in order to participate in fantasy sports contests. To establish an account, an application for an account shall be authorized in a manner approved by the administrator and shall include the applicant's full legal name, principal residential address, date of birth and any other information required by the commission. The account registration process shall also include:

14.7(1) Age verification to prevent persons under the legal age from participating in fantasy sports contests and establishing an account.

14.7(2) Customer verification of legal name, physical address and age to correctly identify account holders.

14.7(3) Verification that the customer is not on the statewide self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

14.7(4) Availability and acceptance of a set of terms and conditions that are also readily accessible to the customer before and after registration and noticed when updated. Notices shall include, at a minimum, the following:

a. Explanation of rules in which any unrecoverable malfunctions of hardware/software are addressed including, but not limited to, if the unrecoverable malfunction, fantasy sports event cancellation, or any other catastrophic malfunction results in the voiding of any contests.

b. Procedures to deal with interruptions caused by the suspension of data flow from the network server during a contest.

c. Specifications advising customers to keep their account credentials secure.

d. Statement that no underage individuals are permitted to participate in contests.

14.7(5) Availability and acceptance of a privacy policy that is also readily accessible to the customer before and after registration and noticed when updated that includes, at a minimum, the following:

a. Statement of information that is collected, the purpose for information collection and the conditions under which information may be disclosed.

b. Statement that any information obtained in respect to customer registration or account establishment must be done in compliance with the privacy policy.

c. Requirement that any information about customer accounts which is not subject to disclosure pursuant to the privacy policy must be kept confidential, except where the release of that information is required by law.

d. Requirement that all customer information must be securely erased from hard disks, magnetic tapes, solid state memory and other devices before the device is properly disposed of by the licensee. If erasure is not possible, the storage device must be destroyed.

491—14.8(99E) Fantasy sports contest service provider requirements.

14.8(1) *Internal controls.* Licensees shall submit a description of internal controls to the administrator. The submission shall be made at least 30 days before fantasy sports contest operations are to commence unless otherwise approved by the administrator. All internal controls must be approved by the administrator prior to commencement of contest operations. The service provider shall submit to the administrator any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by the administrator. It shall be the affirmative responsibility and continuing duty of each licensee and its employees to follow and comply

with all internal controls. The submission shall include controls and reasonable methods that provide for the following:

a. Prevent employees of the internet fantasy sports contest service provider and relatives living in the same household of such employees from competing in any internet fantasy sports contest on the service provider's digital platform in which the service provider offers a prize to the public.

b. Verify that any fantasy sports contest player is 21 years of age or older.

c. Ensure that coaches, officials, athletes, contestants, or other individuals who participate in a game or contest that is the subject of an internet fantasy sports contest are restricted from entering an internet fantasy sports contest in which the outcome is determined, in whole or in part, by the accumulated statistical results of a team of individuals in the game or contest in which they participate.

d. Provide for an easy and obvious method for a player to make a complaint and to enable the player to notify the commission if such complaint has not been or cannot be resolved by the licensee.

e. Description of the measures used to determine the true identity, date of birth, and address of each player seeking to open an account.

f. Description of standards and procedures used to monitor fantasy sports contests to detect the use of unauthorized scripts and restrict players found to have used such scripts from further fantasy sports contests.

g. Controls to prevent unauthorized withdrawals from a registered player's account by the service provider or others.

h. Description on how the service provider will accept wagers within the permitted boundary.

i. Description on how the service provider will segregate fantasy sports contest player funds from operational funds.

j. The methods by which the fantasy sports contest service provider will protect a fantasy sports contestant's personal and private information.

14.8(2) *Records.* Licensees shall provide all information requested by the commission. Access to this information shall be immediate, and copies of the information shall be delivered within seven days or less as ordered by the commission. The licensees shall ensure all books and records and their retention comply with 491—subrule 5.4(14). All records pertaining to contests shall be available to allow for player complaint resolution.

14.8(3) *Reporting.* The licensee shall provide immediate notification of any facts which the licensee has reasonable grounds to believe indicate a violation of law or commission rule committed by licensees, their key persons, or their employees, including without limitation the performance of licensed activities different from those permitted under their license. The licensee is also required to provide a detailed written report within 72 hours from the discovery for any of the following:

a. Criminal or disciplinary proceedings commenced against the service provider in connection with its operations;

b. Abnormal contest activity or patterns that may indicate a concern about the integrity of an internet fantasy sports contest;

c. Any other conduct with the potential to corrupt an outcome of an internet fantasy sports contest for purposes of financial gain, including but not limited to match fixing;

d. Suspicious or illegal internet fantasy sports contest activities, including the use of funds derived from illegal activity, deposits of money to enter an internet fantasy sports contest to conceal or launder funds derived from illegal activity;

e. The use of agents to enter an internet fantasy sports contest or use of false identification.

14.8(4) *Technical and testing requirements.*

a. *Initial testing.* All equipment and systems integral to the conduct of fantasy sports contests shall be tested and certified for compliance with commission rules and the standards required by a commission-designated independent testing laboratory. Certification and commission approval must be received prior to the use of any equipment or system to conduct a fantasy sports contest. The commission may designate more than one independent testing laboratory.

b. *Change control.* The fantasy sports contest service providers shall submit change control processes that detail evaluation procedures for all updates and changes to equipment and systems

to the administrator for approval. These processes shall include details for identifying criticality of updates and determining of submission of updates to an independent testing laboratory for review and certification.

c. *Annual testing.*

(1) A system integrity and security risk assessment shall be performed annually on the fantasy sports contest system.

1. The testing organization must be independent of the licensee and shall be qualified by the administrator.

2. The system integrity and security risk assessment shall be conducted no later than 90 days after the start of the licensee's fiscal year.

3. Results from the risk assessment shall be submitted to the administrator no later than 30 days after the assessment is conducted.

(2) At the discretion of the administrator, additional assessments or specific testing criteria may be required.

d. *Limit on number of websites and platforms.* A fantasy sports contest service provider is authorized to conduct no more than two websites or platforms maintained and operated by the service provider.

14.8(5) *Operating requirements.* A fantasy sports contest service provider shall ensure the following:

a. Players winning fantasy sports contests shall have winning funds deposited into their player account or be paid by other means approved by the administrator within 48 hours from the end of the contest. Players shall have a fee-free method to deposit or withdraw funds from their player account. If funds are unable to be placed in a player's account, the fantasy sports contest service provider shall mail the funds to the player's address on file within ten days.

b. Player withdrawal of funds maintained in the player account shall be completed within five business days of the request unless the licensed fantasy sports contest service provider believes, in good faith, that the player engaged in fraud or other illegal activity pursuant to Iowa Code chapter 99D, 99E or 99F.

c. Procedures allow for a player to close an account and to access the player's history, including all fantasy sports contests in which the player participated.

d. Employees of the licensee are prohibited from participation in any fantasy sports contest offered by the licensee in which a cash prize is offered to the public. This includes prohibiting relatives living in the same household as such employees from competing in any fantasy sports contests offered by any licensee.

e. Prohibit the sharing of confidential information that could affect fantasy sports contest play with third parties until the information is made publicly available.

f. Players are allowed to voluntarily self-exclude in compliance with Iowa Code section 99F.4(22), and a fantasy sports contest service provider shall follow all resolutions associated with the process.

491—14.9(99E) Contest rules.

14.9(1) Prior to conducting a new type of fantasy sports contest, a fantasy sports contest service provider shall submit proposals for the contest format including, but not limited to: contest rules, prize information, and any restrictive features of the contest. The contest submission, or requests for modification to an approved contest, shall be in writing and approved by the administrator prior to implementation. Once a contest is approved, the contest is available for all providers unless the contest format is subsequently disapproved by the administrator for any reason the commission deems appropriate. Service providers may offer minor variations of an approved contest type without seeking administrator approval. Minor variations include:

a. Offering the contest format for any sport, league, association or organization previously approved by the administrator for any fantasy sports contest type;

b. The size of the contest and number of entries permitted;

c. Nonmaterial changes to entry fee and prize structure;

d. The number of athletes that a contestant selects to fill a roster when completing an entry;

e. The positions that must be filled when completing an entry;

f. Adjustments to the scoring system; and

g. Adjustments to a salary cap.

14.9(2) Licensees are required to comply with and ensure the following:

a. Advertisements for contests and prizes offered by a licensee shall not target prohibited participants, underage persons, or self-excluded persons.

b. The values of all prizes and awards offered to winning players must be established and made known to the players in advance of the contest.

c. Introductory procedures for players are prominently displayed on the main page of the licensee's platform to explain contest play and how to identify a highly experienced player.

d. The platform must identify all highly experienced players in every fantasy sports contest by a symbol attached to the players' usernames, or by other easily visible means, on all platforms supported by the licensee.

e. The platform does not offer contests based on the performance of participants in high school or youth sports events. However, until May 1, 2020, "fantasy sports contest" does not include any fantasy or simulated game or contest in which any winning outcomes are based on statistical results from a collegiate sporting event as defined in Iowa Code section 99E.1.

f. Representations or implications about average winnings from contests shall not be unfair or misleading.

g. Prohibit the use of unauthorized third-party scripts or unauthorized scripting programs for any contest and ensure that measures are in place to deter, detect, and prevent cheating to the extent reasonably possible. "Cheating" includes collusion and the use of cheating devices, including the use of software programs that submit entry fees or adjust the athletes selected by a player.

h. Prominently include information about the maximum number of entries that may be submitted for that contest for all advertised fantasy sports contests.

i. Disclose the number of entries that a player may submit to each fantasy sports contest and provide reasonable steps to prevent players from submitting more than the allowable number.

j. Provide players with an opportunity to file a patron dispute.

k. The licensee shall conspicuously disclose the source of the data utilized in any results.

491—14.10(99E) Segregation account requirements and financial reserves.

14.10(1) *Segregation.* Fantasy sports contest service providers shall segregate all fantasy sports contest player funds from operational funds.

14.10(2) *Financial reserves.* For the protection of the funds of contest participants held in paid fantasy sports accounts, the fantasy sports contest service provider shall maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, payment processor reserves and receivables, a bond, or a combination thereof in the amount of the deposits in internet fantasy sports contest player accounts.

a. The method of reserve shall be submitted and approved by the commission prior to implementation.

b. The amount of the reserve shall be equal to, at a minimum, the sum of all registered players' funds held in player accounts originating in Iowa.

c. If, at any time, the licensee's total available cash and cash equivalent reserve is less than the amount required, the licensee shall notify the commission of this deficiency within 48 hours.

d. Each licensee shall continuously monitor and maintain a record of all player deposits and the licensee's cash reserves to ensure compliance with the cash reserves requirement.

e. The licensee shall provide the commission with documentation including the amount of deposits in players' accounts and the amount in cash reserves as of the last day of each month. The information is due by the fifteenth day of the month for the preceding month.

491—14.11(99E) Annual audit. An audit of the fantasy sports contest operations for the licensee or parent company of the licensee shall be conducted by certified public accountants authorized to practice in the state of Iowa and provided to the commission within 180 days of the licensee's fiscal year and meet the following conditions:

14.11(1) Inclusion of an internal control letter, audited balance sheet, and audited profit-and-loss statement including a breakdown of expenditures and subsidiaries of fantasy sports contest activities.

14.11(2) Inclusion of a supplement schedule indicating financial activities on a calendar-year basis if the licensee's fiscal year does not correspond to the calendar year.

14.11(3) Report of any material errors or irregularities that may be discovered during the audit.

14.11(4) Availability, upon request, of an engagement letter for the audit between the licensee or parent company of the licensee and the auditing firm.

491—14.12(99E) Abandoned accounts.

14.12(1) Abandoned player accounts under this rule are subject to Iowa Code chapter 556. Player accounts are considered abandoned if no activity by the account holder has occurred for three years. Player activity includes entering a contest, making an account deposit, or withdrawing funds.

14.12(2) No internet fantasy sports contest service provider shall charge an administration fee or maintenance fee for any inactive player account derived from state of Iowa residents at any time for any reason.

491—14.13(99E) Problem gambling.

14.13(1) The licensee shall adopt and implement the following:

a. Policies and procedures designed to identify problem gamblers.

b. Policies and procedures designed to comply with the process established by the commission pursuant to Iowa Code section 99F.4(22).

c. Policies and procedures designed to cooperate with the Iowa gambling treatment program in creating and establishing controls.

d. Policies and procedures designed to make information available to customers concerning assistance for compulsive play in Iowa, including websites or toll-free numbers directing customers to reputable resources containing further information, which shall be free of charge.

e. A process to easily and prominently impose limitations or notifications for deposits and monetary participation in a contest. Upon receipt, any self-imposed limits must be employed correctly and immediately as indicated to the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours.

f. A process to easily and prominently self-exclude for a specified period of time or indefinitely and easily and obviously direct participants, via a link, to exclude themselves pursuant to Iowa Code section 99F.4(22). Upon receipt, any self-exclusion limits must be employed correctly and immediately as indicated to the player. No changes can be made to reduce the severity of the self-exclusion limitations for at least 24 hours. In the event of indefinite self-exclusion, the licensee must ensure that the player is paid in full for the player's account balance within a reasonable time provided that the licensee acknowledges that the funds have cleared. This control does not supersede the requirements set forth in Iowa Code section 99F.4(22).

g. A process to review and deactivate accounts of newly enrolled participants of the statewide self-exclusion program set forth in Iowa Code section 99F.4(22). The licensee must ensure that the player is paid in full for the player's account balance provided that the licensee acknowledges that the funds have cleared.

14.13(2) The licensee shall also include on the internet site or mobile application the statewide telephone number of the Iowa department of public health to provide problem gambling information and extensive responsible gaming features in addition to those described in Iowa Code section 99F.4(22).

14.13(3) Money forfeited by a voluntarily excluded person pursuant to Iowa Code section 99F.4(22) shall be withheld by the licensee and remitted to the general fund of the state by the licensee.

491—14.14(99E) Licensing of internet fantasy sports contest service providers.

14.14(1) *Operation.* The internet fantasy sports contest service provider shall submit the following for commission approval:

a. Internal controls for the operation of the account.

b. A detailed description and certification of systems and procedures used by the internet fantasy sports contest service provider to validate the identity, age and location of licensee account holders and to validate the legality of wagers accepted.

c. Certification of secure retention of all records related to internet fantasy sports contests and accounts for a period of not less than three years or such longer period as specified by the commission.

d. Certification of prompt commission access to all records relating to account holder identity, age and location in hard-copy or standard electronic format acceptable to the commission.

e. Verification that the player is not on the statewide voluntary self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

14.14(2) *Record keeping.*

a. Record storage required. Internet fantasy sports contest service providers shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and any of its customers who are applicants or licensees under Iowa Code chapter 99E.

(3) Financial records of all transactions with players and all other licensees under these regulations.

b. Record retention. The records listed in paragraph 14.14(2)*"a"* shall be retained as required by 491—subrule 5.4(14).

14.14(3) *Violation of laws or regulations.* Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee, or any combination of the above. The commission has the discretion to suspend fantasy sports contest operations of its licensees by written order if necessary.

These rules are intended to implement Iowa Code chapters 99D, 99E and 99F.

ARC 4822C

RACING AND GAMING COMMISSION[491]

Notice of Intended Action

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

The Racing and Gaming Commission hereby proposes to amend Chapter 5, "Track, Gambling Structure, and Excursion Gambling Boat Licensees' Responsibilities," Chapter 7, "Greyhound Racing," Chapter 8, "Pari-Mutuel Wagering, Simulcasting and Advance Deposit Wagering," Chapter 10, "Thoroughbred and Quarter Horse Racing," Chapter 11, "Gambling Games," and Chapter 12, "Accounting and Cash Control," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapters 99D and 99F.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 99D and 99F.

Purpose and Summary

Item 1 updates the manner of notification for incident reports.

Item 2 removes the reference to the surveillance department procedure manual that is replaced by a maintenance plan as described in the paragraph below summarizing Item 16.

Item 3 removes the prohibition on certain types of entries.

Item 4 clarifies the simulcast wagering transmission requirement.

Item 5 allows for certain types of stewards' decisions to be appealed.

Item 6 allows for digitally stamped papers.

Items 7, 10, and 11 clarify other allowable horse identifiers.

Item 8 updates the clerk of scales reporting requirements.

Item 9 clarifies the record-keeping requirement related to equine infectious anemia (EIA) test results.

Item 12 allows for digital stamping of Iowa-foaled horse certificates.

Item 13 clarifies when a horse may be entered in a race after being claimed.

Item 14 clarifies racing silk requirements.

Item 15 allows for mechanical devices to accept more than one coin, chip or token with authorization.

Item 16 specifies what is included in a surveillance maintenance plan.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on January 7, 2020. Comments should be directed to:

Barb Blake
Iowa Racing and Gaming Commission
1300 Des Moines Street
Des Moines, Iowa 50309
Email: barb.blake@iowa.gov

Public Hearing

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

January 7, 2020 9 a.m.	Commission Office, Suite 100 1300 Des Moines Street Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 5.4(5) as follows:

5.4(5) *Security force.*

a. and *b.* No change.

c. *Incident reports.* The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5)*"b."* In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification ~~on each office's messaging system~~ in a manner previously agreed upon by the representatives if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

d. No change.

ITEM 2. Amend paragraphs **5.4(7)"d"** and **"e"** as follows:

~~*d.* A surveillance department shall develop a standard operating procedure manual, which shall include surveillance system maintenance and emergency plans. This manual shall be made available for inspection by the commission and DCI.~~

~~*e.*~~ *d.* A facility may include capabilities within the surveillance system for video recording of other areas of a facility and grounds, provided that commission and DCI access is unrestricted.

ITEM 3. Amend subrule 7.7(14) as follows:

7.7(14) No trainer or owner shall have more than two greyhounds in any race except in stakes or sweepstakes races. No double entries shall be allowed until all single interests eligible for the performance are used and double entries shall be uncoupled for wagering purposes. ~~Double entries shall be prohibited in all twin trifecta and tri-super races.~~

ITEM 4. Amend subrule 8.4(1) as follows:

8.4(1) *General.*

a. No change.

b. *Transmission.* The method used to transmit sales transaction and data including, but not limited to, the odds, will pay, race results, and payoff prices must be approved by the commission, based upon the determination that provisions to secure the system and transmission are satisfactory. If the method relies on Internet service to transmit, a backup Internet service shall be used in the event of transmission failure until all transactions are completed for the day.

c. and *d.* No change.

ITEM 5. Amend subparagraph **10.4(4)"a"(6)** as follows:

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of the commission. The laws of Iowa and the rules of racing apply equally during periods of racing. They supersede the conditions of a race and the regulations of a racing meet and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final. ~~A decision by the stewards regarding a disqualification of a horse due to a foul, interference, or a riding infraction may not be appealed.~~

ITEM 6. Amend subparagraph **10.4(5)"g"(5)** as follows:

(5) Iowa-foaled horse allowance. Iowa-foaled horses that are properly registered and whose papers are stamped, physically or digitally, by the Iowa department of agriculture and land stewardship shall be allowed an additional three pounds beyond the stated conditions of the race if the race is not limited to Iowa-foaled horses. This allowance does not apply to stakes races.

ITEM 7. Amend subrule 10.4(7) as follows:

10.4(7) *Horse identifier.* The horse identifier shall:

a. and *b.* No change.

c. Examine every starter in the paddock for sex, color, markings, ~~and~~ microchip, lip tattoo, or digital tattoo for comparison with its registration certificate to verify the horse's identity;

d. Supervise the tattooing, digital tattooing, microchipping or branding for identification of any horse located on facility premises; and

e. No change.

ITEM 8. Amend subrule 10.4(13) as follows:

10.4(13) *Clerk of scales.* The clerk of scales shall:

a. to *f.* No change.

g. Release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet; ~~and~~

h. Assume the duties of the jockey room custodian in the absence of such employee~~.~~; and

i. Promptly report to the stewards any infraction of the rules with respect to riding equipment, safety equipment, riding crops, or conduct.

ITEM 9. Amend subparagraph **10.5(1)"a"(12)** as follows:

(12) Having each horse in the trainer's care that is racing or stabled on facility premises tested for equine infectious anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary. The test must have been conducted within the previous 12 months and must be repeated upon expiration. The certificate must be attached to the foal certificate or otherwise accessible by the commission or racing association.

ITEM 10. Amend subparagraph **10.6(1)"a"(2)** as follows:

(2) A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered registration certificate, altered microchip, or altered lip or digital tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any facility or regulatory agency.

ITEM 11. Amend paragraph **10.6(1)"b"** as follows:

b. A horse is ineligible to start a race when:

(1) No change.

(2) The horse's breed registration certificate is not on file, physically or digitally, with the racing secretary, or horse identifier, except where the racing secretary has submitted the certificate to the breed registry for correction or transfer of ownership. The stewards may, in their discretion, waive the requirement provided the registration certificate is in the possession of another board of stewards, a copy of the registration certificate is on file with the racing secretary, and the horse is otherwise properly identified. For claiming races, if the claimed horse has been approved by the stewards to run without the registration certificate on file in the racing office, then the registration certificate must be provided to the racing office within seven business days for transfer to the new owner before claiming funds will be approved for transfer by the stewards.

(3) The horse is not fully identified by an official tattoo on the inside of the upper lip or digital tattoo or microchip.

(4) No change.

(5) No current negative Coggins test or current negative equine infectious anemia test certificate is attached to the horse's registration certificate or otherwise accessible by the commission or racing association.

(6) to (15) No change.

ITEM 12. Amend subrule 10.6(2) as follows:

10.6(2) Entries.

a. to *e.* No change.

f. Consecutive days. No horse shall be run ~~on two~~ twice within five consecutive calendar days.

g. to *j.* No change.

k. Registration certificate to reflect correct ownership. Every breed registry foal certificate filed physically or digitally with the racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of the horse. The name of the owner that is printed on the official program for the horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate unless a stable name has been registered with the commission for the owner or ownership.

l. and *m.* No change.

n. Iowa-foaled horse. An Iowa-foaled horse shall not be entered in a race limited to Iowa-foaled horses unless the horse is registered with and the papers are either physically or digitally stamped by the department of agriculture and land stewardship. An Iowa-foaled horse would be allowed to run in an open race without the stamp~~,~~ but would be ineligible for Iowa-bred supplement, Iowa-bred breeders awards and Iowa-bred breeders supplement.

ITEM 13. Amend subparagraph **10.6(18)"f"(2)** as follows:

(2) Eligibility price. A horse ~~that is declared the official winner in the race in which it is~~ claimed may not start in a race in which the claiming price is less than the amount for which it was claimed. After ~~the first start back or~~ 30 days, ~~whichever occurs first,~~ a horse may start for any claiming price. ~~A horse which is not the official winner in the race in which it is claimed may start for any claiming price.~~ This provision shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper or for starter allowances. No right, title, or interest for any claimed horse shall be sold or transferred except in a claiming race for a period of 30 days following the date of claiming. The day claimed shall not count, but the following calendar day shall be the first day.

ITEM 14. Amend subrule 10.6(11) as follows:

10.6(11) Racing numbers and silks.

a. and *b.* No change.

c. *Racing silks.* Racing silks shall be turned into the racing office or jockey room custodian upon arrival to the facility.

(1) All horses running in a race are required to race in an owner's silk or trainer's silk.

(2) In the case of a partnership, the horse shall run with a managing partner's silk or a trainer's silk, if no partnership silk is available.

(3) Under special circumstances, a horse may be permitted by the stewards to run in a house silk.

ITEM 15. Amend paragraph **11.5(5)"b"** as follows:

b. Devices shall accept no more than one coin, token or chip per play, unless otherwise authorized by the administrator.

ITEM 16. Amend subrule 12.3(1) as follows:

12.3(1) Each facility shall submit a description of internal controls to the commission. The submission shall be made at least 90 days before gaming operations are to commence unless otherwise directed by the administrator. The submission shall include and provide for the following:

a. to *d.* No change.

e. Surveillance internal controls that include:

(1) and (2) No change.

(3) A system maintenance plan that includes management of:

1. Installations, changes, movements, and malfunctions;

2. A log of available and completed system upgrades, updates, and patches, including descriptions;

3. Universal power supply (UPS) capability, live video and recording redundancies;

4. Electrical outages, emergency evacuation, providing alternative coverage of dedicated areas for DCI approval; and

5. Job descriptions and training of employees responsible for system maintenance, and any external maintenance agreements.

f. and *g.* No change.

ARC 4804C

SECRETARY OF STATE[721]

Notice of Intended Action

Proposing rule making related to felony conviction verification and providing an opportunity for public comment

The Secretary of State hereby proposes to amend Chapter 28, "Voter Registration File (I-VOTERS) Management," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 47.1.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 48A.30.

Purpose and Summary

This proposed rule making is one of several new measures Iowa Secretary of State Paul Pate's office is taking to ensure the integrity of Iowa's felon database. Felons are currently barred from voting in Iowa unless their rights have been restored. Iowa's felon database contains more than 100,000 entries.

The Secretary of State's office has partnered with the Iowa Judicial Branch to ensure information provided by the courts to the Secretary of State's office pursuant to Iowa Code section 48A.30, regarding felony convictions, is accurate. This includes a six-step verification process. Three of those steps are new, and the others have been enhanced.

The intent of this proposed rule making is to clarify the roles of the Iowa Judicial Branch, the Secretary of State's office and county auditors regarding the felon database. The proposed changes to the rule require the Secretary of State's office to verify a felony conviction prior to forwarding the voter's information so county auditors can complete the cancellation process.

In addition to proposing the addition of verification steps for new convictions, the Secretary of State's office will also be conducting a manual review of all database entries. The goal is for the review to be completed prior to the November 3, 2020, general election.

Secretary Pate's office will utilize federal funds to pay for additional staff and review of the felon data.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

SECRETARY OF STATE[721](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on January 7, 2020. Comments should be directed to:

Molly Widen
Office of the Secretary of State
Lucas State Office Building, First Floor
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.5864
Email: molly.widen@sos.iowa.gov

Public Hearing

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

January 10, 2020 2 to 3 p.m.	Iowa Capitol Building Room 22 Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 721—28.4(48A) as follows:

721—28.4(48A) Cancellations and restorations of voter registration due to felony conviction.

28.4(1) Based upon information provided to the state registrar by the state or federal judicial branch and by the governor, the state registrar shall maintain a list of ~~convicted~~ felons convicted in state of Iowa district courts and the United States district courts of the northern and southern districts of Iowa and a list of convicted felons whose voting rights have been restored by the governor of Iowa. Periodically, these lists shall be matched with I-VOTERS. Based upon predetermined search criteria, a list of likely matches of ineligible voters shall be produced for each county and provided to each county registrar.

28.4(2) The state registrar has a demonstrated institutional need for documentation that sufficiently establishes an individual defendant's felony conviction. Therefore, the state registrar shall collaborate with the judicial branch to obtain documentation about felony convictions in a timely, efficient fashion, which shall include documentation sufficient to establish an individual defendant's felony conviction. When the state registrar receives felony conviction information from the United States attorney pursuant to Iowa Code section 48A.30(1)*"d,"* the state registrar shall request documentation sufficient to establish conviction of an offense classified as a felony under federal law. The state registrar shall

verify any conviction information provided pursuant to Iowa Code section 48A.30(1)*"d"* prior to adding an individual to the list of convicted felons maintained pursuant to subrule 28.4(1).

~~**28.4(2)**~~ **28.4(3)** Within ~~15~~ 30 days of the receipt of the list produced by the state registrar in accordance with subrule 28.4(1), the county registrar shall review the list of likely matches, determine the accuracy of the search results based on first name, last name, date of birth and social security number and cancel the registrations of those voters found to be ineligible to vote. The county registrar may also utilize sex, Iowa driver's license or nonoperator's identification numbers, and previous names, if available, to determine the accuracy of the search results. If the county registrar has questions regarding a felony conviction, the county registrar shall contact the court of conviction's clerk of court. Notice shall be sent to the voter at the voter's address in the voter registration file pursuant to Iowa Code section 48A.30(2). The notice shall be sent by forwardable mail and shall provide the voter an opportunity to have the county registrar review any relevant information that establishes the voter's eligibility to vote. When inclusion of a voter's name on the list of likely matches is found to be inaccurate, the registrar shall mark the record as a "no match" and provide that information to the state registrar.

~~**28.4(3)**~~ **28.4(4)** New applicants for registration entered into I-VOTERS by a county registrar shall be electronically matched against the list of convicted felons in the file, and applicants disqualified due to felony conviction shall not be registered as voters. The county registrar shall notify the registration applicant of the applicant's disqualification in the same manner as provided for in subrule ~~28.4(2)~~ 28.4(3) above.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for December is 3.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective December 10, 2019, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TREASURER OF STATE(cont'd)

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .30%
180-364 days	Minimum .40%
One year to 397 days	Minimum .55%
More than 397 days	Minimum .75%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

January 1, 2019 — January 31, 2019	5.00%
February 1, 2019 — February 28, 2019	4.75%
March 1, 2019 — March 31, 2019	4.75%
April 1, 2019 — April 30, 2019	4.75%
May 1, 2019 — May 31, 2019	4.50%
June 1, 2019 — June 30, 2019	4.50%
July 1, 2019 — July 31, 2019	4.50%
August 1, 2019 — August 31, 2019	4.00%
September 1, 2019 — September 30, 2019	4.00%
October 1, 2019 — October 31, 2019	3.75%
November 1, 2019 — November 30, 2019	3.75%
December 1, 2019 — December 31, 2019	3.75%
January 1, 2020 — January 31, 2020	3.75%

ARC 4823C

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Adopted and Filed

Rule making related to waivers

The Office of the Chief Information Officer hereby adopts new Chapter 7, "Waivers," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8B.4(5) and 17A.9A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 8B and section 17A.9A.

Purpose and Summary

Pursuant to Iowa Code section 17A.9A(1), "[a]ny person may petition an agency for a waiver or variance from the requirements of a rule, pursuant to the requirements of this section, if the agency has established by rule an application, evaluation, and issuance procedure permitting waivers and variances." This rule making establishes such procedures by which persons may petition the Office for a waiver or variance, on a case-by-case basis, from administrative rules promulgated by the Office.

This rule making does not apply to or permit requests for waivers or variances from participating agencies subject to information technology requirements set forth in Iowa Code chapter 8B or related rules, policies, standards, processes, or procedures promulgated, administered, and enforced by the Office. Pursuant to Iowa Code section 8B.21(5)"a," the Office is required to "adopt rules allowing for participating agencies to seek a temporary or permanent waiver from any of the requirements of [Iowa Code chapter 8B] concerning the acquisition, utilization, or provision of information technology." The Office has adopted and filed a separate rule making (**ARC 4824C**, IAB 12/18/19) that establishes a uniform process for the granting of information technology waivers requested by a participating agency from information technology governance requirements developed and administered by the Office, simultaneous with this rule making.

Further, this rule making does not govern the waiver of the stated terms, conditions, or requirements in a procurement of information technology. The standards and processes for the granting of waivers from the stated terms, conditions, or requirements in a procurement of information technology shall be as stated in the competitive selection documents or other applicable solicitation documents initiating the procurement.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 23, 2019, as **ARC 4710C**. A public hearing was held on November 12, 2019, at 1 p.m. in the OCIO Innovation Lab, Room 12, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received.

At the Administrative Rules Review Committee (ARRC) meeting held on Tuesday, November 12, 2019, at 9 a.m. in Room 116 at the State Capitol, Des Moines, Iowa, at which the Office appeared and presented in connection with the Notice of Intended Action, **ARC 4710C**, forming the basis of this now Adopted and Filed rule making, Representative Nielsen expressed concern over subrule 7.9(8), which provides that failure of the CIO to grant or deny a petition within the required time period shall be deemed a denial of that petition by the CIO. The Office understood Representative Nielsen's concern to be that, without any additional safeguards, the Office could simply ignore waiver petitions, which would render them denied by operation of rule. The Office has considered this concern and reviewed other similar

rules contained in other agencies' waiver chapters. The Office agrees with Representative Nielsen that an additional safeguard would be appropriate and consistent with other agencies' similar rules. As a result, the Office has added the following language to the end of subrule 7.9(8): "However, the CIO shall remain responsible for issuing an order denying a waiver." This additional language will ensure that, even if the Office were to fail to promptly rule on a waiver petition, the Office remains responsible for issuing an order explaining the basis of any denial and cannot simply avoid addressing the petition altogether. This is consistent with the way in which other agencies, such as the Department of Education, the Department of Human Rights, the State Public Defender, the Department of Public Health, and the Treasurer of State, have approached this issue.

Adoption of Rule Making

This rule making was adopted by the Chief Information Officer on November 27, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

This chapter will establish an agencywide waiver provision.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making action is adopted:

Adopt the following **new** 129—Chapter 7:

CHAPTER 7
WAIVERS

129—7.1(8B,17A) Definitions. The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall also apply:

"Chief information officer" or *"CIO"* means the state chief information officer or the CIO's designee.

"Competitive selection documents" means the same as defined in rule 129—10.2(8B).

"Information technology waiver" means the same as defined in rule 129—8.1(8B).

"Office" or *"OCIO"* means the office of the chief information officer authorized by Iowa Code chapter 8B.

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, vendor, or any legal entity.

"Waiver or variance" means, as applied to an identified person on the basis of the particular circumstances of that person, any action by the office that suspends in whole or in part the requirements

or provisions of a rule of the office. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

129—7.2(8B,17A) Scope of chapter and applicability. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the office in situations where no other more specifically applicable law provides for waivers. Generally, the office may grant a waiver from a rule only if the office has jurisdiction over the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. Except to the extent authorized and not otherwise prohibited by applicable law, the office may not waive requirements created or duties imposed by statute. Any waiver must be consistent with statute.

Notwithstanding the foregoing, to the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule. For example:

7.2(1) Iowa Code section 8B.21(5) and 129—Chapter 8 govern information technology waivers requested by a participating agency from the requirements of Iowa Code chapter 8B, rules adopted by the office, and information technology standards and policies prescribed by the office concerning the acquisition, utilization, or provision of information technology.

7.2(2) Additionally, this chapter does not govern the waiver of the stated terms, conditions, or requirements in a procurement of information technology. The standards and processes for the granting of waivers from the stated terms, conditions, or requirements in a procurement of information technology shall be as stated in the competitive selection documents or other applicable solicitation documents initiating the procurement.

129—7.3(8B,17A) Granting a waiver. In response to a petition completed pursuant to rule 129—7.5(8B,17A), the CIO may, in the CIO's sole discretion, issue an order waiving, in whole or in part, the requirements of a rule pursuant to subrule 7.3(1).

7.3(1) *Criteria for waiver.*

a. The CIO may grant a waiver if the CIO finds, based on clear and convincing evidence, each of the following:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested.

(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.

(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law.

(4) Equal protection of public health, safety, and welfare and information security will be substantially afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

b. In determining whether a waiver should be granted, the CIO shall consider the public interest, policies, and legislative intent of the statute on which the rule is based. When the rule from which a waiver is sought establishes administrative deadlines, the CIO shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

7.3(2) *Special waivers not precluded.* These rules shall not preclude the CIO from granting waivers in other contexts or on the basis of other statutes, rules, standards, policies, or procedures if:

a. The CIO deems it appropriate to do so; and

b. The CIO is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

129—7.4(8B,17A) Filing of petition. Any person may file with the office a petition requesting a waiver, in whole or in part, of a rule of the office on the ground that the application of the rule to the particular circumstances of that person would qualify for a waiver.

7.4(1) *General.* A petition for a waiver must be submitted in writing to the office of the chief information officer at the office's primary headquarters at the address identified in rule 129—1.2(8B,17A). Requests for waiver may be delivered, mailed, or sent by electronic means reasonably calculated to reach the intended recipient.

7.4(2) *Special requirement for contested cases or appeals.* If the petition relates to a pending appeal or contested case, the petition shall use the caption of the appeal or contested case, and in addition to being submitted to the office as required by subrule 7.4(1), a copy shall also be filed in the appeal or contested case proceeding.

129—7.5(8B,17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person for whom a waiver is requested and the case number of any related pending appeal or contested case.
2. A description of and citation to the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration, and any alternative means or other condition or modification proposed to achieve the purposes of the applicable rule.
4. The relevant facts the petitioner believes would justify a waiver under each of the four criteria described in subrule 7.3(1). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes the relevant facts will justify a waiver.
5. A history of any prior contacts between the office and the petitioner relating to the activity that is the subject of the requested waiver, including but not limited to a list or description of prior notices, investigative reports, advice, negotiations, consultations or conferences, a description of contested case hearings relating to the activity within the past five years, and penalties relating to the proposed waiver.
6. Any information known to the requester regarding the office's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases authorizing persons with knowledge regarding the request to furnish the office with information relevant to the waiver.

129—7.6(8B,17A) Additional information. Prior to issuing an order granting or denying a waiver, the office may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in conjunction with a pending contested case or appeal, the office may, on its own motion or at the petitioner's request, schedule a meeting between the petitioner and the CIO, which may be conducted either in person or by telephonic or other similar electronic means.

129—7.7(8B,17A) Notice. The office shall acknowledge the receipt of a petition by means reasonably calculated to reach the petitioner or designee. The office shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the office may give notice to other persons. To accomplish this notice provision, the office may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the office attesting that notice has been provided. Notice may be provided by email or similar electronic means.

129—7.8(8B,17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings and the office's corresponding implementing rules at 129—Chapter 6 shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to office proceedings for a waiver only when the office so provides by rule or order or is required to do so by statute.

129—7.9(8B,17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and, if a waiver is issued, a description of the precise scope of the waiver including its duration and any conditions associated therewith.

7.9(1) *CIO discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the CIO, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the CIO based on the unique, individual circumstances set out in the petition.

7.9(2) *Burden of proof and persuasion.* The burden of proof and persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the CIO should exercise discretion to grant a waiver.

7.9(3) *Narrowly tailored.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

7.9(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the office shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

7.9(5) *Conditions.* The CIO may place any condition on a waiver that the CIO finds desirable to protect the public health, safety, and welfare and information security.

7.9(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the CIO, a waiver may be renewed if the CIO finds that grounds for a waiver continue to exist.

7.9(7) *Time for ruling.* The CIO shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date or the department, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition is filed in a contested case, the CIO shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

7.9(8) *When deemed denied.* Failure of the CIO to grant or deny a petition within the required time period shall be deemed a denial of that petition by the CIO. However, the CIO shall remain responsible for issuing an order denying a waiver.

7.9(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law. Such service may be effectuated by email or similar electronic means.

129—7.10(8B,17A,22) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the office is authorized or required to keep confidential. The office may accordingly redact confidential information from petitions or orders prior to public inspection.

129—7.11(8B,17A) Summary reports. Semiannually, the office shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by such rules, and a general summary of the reasons justifying the office's actions on waiver requests under this chapter. If practicable, the report shall detail the extent to which the granting of a waiver under this chapter

has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

129—7.12(8B,17A) Cancellation of a waiver. A waiver issued by the CIO pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the CIO issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety, and welfare and information security will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

129—7.13(8B,17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

129—7.14(8B,17A) Defense. After the CIO issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

129—7.15(8B,17A) Judicial review. Judicial review of an office decision granting or denying a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code sections 8B.4(5) and 17A.9A.

[Filed 11/27/19, effective 1/22/20]
[Published 12/18/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4824C

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Adopted and Filed

Rule making related to information technology governance

The Office of the Chief Information Officer hereby adopts new Chapter 8, "Information Technology Governance," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8B.4(5), 8B.4(6), 8B.11(8), 8B.21(1)"d," 8B.21(5), 8B.23, 8B.24(1), 8B.24(2) and 8B.24(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 8B.

Purpose and Summary

The Office is created for the purpose of leading, directing, managing, coordinating, and providing accountability for the information technology resources of state government. In furtherance of this role, the Office is, among other things, required or authorized by Iowa Code chapter 8B to:

1. Develop and implement an information strategic plan for the enterprise;
2. Establish an enterprise strategic and project management function for oversight of all information technology-related projects and resources of participating agencies;
3. Develop information technology governance requirements that apply to participating agencies, including:
- Standards of or related to cybersecurity, geospatial systems, application development, and information technology and procurement, including but not limited to system design and systems integration, and interoperability;
- Policies of or related to security to ensure the integrity of the state's information resources and to prevent the disclosure of confidential records, while still fostering transparency and data sharing;
- Statewide standards for information technology security to maximize the functionality, security, and interoperability of the state's distributed information technology assets, including but not limited to communications and encryption technologies;
- Standards for the implementation of electronic commerce, including standards for electronic signatures, electronic currency, and other items associated with electronic commerce;
- Guidelines for the appearance and functioning of applications;
- Standards for the integration of electronic data across state agencies;
- Standards, policies, and procedures of or applicable to the procurement of information technology;

4. Require all information technology security services, solutions, hardware, and software purchased or used by a participating agency to be subject to approval by the office in accordance with security standards;
5. Develop and implement effective and efficient strategies for the use and provision of information technology and information technology staff for participating agencies and other governmental entities; and
6. Manage and oversee the IowAccess program.

In addition, the Office is required to "adopt rules allowing for participating agencies to seek a temporary or permanent waiver from any of the requirements of [Iowa Code chapter 8B] concerning the acquisition, utilization, or provision of information technology." See Iowa Code section 8B.21(5)"a."

To that end, this new chapter establishes the Office's process for developing and promulgating information technology policies, standards, processes, procedures, and guidelines, with appropriate stakeholder input; related assessment and enforcement processes and procedures; and a uniform process for the granting of information technology waivers requested by a participating agency from such information technology governance requirements.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 23, 2019, as **ARC 4712C**. A public hearing was held on November 12, 2019, at 1 p.m. in the OCIO Innovation Lab, Room 12, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. Two changes from the Notice have been made. A comma was added before the word "typically" in paragraph 8.4(3)"d" to make the paragraph's punctuation consistent with that of other similar paragraphs in subrule 8.4(3), and the term "Internet protocol" was included in subparagraph 8.5(1)"a"(5) to identify the abbreviation "IP."

Adoption of Rule Making

This rule making was adopted by the Office on November 27, 2019.

Fiscal Impact

This rule making is unlikely to have an adverse fiscal impact because it outlines processes already generally utilized and followed by the Office but not yet codified in rule. This rule making may have a positive fiscal impact, and binding rules that have the force and effect of law may provide the Office with

more effective tools to incentivize and ensure compliance with information technology requirements developed, administered, and enforced by the Office. However, the Office is not able to estimate the exact positive fiscal impact at this time and, therefore, conservatively determines that this rule making is unlikely to have an adverse fiscal impact.

Jobs Impact

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

Waivers

As required by Iowa Code section 8B.21(5)"a," this new chapter establishes a uniform process for the granting of information technology waivers requested by a participating agency from information technology governance requirements developed and administered by the Office. In addition, the Office has adopted and filed a separate rule making (**ARC 4823C**, IAB 12/18/19) that establishes general waiver processes pursuant to Iowa Code section 17A.9A(1) simultaneous with this rule making.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making action is adopted:

Adopt the following **new** 129—Chapter 8:

CHAPTER 8
INFORMATION TECHNOLOGY GOVERNANCE

129—8.1(8B) Definitions. The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, the following definitions shall also apply:

"Agency" or *"state agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, "agency" or "state agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

"Chief information officer" or *"CIO"* means the state chief information officer or the CIO's designee.

"Information technology governance document(s)" or *"information technology governance requirement(s)"* means compulsory information technology statutes, rules, policies, standards, processes, or procedures which are promulgated, administered, or enforced by the office and which govern participating agencies' acquisition, utilization, or provision of information technology.

"Information technology waiver" or *"waiver"* means, as applied to a participating agency on the basis of the particular circumstances of that agency, any action by the office that suspends, in whole or in part, the requirements of any information technology governance requirement.

"Participating agency" shall have the meaning ascribed to it under Iowa Code chapter 8B but does not include state agencies that are excluded from the definition of state agency as defined in this chapter or that are otherwise exempt pursuant to their specific enabling acts.

129—8.2(8B) Purpose and applicability.

8.2(1) *Purpose.* The office is created for the purpose of leading, directing, managing, coordinating, and providing accountability for the information technology resources of state government. In furtherance of this role, the office is, among other things, required or authorized to:

a. Develop and implement an information strategic plan for the enterprise.

b. Establish an enterprise strategic and project management function for oversight of all information technology-related projects and resources of participating agencies. In exercising this power and duty, the office will endeavor to collaborate and coordinate with participating agencies to the maximum extent possible.

c. Develop information technology governance requirements that apply to participating agencies, including but not limited to:

(1) Standards of or related to cybersecurity, geospatial systems, application development, and information technology and procurement, including but not limited to system design and systems integration, and interoperability.

(2) Policies of or related to security to ensure the integrity of the state's information resources and to prevent the disclosure of confidential records, while still fostering transparency and data sharing.

(3) Statewide standards for information technology security to maximize the functionality, security, and interoperability of the state's distributed information technology assets, including but not limited to communications and encryption technologies.

(4) Standards for the implementation of electronic commerce, including standards for electronic signatures, electronic currency, and other items associated with electronic commerce.

(5) Guidelines for the appearance and functioning of applications.

(6) Standards for the integration of electronic data across state agencies.

(7) Standards, policies, and procedures of or applicable to the procurement of information technology.

d. Require all information technology security services, solutions, hardware, and software purchased or used by a participating agency to be subject to approval by the office in accordance with security standards. In exercising this power and duty, the office will endeavor to collaborate and coordinate with participating agencies to the maximum extent possible.

e. Develop and implement effective and efficient strategies for the use and provision of information technology and information technology staff for participating agencies and other governmental entities.

f. Manage and oversee the IowAccess program.

This chapter outlines the office's process for achieving such objectives with appropriate stakeholder input, including the process by which the office establishes information technology governance requirements; related assessment and enforcement processes and procedures; and a uniform process for the granting of information technology waivers requested by a participating agency from such information technology governance requirements.

8.2(2) *Applicability.*

a. Information technology governance requirements established by the office, unless waived in accordance with the waiver process set forth herein, shall apply to all participating agencies.

b. The office of the governor and the offices of elective constitutional or statutory officers are not required to comply with information technology governance requirements established by the office. However, as required by Iowa Code section 8B.23, they must:

(1) Consider the information technology governance requirements adopted by the office; and

(2) In the case of any acquisition of information technology, consult with the office prior to making any such acquisition and provide a written report to the office relating to any decision regarding such acquisitions.

129—8.3(8B) Advisory groups. The office may establish advisory groups and related policies and procedures to organize and effectively and efficiently utilize such advisory groups. Advisory groups may be comprised of information technology leaders from agencies across state government to advise and assist the CIO and office in accomplishing the objectives, duties, and responsibilities outlined herein and in Iowa Code chapter 8B. Advisory groups established by the office shall be solely advisory to the CIO and office, and the CIO and office retain all final decision-making authority as conferred by Iowa Code chapter 8B.

129—8.4(8B) Information technology governance requirements.

8.4(1) *Proposing information technology governance requirements.* Anyone may recommend the development or adoption of an information technology governance requirement to the CIO or office or advisory committee created and designated by the CIO for such purpose.

8.4(2) *Development of information technology governance requirements.* Where the CIO, office, or advisory committee created and designated by the CIO for such purpose is of the opinion that a proposed information technology governance requirement has merit, the CIO, office, or advisory committee created and designated by the CIO for such purpose may work with the individual proposing the information technology governance requirement to develop the requirement. In developing information technology standards, the CIO, office, or advisory committee created and designated by the CIO for such purpose may consider, by way of example only:

a. Whether and how such requirement furthers the objectives of the enterprise;

b. Current industry standards or best practices;

c. Whether and how the requirement would help avoid the duplication of services, resources, or support;

d. Whether and how the requirement would further the state's information technology strategic plan, enterprise architecture, security plans, or any other information technology governance requirements;

e. Whether and how the requirement would affect expenditures across the enterprise;

f. Existing technology deployments;

g. The impact on state resources;

h. Acquisition, development and deployment time frames associated with implementing the requirement.

8.4(3) *Types of information technology governance requirements.* Information technology governance requirements may include any of the following:

a. "Policy(ies)" means a high-level statement of intent applicable to the acquisition, utilization, or provision of information technology designed to facilitate an enterprisewide goal or objective.

b. "Standard(s)" means a specific, minimum requirement(s) applicable to the acquisition, utilization, or provision of information technology, typically designed to facilitate the uniform application or implementation of one or more policies. Standards may set forth required or prohibited technical approaches, solutions, methodologies, products or protocols which must be adhered to in the design, development, implementation, or upgrade of systems architecture, including hardware, software and services. Standards are intended to establish uniformity in common technology infrastructures, applications, processes or data, and may define or limit the tools, proprietary product offerings or technical solutions which may be used, developed or deployed by participating agencies.

c. "Process(es)" means a high-level overview of required tasks, approvals, procedures, or other processes, typically designed to operationalize one or more policies or standards in a manner that leads to consistent results.

d. "Procedure(s)" means an in-depth set of instructions for the completion of a specific process, task, or action, typically designed to operationalize one or more processes or standards in a manner that leads to consistent results.

e. "Guideline(s)" or "best practices" means a recommended policy, process, task, or action related to the acquisition, utilization, or provision of information technology, typically designed to support related policies or standards. Guidelines or best practices are not required but are intended to aid participating agencies in assessing risks associated with technology decisions, facilitate knowledge transfer, and communicate lessons learned from past experience.

8.4(4) *Goals for information technology governance requirements.* The underlying purpose of information technology governance requirements is, by way of example only:

a. To promote collaboration and consistency in the automation of systems;

b. To eliminate duplicative development efforts and promote efficiencies for improved services to citizens and businesses;

c. To ensure continuity of ongoing state operations;

d. To ensure system security and the confidentiality, integrity, and availability of confidential or sensitive information stored or processed by state information systems;

e. To promote administrative efficiencies relating to development and maintenance of systems; and

f. To enable the state to realize its full purchasing power from the use of a statewide, enterprise approach to the selection of technology solutions.

8.4(5) *Adopting of information technology governance requirements and taking effect.*

a. Following the development of a proposed information technology governance requirement, the CIO may adopt the information technology governance requirement. The CIO shall solicit stakeholder input and feedback, including feedback from participating agencies to which the information technology governance requirement would apply, prior to adopting an information technology governance requirement.

b. The effective date of an information technology governance requirement shall be as stated in the applicable information technology governance document.

c. Upon taking effect, an information technology governance requirement shall apply to all participating agencies.

d. Participating agencies may request additional time to comply with information technology governance requirements. Such requests shall be considered a request for temporary waiver and must be submitted in accordance with rule 129—8.6(8B).

129—8.5(8B) Assessment and enforcement of information technology governance requirements.

8.5(1) *Compliance assessments and requests for information.* The office may periodically assess participating agencies' compliance with information technology governance requirements. In so doing, the office will coordinate and collaborate with participating agencies. Participating agencies shall provide appropriate information, access, and assistance to complete such assessments, or as is otherwise necessary for the office to carry out its duties and responsibilities under Iowa Code chapter 8B. As part of such assessments, participating agencies may be required to, by way of example only:

a. Provide the office with information as required by Iowa Code section 8B.21(1)*"k"* and *"l,"* or as otherwise required pursuant to Iowa Code chapter 8B or 22. Such information may include, but not be limited to:

(1) An inventory of information technology used by the participating agency.

(2) Budget or spending information of or related to information technology.

(3) Competitive selection documents, acquisition documents, internal procurement policies adopted by the participating agency, and other documents relied on, issued by, or executed by the participating agency related to the acquisition of information technology.

(4) Information about any security incidents.

(5) Security logs and reports, such as latency statistics, user access summaries, user access Internet protocol (IP) address summaries, user access history and security logs for information technology systems of the participating agency or its vendors.

(6) Security processes and technical limitations of the participating agency or its vendors, such as those related to virus checking and port sniffing.

b. Permit the office or its third-party designee to conduct security testing and compliance audits on a participating agency's or its vendor's information systems. Such testing and compliance audits may include but not be limited to unannounced penetration and security tests as they relate to the receipt, maintenance, use or retention of the state of Iowa's sensitive or confidential information.

Failure of a participating agency to provide the office with information or submit to compliance audits as requested by the office may be considered a violation of these rules and Iowa Code chapter 8B.

8.5(2) *Alternative assessment methods.* Participating agencies may request the acceptance of results of like assessments conducted by third parties in lieu of an assessment by the office. Whether to accept such alternative assessment methods shall be determined in the discretion of the CIO in coordination with the applicable participating agency.

8.5(3) *Determination of noncompliance.*

a. If the office determines that a participating agency is noncompliant with an information technology governance requirement, the office shall send a report to the head of the noncompliant participating agency, which report shall outline:

(1) The specific information technology governance requirement(s) forming the basis of a violation or ground for noncompliance;

(2) The relevant facts and corresponding reasoning supporting the office's findings and conclusions;

(3) The office's recommendations for remedying the violations or noncompliance.

b. Within 30 calendar days of receipt of the noncompliance notification, the participating agency shall submit to the office a written plan describing the actions the agency will take to achieve compliance or submit a written request for waiver in accordance with rule 129—8.6(8B). The office may, on its own motion or at the request of the participating agency, schedule a meeting between the participating agency and the office. Based on the participating agency's response and outcome of any meeting between the participating agency and the office, or office's decision with respect to any request for waiver submitted by the participating agency, the office may modify, alter, or amend its original report and recommendations.

8.5(4) *Emergency remediation.* When noncompliance with information technology governance requirements is determined by the CIO to be a threat to critical state information resources or information resources outside state government, the CIO may order the immediate shutdown or disconnection of the agency technology services that are contributing to the threat. If the agency does not immediately comply, the office, Iowa communications network, or other body may disconnect the agency from all shared services. The agency will be reconnected to shared services when the CIO determines there is no longer a critical threat.

129—8.6(8B) Waivers from information technology governance requirements.

8.6(1) *Requests for waiver.* A participating agency may file a request for waiver from an information technology governance requirement, in whole or in part, in accordance with the following form, manner, and content requirements.

a. Form and manner. A request for waiver shall be made on forms provided by the office and may be submitted by email to cio@iowa.gov. A request for waiver must be signed by the head of the participating agency seeking the waiver.

b. Content. The request shall:

(1) Include the name and address of the participating agency and a telephone number and email address for the point of contact at the participating agency to whom inquiries and notices regarding the request for waiver may be directed;

(2) Include a reference to the specific information technology governance requirement for which the waiver is submitted;

(3) Include a statement of facts, including a description of the problem or issue prompting the request;

(4) Describe the participating agency's preferred solution;

(5) Outline an alternative approach to be implemented by the participating agency intended to satisfy the waived information technology governance requirement;

(6) Describe the business case for the alternative approach;

(7) Include a copy of a third-party audit or report that compares the participating agency's preferred solution to the information technology solution that can be provided by the office;

(8) Outline the economic justification for the waiver or a statement as to why the waiver is in the best interests of the state;

(9) Specify the time period for which the waiver is requested and, to the extent a permanent waiver is requested, explain why a temporary waiver would be impracticable; and

(10) Include or be accompanied by any other information, including supporting evidence or documentation, deemed relevant by the participating agency, including information that would aid the office in applying the factors outlined in Iowa Code section 8B.21(5)*"b"* or determining whether granting the request, in whole or in part, is in the best interests of the state of Iowa.

c. The office and participating agency shall collaborate on both determining the need for a waiver and, if a waiver is determined to be necessary, the development of request for waiver.

8.6(2) *Notice, additional information, and opportunity for meeting.*

a. Notice. The office may notify other participating agencies that may be interested in or affected by the office's decision regarding a request for waiver and may allow other participating agencies to review the request for waiver and related materials submitted in connection therewith.

b. Additional information.

(1) The office may request, or require in accordance with Iowa Code section 8B.21(1)*"k"* and *"l,"* additional information, evidence, or documentation from the participating agency submitting the request that would aid the office in assessing the request in accordance with the factors outlined in Iowa Code section 8B.21(5)*"b"* and in determining whether granting the request, in whole or in part, is ultimately in the best interests of the state of Iowa.

(2) The office may permit, or require in accordance with Iowa Code section 8B.21(1)*"k"* and *"l,"* other participating agencies that may be interested in or affected by the office's decision to submit supporting or competing viewpoints, evidence, or documentation that would aid the office in assessing the request in accordance with the factors outlined in Iowa Code section 8B.21(5)*"b"* and in determining whether granting the request, in whole or in part, is ultimately in the best interests of the state of Iowa.

c. The office shall coordinate and schedule a meeting with the participating agency submitting the request or any other participating agency that may be interested in or affected by the office's decision.

8.6(3) *Granting a waiver.* In response to the office's receipt of a request for waiver under and in accordance with this chapter, the CIO may issue an order waiving, in whole or in part, an information technology governance requirement. The CIO may only grant a waiver if the participating agency shows that the waiver would be in the best interests of the state. In determining whether to grant a waiver, in whole or in part, the CIO shall consider the factors outlined in Iowa Code section 8B.21(5)*"b."* The final decision on whether the circumstances justify the grant of a requested waiver, in whole or in part, shall be in the sole discretion of the CIO.

a. An order granting or denying a waiver, in whole or in part, shall be in writing and shall:

(1) Identify the participating agency(ies) to which the order applies;

(2) Identify the specific information technology governance requirements involved;

(3) Include a statement of the relevant facts and reasons for the decision, including an application of the factors outlined in Iowa Code section 8B.21(5)*"b"* and an explanation as to how the waiver is or is not in the best interests of the state; and

(4) To the extent a waiver is granted, describe the precise scope of the waiver including its duration and any conditions associated therewith.

b. A waiver, if granted, shall provide the narrowest exception possible to the information technology governance requirements involved.

c. The CIO may place any condition on a waiver that the CIO finds desirable to protect the best interests of the state.

d. A waiver shall not be permanent unless the requestor can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the CIO, a waiver may be renewed if the CIO finds that grounds for a waiver continue to exist.

e. The CIO shall grant or deny a request for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date or the CIO, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days.

f. Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the participating agency by email to the contact at the participating agency identified in the request for waiver. The office may also transmit a copy of the order to other participating agencies that may be interested in or affected by the office's decision.

g. Consolidation. In the event the CIO receives similar requests for waivers from multiple participating agencies concerning the same information technology governance requirements, the CIO may consolidate the requests and issue a single ruling granting or denying the requests, in whole or in part.

8.6(4) *Cancellation of a waiver.* A waiver issued by the CIO pursuant to this chapter may be withdrawn, canceled, or modified after appropriate notice and fact-finding. Failure of a participating agency to cooperate in any fact-finding process initiated by the CIO to determine whether a waiver previously issued pursuant to this chapter should be withdrawn, canceled, or modified is grounds to cancel or modify a previously granted waiver.

8.6(5) *Violation of a waiver.* Violation of a condition in a waiver order shall be treated as a violation of the information technology governance requirement for which the waiver was granted.

8.6(6) *Defense.* After the CIO issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the participating agency to which the order pertains in any proceeding in which the rule in question is sought to be invoked.

129—8.7(8B,22) Public availability. Reports issued by the office, or orders granting or denying waivers, under this chapter shall be indexed, filed, and made available for public inspection as provided in Iowa Code section 17A.3. Such reports, orders, and related materials may be considered public records under Iowa Code chapter 22; provided, however, that such reports, orders, and related materials may contain information the office is authorized or required to keep confidential. The office may accordingly redact confidential information from petitions or orders prior to public release or inspection.

129—8.8(8B) Appeals. A participating agency may appeal a final decision of the CIO regarding the participating agency's noncompliance with information technology governance requirements under rule 129—8.5(8B), or a denial, in whole or in part, of a request for waiver under rule 129—8.6(8B), to the director of the department of management within seven calendar days following the service of the decision. The director of the department of management shall respond within 14 days following the receipt of the appeal.

These rules are intended to implement Iowa Code chapter 8B.

[Filed 11/27/19, effective 1/22/20]
[Published 12/18/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4825C

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Adopted and Filed

Rule making related to procurement of information technology

The Office of the Chief Information Officer hereby adopts new Chapter 10, "Procurement of Information Technology," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8B.4(5), 8B.4(6), 8B.11(8), 8B.21(1)"d," 8B.24(4), 8B.24(5)"f" and 8B.24(6).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 8B.

Purpose and Summary

This adopted and filed rule making sets forth the methods the Office may utilize in procuring information technology devices and services on behalf of state government, including the establishment of master information technology agreement and prequalification processes, and the related decisional framework governing how to decide which acquisition method to deploy. Further, this adopted and filed rule making specifies the dollar thresholds and related conditions and methods under and by which participating agencies may procure information technology directly. This adopted and filed rule making also establishes processes requiring participating agencies to seek and obtain the Office's approval before procuring information technology directly and establishes that, as required by Iowa Code section 8B.23(2), the Office of the Governor and the offices of elective constitutional or statutory officers must consult with the Office prior to procuring information technology, that those offices must consider the information technology standards adopted by the Office, and that those offices must provide a written report to the Office relating to decisions regarding such acquisitions upon request by the Office. This rule making establishes performance review and suspension and debarment processes and procedures applicable to information technology vendors selling information technology devices and services to state government.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 23, 2019, as **ARC 4711C**. A public hearing was held on November 12, 2019, at 1 p.m. in the OCIO Innovation Lab, Room 12, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. The Office made nonsubstantive grammatical and clarifying changes as a result of discussion with the Administrative Code editors.

Adoption of Rule Making

This rule making was adopted by the Office on November 27, 2019.

Fiscal Impact

This rule making is unlikely to have an adverse fiscal impact because it outlines processes already generally utilized and followed by the Office but not yet codified in rule. This rule making may have a positive fiscal impact, in that providing additional clarity and a more uniform process as it relates to information technology acquisitions could reduce transaction costs to the State and other governmental entities and enable the Office to better leverage volume discount opportunities. However, the Office is

not able to estimate the exact positive fiscal impact at this time and, therefore, conservatively determines that this rule making is unlikely to have an adverse fiscal impact.

Jobs Impact

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

Waivers

As required by Iowa Code section 8B.21(5)"a," the Office has adopted and filed a separate rule making (**ARC 4824C**, IAB 12/18/19) that establishes a uniform process for the granting of information technology waivers requested by a participating agency from information technology governance requirements developed and administered by the Office, including the requirements of this new chapter, simultaneous with this rule making. In addition, the Office has adopted and filed a separate rule making (**ARC 4823C**, IAB 12/18/19) that establishes general waiver processes pursuant to Iowa Code section 17A.9A(1) simultaneous with this rule making.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making action is adopted:

Adopt the following **new** 129—Chapter 10:

CHAPTER 10
PROCUREMENT OF INFORMATION TECHNOLOGY

129—10.1(8B) General provisions.

10.1(1) *Applicability.* This chapter governs:

a. The process for participating agencies and other governmental entities to obtain approval from or consult with, as applicable, the office in connection with the acquisition of information technology; and

b. The procurement of information technology by and for the office; by the office for the benefit or use of participating agencies or other governmental entities; and by a participating agency directly, to the extent the participating agency possesses the procurement authority to make such purchases.

10.1(2) *Funding.* The office and participating agencies shall follow these procurement policies and information technology governance requirements promulgated by the office regardless of the funding source supporting the procurement. However, when these rules or information technology governance requirements promulgated by the office prevent the state from obtaining and using a federal grant, these rules and information technology governance requirements may be suspended pursuant to and in accordance with Iowa Code section 8B.21(5) and 129—Chapter 8 to the extent required to comply with the federal grant requirements.

129—10.2(8B) Definitions. The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, the following definitions shall also apply:

"Acquisition" or *"acquire"* means the same as "procurement," "procure," or "purchase."

"Acquisition document" or *"procurement document"* means any document or instrument that effectuates an acquisition of information technology, including but not limited to a contract, agreement, purchase order, statement of work, bill of sale, invoice, or other similar document.

"Agency" or *"state agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, "agency" or "state agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

"American-based business" means an entity that has its principal place of business in the United States of America.

"American-made product" means product(s) produced or grown in the United States of America.

"Award" means the selection of a vendor to receive a contract, master information technology agreement, or order for information technology as the outcome of a competitive selection process.

"Chief information officer" or *"CIO"* means the state chief information officer or the state chief information officer's designee.

"Competitive bidding procedure" or *"competitive selection process"* means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, evaluated, accepted, rejected, or awarded. A "competitive bidding procedure" or "competitive selection process" includes but is not limited to a reverse auction as permitted by subrule 10.3(4), any competitive selection process outlined in 11—Chapter 118, or any prequalification process or subsequent solicitation outlined in subrule 10.5(6). When used to refer to a competitive selection process administered by another governmental entity, a "competitive bidding procedure" or "competitive selection process" includes any competitive bidding procedure or competitive selection process the other governmental entity is authorized to use pursuant to its laws, rules, and regulations.

"Competitive selection documents" means documents prepared and issued that solicit information technology to be purchased through a competitive selection process. A competitive selection document may be an electronic document.

"Contract let by another governmental entity" means either:

1. A contract entered into by another governmental entity under which the office may order information technology on its own behalf or on the behalf of a participating agency or other governmental entity, or approve a participating agency's or other governmental entity's request to procure information technology in the same manner; or
2. A contract entered into by another governmental entity as the outcome of a competitive selection process conducted by that other governmental entity which contract the office, or a participating agency or other governmental entity as authorized by the office, may leverage by entering into a separate contract for the purchase of information technology based thereon (also referred to as a "leveraged contract"), other than a contract entered into by the state board of regents or an institution under the control of the state board of regents. When the leveraged contract is the result of a competitive process administered by another governmental entity, such process may serve as a substitute for or in lieu of the office, or a participating agency or other governmental entity as authorized by the office, administering its own competitive selection process.

"Emergency" includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety;
2. In which immediate action must be taken to preserve critical services or programs;
3. That compromises the security of information systems or lifeline critical infrastructure, or otherwise poses a substantial risk or threat to the security, confidentiality, or integrity of sensitive or confidential information; or

4. In which the need is a result of events or circumstances not reasonably foreseeable.

"Emergency procurement" means an acquisition resulting from an emergency need.

"Enterprise" means most or all state agencies acting collectively.

"Fair and reasonable price" means a price that is commensurate with the extent and complexity of the information technology to be provided and is comparable to the price paid by other entities for projects of similar scope and complexity.

"Formal competition" means a competitive selection process other than informal competition, including without limitation a request for proposals or request for bids, and which results in the procurement of information technology.

"Governmental entity" means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

"Informal competition" means a streamlined competitive selection process in which the purchasing entity makes an effort to contact at least three prospective vendors identified by the purchasing entity as qualified to perform the necessary work to request that vendors provide bids or proposals for the information technology the purchasing entity needs.

"Information technology governance documents" or *"information technology governance requirements"* means compulsory information technology statutes, rules, policies, standards, processes, or procedures which are promulgated, administered, or enforced by the office and which govern participating agencies' acquisition, utilization, or provision of information technology.

"Information technology services" shall mean the same as defined in Iowa Code chapter 8B. In addition, the term "information technology services" shall include:

1. Cloud services, including software, platform, or infrastructure services delivered or accessed from a remote location through an Internet- or web-based interface. Such delivery or access models are commonly referred to as "software-as-a-service," "platform-as-a-service," "infrastructure-as-a-service," or other variations of "as-a-service."
2. Service provided in connection with the provisioning of broadband.
3. Value-added services.

"Intergovernmental agreement" means an agreement for information technology between a state agency and any other governmental entity, whether federal, state, or local, or any department, division, unit or subdivision thereof.

"Iowa-based business" means an entity that has its principal place of business in Iowa.

"Iowa product" means a product(s) produced in Iowa.

"Life cycle cost" means the expected total cost of ownership during the life of a product, including disposal costs.

"Master information technology agreement" means a contract entered into by the office which establishes prices, terms, and conditions for the purchase of information technology. These contracts may involve the needs of one or more state agencies or other governmental entities.

"Material modification," as it relates to a previously approved information technology procurement, means a change in the procurement of 10 percent or $25,000, whichever is less, or a change of sufficient importance or relevance so as to have possible significant influence on the outcome. Participating agencies shall not break purchasing into smaller increments in order to avoid the thresholds in this rule.

"Negotiated contract" means an agreement that meets the requirements of Iowa Code section 8B.24(5)*"b."*

"Order" means a direct purchase or a purchase from a state contract, master information technology agreement, or contract let by another governmental entity.

"Participating agency" shall mean the same as defined in Iowa Code chapter 8B but does not include state agencies that are excluded from the definition of state agency as defined in this chapter or that are otherwise exempt pursuant to their specific enabling acts.

"Procurement," "procure," or *"purchase"* means the acquisition of information technology through lease, lease/purchase, acceptance of, contracting for, obtaining title or license to, use of, or any other manner or method for acquiring information technology or an interest therein.

"Procurement authority" means a state agency authorized by statute to purchase information technology directly; or a state agency that has been delegated the authority to or has otherwise been authorized to procure information technology directly by the office, including but not limited to as such procurement authority is delegated to a participating agency or such procurement is otherwise authorized by the office by and pursuant to this chapter.

"Responsible bidder" or *"responsible respondent"* means a vendor that has the capability in all material respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the purchasing entity may consider various factors, including but not limited to the vendor's competence and qualification for the type of information technology required, the vendor's integrity and reliability, the past performance of the vendor relative to the information technology to be provided, the past experience of the purchasing entity or other governmental entities in relation to the vendor's performance, the relative quality of the information technology as compared with similar information technology available from other sources, the proposed terms of delivery, and the best interests of the state.

"Reverse auction process" or *"reverse auction"* means a repetitive competitive bidding process that allows vendors to submit one or more bids, with each bid having a lower cost than the previous bid.

"Sole source" includes, but is not limited to, a circumstance in which a purchasing entity determines that:

1. One service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the information technology;
2. The information technology being purchased involves work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the information technology;
3. The federal government or other provider of funds for the information technology being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the purchasing entity's use of the funds in a way that restricts the state agency to only one information technology provider;
4. Applicable law requires, provides for, or permits use of a sole source procurement;
5. The procurement is for an upgrade, or 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;
6. Any other circumstance as the office may identify from time to time.

"Sole source procurement" means an acquisition occurring when one of the circumstances set forth in the definition of "sole source" in this chapter is satisfied.

"Targeted small business" or *"TSB"* means a targeted small business as defined in Iowa Code section 15.102 that is certified by the department of inspections and appeals pursuant to Iowa Code section 10A.104 and as authorized by Iowa Code chapter 73.

"Upgrade" means additional hardware or software enhancements, extensions, features, options, or devices to support, enhance, or extend the life or increase the usefulness of previously procured information technology.

"Vendor" means a person, firm, corporation, partnership, business or other commercial entity that offers or provides information technology for sale, lease, or license.

129—10.3(8B) Methods of procurement.

10.3(1) *Methods.* The office may procure information technology on its own behalf or on behalf of participating agencies or other governmental entities using any of the methods set forth in Iowa Code section 8B.24(5) or authorize participating agencies to procure information technology in a similar manner (including but not limited to subject to applicable approval processes and requirements, as such

procurement authority is delegated to a participating agency by the office elsewhere in this chapter). Such methods include but are not limited to:

a. A cooperative procurement agreement pursuant to Iowa Code section 8B.24(5)*"a."*

b. A negotiated contract under any of the circumstances set forth in Iowa Code section 8B.24(5)*"b"*(1) to 8B.24(5)*"b"*(3).

c. A contract let by another governmental entity pursuant to Iowa Code section 8B.24(5)*"c"* if:

(1) The contract authorizes other governmental entities to procure information technology therefrom or leverage the contract by entering into a separate contract based on the contract, as applicable;

(2) The purchasing entity notifies the other governmental entity of the purchasing entity's intent to use or leverage the other governmental entity's contract;

(3) The purchasing entity follows applicable procedures under the contract required for other governmental entities to purchase therefrom or leverage the contract; and

(4) The vendor provides written assurances to the purchasing entity that any contemplated purchases or resulting leveraged contract would not adversely impact the governmental entity which was the original signatory to the contract.

d. A reverse auction process in accordance with the requirements of Iowa Code section 8B.24(5)*"d."*

e. A competitive selection process in the same manner as outlined in 11—Chapter 118 and in accordance with the requirements identified in rule 129—10.12(8B).

f. Other agreements for the purchase, disposal, or other disposition of information technology, including but not limited to the following:

(1) Intergovernmental agreement. An intergovernmental agreement with a governmental entity which has the resources available to supply the information technology sought.

(2) Emergency procurement. An emergency procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of "emergency" as set forth in this chapter is satisfied. The following requirements shall apply to an emergency procurement:

1. An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the purchasing entity should consider price and availability of the information technology so that the purchasing entity obtains the best value for the funds spent under the circumstances.

2. Justification for the emergency procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the reasons the purchase is an emergency. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.

3. The head of the purchasing entity shall sign all emergency justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign an emergency contract or amendment.

4. Use of an emergency procurement does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.

(3) Sole source procurement. A sole source procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of "sole source" as set forth in this chapter is satisfied. The following requirements shall apply to a sole source procurement:

1. Justification for the sole source procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the reasons the purchase qualifies as a sole source. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.

2. The head of the purchasing entity shall sign all sole source justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign a sole source contract or amendment.

3. Use of a sole source procurement method does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.

10.3(2) *Request for information (RFI).* A request for information (RFI) is a nonbinding method the office or a participating agency may use to obtain market information from interested parties for a possible upcoming purchase. Information may include but is not limited to best practices, industry standards, technology issues, qualifications and capabilities of potential suppliers, current pricing, or existing contract vehicles. Agencies considering the use of an RFI may contact the office for information and guidance in using this process.

129—10.4(8B) Master information technology agreements.

10.4(1) *Master information technology agreements.* In furtherance of the office's duty to cooperate with other governmental entities in the procurement of information technology and in an effort to make such procurements in a cost-effective, efficient manner, the office may enter into master information technology agreements to procure information technology for participating agencies and other governmental entities, or may authorize participating agencies and other governmental entities to procure information technology thereunder, pursuant to any of the methods set forth in rule 129—10.3(8B). The office may procure information technology for participating agencies and other governmental entities from such master information technology agreements or may authorize participating agencies and other governmental entities to procure information technology directly therefrom. Master information technology agreements for particular information technology or a particular class of information technology may be awarded to a single vendor or to multiple vendors, in the sole discretion of the office, irrespective of the procurement method utilized.

10.4(2) *Use of master information technology agreements.*

a. If the office has entered into a master information technology agreement, a participating agency shall procure information technology through the master information technology agreement, unless:

(1) The contract states that use of the master information technology agreement is optional;

(2) An information technology governance document provides otherwise; or

(3) The participating agency has obtained a waiver from the office pursuant to Iowa Code section 8B.21(5) and corresponding information technology waiver rules in 129—Chapter 8.

b. Unless otherwise stated in the master information technology agreement, any governmental entity may purchase from a master information technology agreement held by the office.

c. All governmental entities must notify the office of their intent to utilize a master information technology agreement held by the office and consult with the office about any proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations, restrictions, requirements, or obligations found in the master information technology agreement, of which the governmental entity should be aware. A participating agency that obtains approval from the office for an acquisition as required by rule 129—10.7(8B) does not need to separately consult with the office as required by this paragraph before making a purchase under a master information technology agreement held by the office.

129—10.5(8B) Prequalification of vendors. In accordance with Iowa Code section 8B.24(4), using an invitation to qualify, the office may prequalify a list of vendors capable of delivering particular information technology or a class of information technology. The office, in its sole discretion, may determine for what information technology or classes of information technology it would be appropriate to use an invitation to qualify.

10.5(1) *Purpose.* The purpose of an invitation to qualify for information technology acquisitions includes but is not limited to the following:

a. Standardizing the terms and conditions relating to all information technology provided by vendors, thereby avoiding repetition and duplication of efforts.

b. Accomplishing information technology assignments in a manner consistent with information technology governance requirements prescribed by the office.

c. Reducing the time required for the solicitation of proposals from vendors for individual projects.

10.5(2) *Evaluation criteria.* The office shall develop the evaluation criteria for vendor prequalification based upon its expertise, information and research, and the needs of the office, participating agencies, and other governmental entities. The office shall develop evaluation criteria for each invitation to qualify. Examples of evaluation criteria include but are not limited to:

a. Affirmative responses to mandatory agreement questionnaires.

b. Ratings on professional/technical personnel questionnaires.

c. Scoring in a specified range on client reference surveys.

d. Competitive cost data by type of service.

e. Acceptable vendor financial information.

f. Ability to comply with information technology governance requirements, other applicable industry standards, regulatory requirements, or any combination thereof.

g. Willingness and ability to submit personnel to background checks.

10.5(3) *Issuance and time to respond.* The office may issue invitations to qualify as needed. The office shall provide notice of the issuance of an invitation to qualify pursuant to rule 129—10.12(8B). In addition to the applicable evaluation criteria and other substantive requirements contained within the invitation to qualify, the office shall specify in the invitation to qualify:

a. The date and time at which vendors may begin submitting responses.

b. The form and manner in which responses shall be submitted to the office.

c. The date and time at which vendor responses will no longer be accepted.

10.5(4) *Response and evaluation.* Vendors may apply for eligibility on a continuous basis during the time period the invitation to qualify remains open. The office will not accept vendor responses after the response window has closed but may extend or reopen the window if the best interests of the state would be served. The office may evaluate vendor responses for placement on a prequalified vendor list during the period that the invitation to qualify remains open or after the response window has closed. Vendors seeking to qualify must meet all the evaluation criteria established by the office for a particular category or type of solicitation. The office retains the sole discretion to determine whether vendors that submit responses meet the evaluation criteria established by the office and to weigh the evaluation criteria in the manner it deems appropriate to determine whether such vendors are responsible bidders and able to provide the particular information technology or class of information technology sought. An approved vendor shall remain prequalified for the period specified by the office in the invitation to qualify, unless the vendor fails to meet any minimum acceptable performance levels established by the office as permitted by subrule 10.5(7) or breaches any terms and conditions included in any contract agreed to by the vendor.

10.5(5) *Not an award and execution of contracts.* Vendor prequalification is not an award and does not create an obligation on the part of the office. However, prior to conducting subsequent solicitations pursuant to subrule 10.5(6), prequalified vendors may be required to negotiate and agree to general terms and conditions which may be applicable to subsequent solicitations conducted pursuant to subrule 10.5(6).

10.5(6) *Subsequent solicitations.* Following the completion of the prequalification process, the office or governmental entities may select a prequalified vendor to provide specific information technology pursuant to a scaled-down competitive selection process without public notice. Such solicitation may be restricted only to prequalified vendors, in addition to the TSB notification required by paragraph 10.12(1)*"d."* Prequalified vendors receiving an award may be required to negotiate and agree to additional terms and conditions applicable to the specific information technology acquired.

10.5(7) *Acceptable performance levels.* The office may establish and notify prequalified vendors of minimum acceptable performance levels and institute performance tracking mechanisms on prequalified vendors. If a vendor's performance falls below the minimum acceptable level, the vendor may be removed from the prequalified list.

10.5(8) *Approval/consultation required.*

a. In addition to the requirements of paragraph 10.5(8)*"b,"* before a participating agency may acquire information technology from a prequalified vendor, the participating agency must receive the approval(s) required by rule 129—10.7(8B).

b. All governmental entities must notify the office of their intent to acquire information technology from a vendor prequalified by the office pursuant to the office's processes hereunder and consult with the office about the proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations, restrictions, requirements, or obligations found in any applicable contracts, of which the governmental entity should be aware.

10.5(9) *Appeal rights.* A vendor that does not prequalify or that is removed from the prequalified list due to the vendor's performance has the right to appeal pursuant to 129—Chapter 11.

129—10.6(8B) Method of procurement, how determined. In determining which of the procurement methods set forth in Iowa Code section 8B.24(5) and rule 129—10.3(8B) to utilize or to authorize a participating agency to utilize in acquiring information technology, whether to establish a master information technology agreement pursuant to rule 129—10.4(8B), or whether to prequalify vendors pursuant to the prequalification process outlined in rule 129—10.5(8B), the office may consider the following nonexclusive list of factors:

1. The manner in which such decision would further the state's information technology strategic plan.
2. The manner in which such decision would enhance the security of state information-technology systems, and the immediacy of the need to do so.
3. The manner in which such decision would improve compatibility, interoperability, and connectivity between state agencies.
4. The manner in which such decision would further improve statewide efforts to standardize data elements and better encourage or facilitate the sharing of data across state agencies.
5. The manner in which such decision would likely affect the cost to the state for the information technology.
6. The need to standardize the terms and conditions relating to the information technology provided by vendors with respect to a specific information technology or a class of information technology.
7. The administrative costs/overhead associated with pursuing an alternative method.
8. The likelihood that an alternative method would result in a different or better outcome.
9. The likely willingness and ability of state agencies to follow the office's decision and leadership with respect to a particular information technology acquisition.
10. The needs of all state agencies.
11. The need to avoid repetition and duplication.
12. Whether such decision would improve compliance with the information technology standards and policies prescribed by the office, other applicable industry standards, state or federal regulatory requirements related to information security, or any combination thereof.
13. Whether such decision would reduce the time required to solicit proposals from vendors to obtain the required information technology.
14. Whether there is an emergency or other pressing need.
15. The competitiveness of the market for the particular information technology sought and the likelihood vendors would supply thorough and meaningful proposals in response to a solicitation as part of a competitive selection process.
16. Any other factors deemed relevant by the office.

129—10.7(8B) Approval process for participating agencies.

10.7(1) *Approval, when required.* Any procurement of information technology, an information technology project, or information technology outsourcing satisfying any or all of the following conditions must receive prior approval from the office before a participating agency issues a competitive selection document; issues any order or other acquisition document, including an order under a master information technology agreement; or otherwise seeks to procure information technology through the office or on its own procurement authority (including but not limited to where such procurement authority is delegated by the office to a participating agency elsewhere in this chapter). Prior approval

is required when the information technology acquisition, project, or outsourcing satisfies any or all of the following conditions:

a. Costs $25,000 or more; or

b. Is projected to involve 750 agency staff hours or more; or

c. Involves substantial information-security concerns, including but not limited to the sensitivity or confidentiality of the data involved; the location of the system, data to be stored therein, or both; or the data involved is subject to state or federal regulatory requirements governing data security, confidentiality, or integrity; or

d. Involves significant compatibility, interoperability, or connectivity concerns.

The participating agency's approval request shall be submitted in the form and manner identified by the office. Participating agencies shall not break purchasing into smaller increments in order to avoid the threshold requirements of this rule.

10.7(2) *Office's review of proposed procurement.* When the office's prior approval is required by subrule 10.7(1), the office will review a proposed information technology procurement regardless of funding source, method of procurement, or agency procurement authority. The office will review a proposed procurement, without limitation:

a. To determine whether the proposed procurement complies with applicable information technology governance requirements prescribed by the office, including but not limited to those of or relating to information security.

b. To determine whether the proposed procurement method is advisable, considering the factors set forth in rule 129—10.6(8B), including but not limited to whether an established master information technology agreement may be utilized to procure the proposed information technology.

c. To determine whether the proposed procurement is a necessary purchase or in the best interests of the state, considering, without limitation, the factors set forth in rule 129—10.6(8B).

10.7(3) *Conditions.* The office may place any condition the office finds desirable on an approval to protect the best interests of the state. For example, the office may condition its approval on:

a. The incorporation of contractual protections or implementation of compensating controls to safeguard sensitive or confidential data to be stored, processed, or transmitted by or through the information technology.

b. The ability of vendors to comply with state or federal regulatory requirements governing data security, confidentiality, integrity, or other similar requirements.

c. The ability to achieve the necessary compatibility, interoperability, or connectivity with enterprise systems.

d. Any other condition deemed desirable to protect the best interests of the state.

10.7(4) *Outcome of review and requests for waiver.*

a. If the office approves a procurement proposed by a participating agency, in whole or in part, the procurement may proceed, subject to any conditions imposed by the office in accordance with subrule 10.7(3).

b. If the office denies a procurement proposed by a participating agency, the office will notify the participating agency of the available options, which may include modifying and resubmitting the request, canceling the request, or requesting an information technology waiver from the office pursuant to 129—Chapter 8.

c. A participating agency may not appeal or otherwise complain about an adverse decision rendered by the office unless or until the participating agency has requested a waiver from the office's decision pursuant to 129—Chapter 8.

10.7(5) *Ongoing approval—when required.* Once a procurement proposed by a participating agency is approved by the office, ongoing approval is not required, unless:

a. There is a material modification to a previously approved procurement; or

b. Communicated by the office to the participating agency in writing.

If additional approval is required pursuant to this rule, such approval shall follow the same process outlined in subrules 10.7(1) to 10.7(4).

129—10.8(8B) Consultation.

10.8(1) *When required for nonparticipating agencies.* The office of the governor and the offices of elective constitutional or statutory officers are not required to obtain prior approval from the office before acquiring information technology pursuant to rule 129—10.7(8B). However, pursuant to Iowa Code section 8B.23(2), the office of the governor and the offices of elective constitutional or statutory officers must consult with the office prior to procuring information technology, consider the information technology standards adopted by the office, and provide a written report to the office relating to decisions regarding such acquisitions upon request by the office.

10.8(2) *Encouraged for non-information technology acquisitions.* Even where an information technology acquisition is not appropriately deemed an information technology acquisition, the office may provide advice to or consult with any governmental entity regarding the acquisition of goods, services, or an outsourcing of state functions when the acquisition includes a substantial information-technology component, includes a substantial information-security component, or would grant a third party access to the state's sensitive or confidential information. Such consultation is generally encouraged to ensure, by way of example only:

a. Appropriate contractual protections or compensating controls are incorporated or implemented to safeguard sensitive or confidential data or information.

b. The chosen vendor is able to comply with any applicable state or federal regulatory requirements governing data security, confidentiality, integrity, or otherwise.

c. The vendor's information-technology systems comply with applicable information technology governance requirements.

d. The vendor's information-technology systems are adequately designed or architected in a manner that will adequately safeguard the state's sensitive or confidential information.

e. The vendor's information-technology systems will be capable of adequately and securely connecting to or interfacing with state information-technology systems, to the extent necessary.

10.8(3) *Master information technology agreements and invitations to qualify.* In accordance with and as further set forth in paragraphs 10.4(2)*"c"* and 10.5(8)*"b,"* all governmental entities must notify the office of their intent to utilize master information technology agreements or to acquire information technology from a vendor prequalified by the office in accordance with the office's prequalification and subsequent solicitation processes and to consult with the office about any such proposed acquisition.

129—10.9(8B) Delegated procurement authority. Subject to the approval and consultation processes and requirements set forth in rules 129—10.7(8B) and 129—10.8(8B), participating agencies may procure information technology through a competitive selection process administered by the participating agency consistent with the purchasing thresholds and requirements established by this rule.

10.9(1) *Agency direct purchasing—basic tier.* For information technology purchases that do not exceed the following dollar thresholds, participating agencies may procure information technology without competition:

a. Non-master-information-technology-agreement information technology devices costing less than $1,500.

b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is less than $5,000, or when the estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is less than $15,000.

c. Non-master-information-technology-agreement information technology devices or services from a TSB for purchases of less than the amount determined by the department of administrative services by rule, but not to exceed $25,000. Participating agencies shall search the TSB directory on the web and purchase directly from a TSB if it is reasonable and cost-effective to do so. A participating agency must confirm that the vendor is certified as a TSB by the department of inspections and appeals prior to making a purchase pursuant to this subrule.

10.9(2) *Agency direct purchasing—middle tier.* For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using either formal or informal competition:

a. Non-master-information-technology-agreement information technology devices costing greater than or equal to $1,500 but less than $5,000.

b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to $5,000 but less than $50,000, or when the estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is greater than or equal to $15,000 but less than $150,000.

10.9(3) *Agency direct purchasing—advanced tier.* For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using only formal competition:

a. Non-master-information-technology-agreement information technology goods costing greater than or equal to $5,000.

b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to $50,000, or when the estimated value of the multiyear information technology services contract in the aggregate, including any extensions or renewals, is greater than or equal to $150,000.

10.9(4) *Training, when required.* Participating agency personnel engaged in the purchase of information technology at the middle or advanced tier shall have completed enhanced procurement training identified by the office.

10.9(5) *Misuse of agency authority.*

a. Participating agencies shall not break purchasing into smaller increments for the purpose of avoiding the purchasing thresholds established by this rule.

b. Except as otherwise authorized or permitted by the office, purchasing authority delegated to participating agencies by this rule shall not be used to avoid the use of master information technology agreements.

10.9(6) *Other methods where authorized by office.* The office may authorize participating agencies to make direct purchases utilizing any other procurement methods outlined in rule 129—10.3(8B) on a case-by-case basis.

129—10.10(8B) Duration of master information technology agreements. The initial term of a master information technology agreement shall be as determined by the office. Following the initial term, a master information technology agreement may be extended or renewed by the office for a number of periods and in durations as determined by the office.

129—10.11(8B) Duration of information technology contracts. Each contract signed by the office or a participating agency shall have a specific starting and ending date and may be structured in a manner that includes an initial term and option(s) for renewal terms. The initial term, renewal term, and total term may be of a duration as determined by the office or participating agency making the purchase. Unless otherwise authorized or permitted by the office, information technology contracts entered into by the office or a participating agency shall not exceed ten years. Information technology contracts should be assessed on a regular basis so the enterprise obtains the best value for the funds spent; avoids inefficiencies, waste or duplication; and is able to take advantage of new innovations, ideas, and technologies.

129—10.12(8B) Requirements applicable to competitive selection process.

10.12(1) *Notice of competitive selection.*

a. *Opportunity posting.* The office and each participating agency shall provide public notice of solicitations by posting notice of every formal competitive selection opportunity to the official centralized procurement website operated by the department of administrative services. Alternatively, a participating

agency may add a link to the centralized procurement website that connects to the website maintained by the agency on which requests for bids and proposals for that agency are posted. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state website operated by the department of administrative services.

b. Other forms of notice. In addition to the requirements and options set forth in paragraph 10.12(1)*"a,"* notice of competitive bidding opportunities and proposals may also be provided by print, telephone or fax, email or other electronic means, or by other means that give reasonable notice to vendors.

c. Bids voided. A formal competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this subrule is void and shall be reissued.

d. Targeted small business notification. Targeted small businesses shall be notified of all solicitations at least 48 hours prior to the general release of the notice of solicitation. The notice shall be distributed to the state of Iowa's 48-hour procurement notice website for posting.

e. Vendor intent to participate. In the event the office elects to conduct any procurement electronically or otherwise, it may require that vendors prequalify or otherwise indicate their intention to participate in the procurement process.

10.12(2) *Specifications in competitive selection process.* Specifications shall be as set forth in the applicable competitive selection documents but shall generally comport with the following guidelines. Such guidelines shall not be construed or interpreted as limiting the office or participating agencies in developing specifications or terms and conditions in competitive selection documents that are necessary to effectively and efficiently procure information technology.

a. Limitations on brands and models. Specifications used in competitive selection documents shall generally be written in a manner that encourages competition. Specifications shall be written in general terms without reference to a particular brand or model unless the reference is clearly identified as intending to illustrate the general characteristics of the item or a specific brand or model is necessary to maintain compliance with an information technology requirement; to maintain or improve compatibility, interoperability, or connectivity with or across state information-technology systems and equipment; or to adequately safeguard the confidentiality, integrity, or availability of confidential or sensitive data or information or information systems.

b. Life cycle cost and energy efficiency. The office or participating agencies shall consider life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products.

c. Financial security. The office or participating agencies may require bid, appeal, litigation, fidelity, or performance security or bond, or any combination thereof, as designated in the competitive selection documents or by rule. When required, a security may be by certified check, cashier's check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the office or participating agency. When required, security shall not be waived.

10.12(3) *Award.*

a. How determined. In determining which vendor(s) should receive an award following a competitive selection process, the office or participating agency shall select a vendor(s) on the basis of criteria contained in the competitive selection documents.

b. Intent to award. After evaluating responses to a solicitation using formal competition, the office or participating agency shall notify each vendor that submitted a response to the solicitation of its intent to award to a particular vendor(s) subject to execution of a written contract(s). Such notice may be made by electronic means, including to the vendor's authorized representative and corresponding email address as identified in the vendor's proposal. This notice of intent to award does not constitute the formation of a contract(s) between the state and successful vendor(s).

c. Rejection of bids or proposals. The office and participating agencies reserve the right to reject any or all responses to solicitations at any time for any reason. New bids or proposals may be requested at a time deemed convenient to the office or participating agency involved.

d. Minor deficiencies and informalities. In addition to any waiver rights reserved or processes included in the competitive selection documents, the office and participating agencies reserve the right

to waive minor deficiencies and informalities if, in the judgment of the office or participating agency, the best interest of the state will be served.

e. Ties and preferences. If an award is based on the highest score and there is a tied score, or if the award is based on the lowest cost and there is a tied cost, the award shall be determined as follows:

(1) Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, first preference will be given to the Iowa vendor. Ties involving Iowa-produced or Iowa-manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing process outlined in subparagraph 10.12(3)*"e"*(3) will be held among the Iowa vendors only.

(2) If a tie does not include an Iowa vendor or Iowa-produced or Iowa-manufactured product, preference will be given to a vendor based in the United States or products produced or manufactured in the United States over a vendor based or products produced or manufactured outside the United States.

(3) If a tie neither includes an Iowa vendor or Iowa-produced or Iowa-manufactured product nor a United States vendor or United States-produced or United States-manufactured product, a drawing may be held in the presence of the vendors that tied or in front of at least three noninterested parties. All drawings shall be documented.

129—10.13(8B) Performance reviews and suspension/debarment.

10.13(1) *Review of vendor performance.* The office, in cooperation with other governmental entities, may periodically review the performance of vendors. State agencies obtaining information technology from vendors are encouraged to document vendor performance throughout the duration of any contract and report any problems to the office as they are identified. Performance reviews shall be based on the specifications or service levels in the vendors' contract(s) or as set forth or identified in any applicable statement of work, order, or other applicable acquisition document. Performance reviews shall include but need not be limited to:

a. Compliance with applicable contract specifications or requirements;

b. On-time delivery; and

c. Accuracy of billing.

Performance reviews help determine whether vendors are responsible bidders for future projects.

10.13(2) *Suspension or debarment.* Prior performance on a state contract may cause a vendor to be disqualified or preclude a vendor from being considered a qualified or responsible bidder in future procurements. In addition, a vendor or subcontractor of a vendor may be suspended or debarred for any of the following reasons:

a. Failure to deliver within specified delivery dates without prior agreement of the office or applicable governmental entity;

b. Failure to deliver in accordance with contract specifications or requirements;

c. Attempts to influence the decision of any state employee involved in the procurement process;

d. Evidence of agreements by vendors to restrain trade or impede competitive bidding;

e. Determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation, executive orders, or contract terms of conditions;

f. Evidence that a vendor has willfully filed or submitted a false certificate or information with or to the office or other governmental entities;

g. Suspension or debarment by the federal government;

h. Any other reason identified in the competitive selection documents or contract.

The office shall notify any vendor considered for suspension or debarment and provide the vendor an opportunity to respond to and cure any deficiencies prior to suspending or debarring any vendor. If the vendor fails to remedy the situation after receiving such notice, the office may suspend the vendor from eligibility for state information technology acquisitions for a period of time as specified by the office or debar the vendor from all future state business. The office may notify the department of administrative services of the office's final decision. The department of administrative services may, in its discretion, take reciprocal action as it relates to the acquisition of goods and services of general use.

129—10.14(8B) Additional requirements and authorizations to information technology acquisitions and agreements.

10.14(1) Information technology shall not be performed or obtained pursuant to a contract until all parties to the contract have signed a written contract. If an information technology contract requires the execution of orders or statements of work to effectuate individual transactions, information technology shall not be performed or obtained until the appropriate transactional document(s) is executed by both parties in a signed writing. A vendor that provides information technology to a governmental entity prior to the execution of a contract or appropriate transactional document shall not be entitled to any payment for the information technology.

10.14(2) Except to the extent of any conflict or inconsistency with this chapter, all information technology service contracts shall, to the extent applicable, comply with the requirements of 11—Chapter 119.

10.14(3) The office and participating agencies may enter into a contract for information technology in which a contractual limitation of vendor liability is provided for as authorized by and in accordance with 11—Chapter 120.

10.14(4) All information technology contracts shall comply with the requirements of 11—Chapter 121, which, among other requirements, requires state agencies entering into contracts to include a clause in every contract prohibiting employment discrimination and requiring compliance with applicable laws, rules, and executive orders governing equal opportunity in employment and affirmative action.

129—10.15(8B) Confidential information in a solicitation response. Unless material submitted in response to a solicitation is identified as proprietary or confidential by the vendor in accordance with Iowa Code section 22.7, all submissions by a vendor are public information. To facilitate a fair and objective evaluation of proposals, submissions by vendors will not be released to competitors or the public prior to issuance of the notice of intent to award or final disposition of any vendor appeal taken in accordance with 129—Chapter 11, whichever occurs later. Aggrieved or adversely affected vendors may only obtain proposals or other relevant evidence or information in furtherance of an appeal pursuant to the disclosure/protective order processes set forth in 129—Chapter 11. If a vendor's claim of confidentiality is challenged by a competitor or through a request by a citizen to view the proposal, it is the sole responsibility of the vendor to defend the claim of confidentiality in an appropriate venue. State agencies will not release the subject material while the matter is being adjudicated.

These rules are intended to implement Iowa Code chapter 8B.

[Filed 11/27/19, effective 1/22/20]
[Published 12/18/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4826C

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Adopted and Filed

Rule making related to vendor appeals

The Office of the Chief Information Officer hereby adopts new Chapter 11, "Vendor Appeals," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8B.4(5), 8B.11(8), 8B.24(2), 8B.24(3), 8B.24(5)"f" and 8B.24(6).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 8B.

Purpose and Summary

The Office is required to institute procedures to ensure effective and efficient compliance with information technology standards established by the Office, and to develop policies and procedures that apply to all information technology goods and services acquisitions and ensure the compliance of all participating agencies. In furtherance of that objective, this Adopted and Filed rule making establishes a process by which vendors may challenge the Office's or participating agencies' administration of competitive selection processes, prequalification processes, or reverse auction processes administered by the Office or participating agencies as authorized by the Office. If a purchasing entity has adopted its own rules, processes, or procedures governing award or disqualification decisions of or by the purchasing entity, the purchasing entity may rely on those rules, processes, or procedures in lieu of these rules at its election.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 23, 2019, as **ARC 4730C**. A public hearing was held on November 12, 2019, at 1 p.m. in the OCIO Innovation Lab, Room 12, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing.

The Iowa Communications Alliance submitted a written comment during the public comment period. Specifically, the Alliance stated: "We believe the five-day timeframe in proposed rule 11.3(1) and (3) for filing an appeal appears to be shorter than any other state agency we work with. Five days for each of these actions is very short for interested parties, especially smaller businesses with limited staff, giving them time to notice, review and act upon the state's action. To address this, we suggest 20 days is more appropriate for proposed rule 11.3 as well as 11.5(4) (request for second-tier review) and 11.10(1) (stay of agency action). The deadlines in rules 11.4 (interventions) and 11.6 (informal debriefing) may be best established at 10 days."

The Office has considered the Alliance's comment, but ultimately has not incorporated its suggested changes into this Adopted and Filed rule making. In reviewing other state agencies' vendor appeal and stay time frames, the Office observes that five days is in fact quite standard and consistent with the time frames established by other agencies in the vendor appeal context. For example, the vendor appeal rules of the Department of Administrative Services—the State's centralized agency that is responsible for the purchasing of goods and services of general use—located at 11—subrule 117.20(1), states, in part: "Any vendor that filed a timely bid or proposal and that is aggrieved by an award of the department may appeal the decision by filing a written notice of appeal … within five calendar days of the date of award, exclusive of Saturdays, Sundays, and legal state holidays" (emphasis added); see also 11—subparagraph 117.20(3)"a"(2), which states: "Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order, and shall state the reasons justifying a stay" (emphasis added).

Five days is also consistent with the time frames established by other state agencies as described below:

- Rule 531—2.17(99G) of the Iowa Lottery Authority states, in part, "Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the lottery may appeal the decision by filing a written notice of appeal before the Iowa Lottery Authority Board … within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays" (emphasis added);
- The Iowa Telecommunications and Technology Commission's rule 751—5.17(8D) states, in part, "Any vendor whose bid or proposal has been timely filed and that is aggrieved by the commission's notice of intent to award may appeal the decision by filing a written notice of appeal before the Iowa

telecommunications and technology commission, within five days of the date of the notice of intent to award, exclusive of Saturdays, Sundays, and legal state holidays" (emphasis added). 751—subparagraph 5.18(8)"a"(1) states, in part, "The petition for stay shall be filed with the notice of appeal and shall state the reasons justifying a stay" (emphasis added);

- Rule 193—3.2(546) of the Professional Licensing and Regulation Bureau states, in part, "Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the board may appeal by filing a written notice of appeal with the board within five days of the date of the award, exclusive of Saturdays, Sundays, and legal state holidays" (emphasis added). 193—subrule 3.3(7) states, in part, "The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay" (emphasis added);
- 441—subrule 7.42(1) of the rules of the Department of Human Services states, in part, "If the party seeking reconsideration continues to be an aggrieved party following receipt of the decision on reconsideration, the aggrieved party may file an appeal within five days of the date of the department's decision on reconsideration" (emphasis added), and 441—paragraph 7.45(1)"a" states, in part, "The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value" (emphasis added); and
- The Iowa Finance Authority's rule 265—15.15(16) states, in part, "Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the authority may appeal the decision by filing a written notice of appeal before the Iowa finance authority board at the address set forth in rule 265—1.3(16) within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays" (emphasis added).

The Office made nonsubstantive grammatical and clarifying changes as a result of discussion with the Administrative Code Editors.

Adoption of Rule Making

This rule making was adopted by the Office on November 27, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

The Office has, simultaneous with this filing, adopted and filed a separate rule making (**ARC 4823C**, IAB 12/18/19) that establishes general waiver processes pursuant to Iowa Code section 17A.9A(1).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making action is adopted:

Adopt the following **new** 129—Chapter 11:

CHAPTER 11
VENDOR APPEALS

129—11.1(8B) Purpose.

11.1(1) The office is required to institute procedures to ensure effective and efficient compliance with information technology standards established by the office, and to develop policies and procedures that apply to all information technology goods and services acquisitions and ensure the compliance of all participating agencies. In furtherance of that objective, these rules establish the process by which vendors may challenge the office's or participating agencies' administration of competitive selection processes, prequalification processes, or reverse auction processes administered by the office or participating agencies as authorized by the office. A vendor's failure to utilize this process shall be deemed a failure to exhaust administrative remedies.

11.1(2) These rules shall not apply if a purchasing entity has adopted its own rules governing award or disqualification decisions of or by the purchasing entity that conflict with these rules. However, even if a purchasing entity has adopted its own vendor appeal rules, the purchasing entity may elect to follow these rules in the case of information technology goods and services acquisitions to the extent the purchasing entity has stated its intention to follow these rules in the competitive selection documents or other applicable solicitation documents.

129—11.2(8B) Definitions. The definitions in Iowa Code section 8B.1 and rule 129—10.2(8B) shall apply to this chapter. In addition, the following definitions shall also apply:

"Award," for purposes of this chapter, means the selection of a vendor to receive a contract, master information technology agreement, or order for information technology as the outcome of a competitive selection process or reverse auction process, or decision to not prequalify or remove a vendor from a prequalified list as part of a prequalification process.

"Head of the purchasing entity" means the head of the purchasing entity or that person's designee.

129—11.3(8B) Filing an appeal.

11.3(1) *Notice of intent to appeal.* Any vendor that filed a timely bid or proposal and that is aggrieved or adversely affected by an award ("appellant"), including a decision of the purchasing entity to disqualify a vendor, may appeal the decision by filing a notice of intent to appeal with the entity issuing the competitive selection documents or other applicable solicitation documents ("purchasing entity") to the purchasing entity's address as identified in the competitive selection documents or other applicable solicitation documents. The purchasing entity must actually receive the notice of intent to appeal within the time frame specified in the competitive selection documents or other applicable solicitation documents for the notice of intent to appeal and thereby the appeal to be considered timely. If the competitive selection documents or other applicable solicitation documents are silent on the time frame to appeal, the time frame shall be five days from the date of the issuance of the notice of intent to award. Failure to timely file a notice of intent to appeal will result in dismissal.

11.3(2) *Initial disclosures—public, redacted proposals and evaluation materials.* Following the purchasing entity's receipt of the notice of intent to appeal, the purchasing entity will transmit to the appellant a public copy from which claimed confidential or proprietary information has been excised of the awardee's proposal and, to the extent applicable, evaluation committee materials, documentation, analysis, and results. Upon written request of the appellant, the purchasing entity will provide a public copy from which claimed confidential or proprietary information has been excised of unsuccessful vendors' proposals. The appellant shall be entitled to no additional discovery, materials, or information in furtherance of the appellant's appeal unless and until the proceedings advance to a second-tier review.

11.3(3) *Notice of appeal.* Within five days of the appellant's receipt of the initial disclosures required by subrule 11.3(2), the appellant shall file a formal notice of appeal with the purchasing entity to the purchasing entity's address as identified in the competitive selection documents or other

applicable solicitation documents. Such notice of appeal shall conform to and comply with the form and format and content requirements set forth in subrules 11.3(4) and 11.3(5). The purchasing entity must actually receive the notice of appeal within the five-day time frame. Failure to timely file a notice of appeal will result in dismissal.

11.3(4) *Form and format.* Notices of appeal should be concise and logically arranged. No other technical forms of pleading are required.

11.3(5) *Contents.* Notice pleading is not permitted. The notice of appeal shall:

a. Include the name, address, email address, and telephone and facsimile numbers of the vendor;

b. Be signed by the vendor or the vendor's authorized representative;

c. Identify the specific award forming the basis of the vendor's challenge;

d. Set forth information establishing the timeliness of the appeal;

e. State the specific legal and factual grounds upon which the vendor is appealing the award, in a manner that ties the underlying factual assertions to the legal grounds forming the basis of the appeal;

f. Describe how the vendor is aggrieved or adversely affected by the award;

g. If applicable, explain whether and why the vendor failed to raise the issue(s) raised in the appeal through a request for clarification process or other question and answer process available during the competitive selection process;

h. State that the vendor agrees and consents to, and by submitting its notice of appeal to the purchasing entity stipulates to the entry of, a protective order as a condition precedent to receiving any documents or information containing or comprised of, in whole or in part, confidential or proprietary information relevant to the vendor's appeal should the matter proceed to a second-tier review; and

i. Set forth the specific relief requested, i.e., whether the vendor is requesting that the award be reversed in its entirety or remanded back to the purchasing entity to correct any legal errors.

11.3(6) *Public records.* A notice of appeal shall be considered a public record and may be distributed to third parties, including to the vendor's competitors, in accordance with rule 129—11.4(8B). If the vendor believes the notice of appeal contains information that should be maintained by the purchasing entity as proprietary or confidential in accordance with applicable law, the vendor must conspicuously identify such a request on the first page of the notice of appeal; mark each page upon which confidential or proprietary information appears; submit a public copy from which claimed confidential or proprietary information has been excised (information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible); enumerate the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential in the notice of appeal; and explain why disclosure of the specific information would not be in the best interest of the public in the notice of appeal. Notwithstanding the foregoing, intervenors, including competitors of the vendor filing the notice of appeal, may still receive an unredacted copy of a notice of appeal subject to the protective order requirements and processes set forth in this chapter.

11.3(7) *Failure to comply.* An appeal may be dismissed for failure to comply with any of the requirements of this rule.

129—11.4(8B) Notice of receipt of appeal to awardee and intervention.

11.4(1) *Notice of likely appeal.* Following the purchasing entity's receipt of a timely notice of intent to appeal, the purchasing entity shall promptly give notice of the likely appeal to the awardee(s), if any.

11.4(2) *Intervention.* The awardee(s) may intervene within five days of such notification by filing a notice of intent to intervene with the purchasing entity.

11.4(3) *Initial disclosures—notice of appeal and public, redacted proposals and evaluation materials.* Following the purchasing entity's receipt of a timely formal notice of appeal in accordance with subrule 11.3(3), the purchasing entity will transmit to the intervenor(s) a public copy from which claimed confidential or proprietary information has been excised of the formal notice of appeal and the appellant's proposal and, to the extent applicable, evaluation committee materials, documentation, analysis, and results. Subject to agreement and consent by the awardee(s) to the entry of a protective order in accordance with the provisions of this chapter governing protective orders, the purchasing entity

may provide unredacted copies of the formal notice of appeal to the intervenor(s). If the intervenor(s) does not agree to the entry of a protective order, the purchasing entity will only provide the awardee(s) with a public, redacted copy of the notice of appeal. Upon written request of the intervenor, the purchasing entity will provide a public copy from which claimed confidential or proprietary information has been excised of unsuccessful vendors' proposals. The intervenor(s) shall be entitled to no additional discovery, materials, or information unless and until the proceedings advance to a second-tier review.

11.4(4) *Intervention.* Within five days of the appellant's receipt of the initial disclosures required by subrule 11.4(3), the intervenor(s) may submit a written justification defending the award, which written justification shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations set forth in rule 129—11.3(8B) applicable to notices of appeal.

129—11.5(8B) First-tier review.

11.5(1) *Internal review.* Following the receipt of a notice of appeal in accordance with rule 129—11.3(8B) and written justification or expiration of the period for intervention in accordance with rule 129—11.4(8B), the purchasing entity shall conduct an internal review of the grounds upon which the vendor challenges the award and the facts and circumstances involved. The purchasing entity shall issue a brief written decision affirming, modifying, or reversing, in whole or in part, the award and order any relief as determined appropriate by the purchasing entity.

11.5(2) *Consultation with office.* The office may consult with and assist other purchasing entities in conducting the review required by this rule.

11.5(3) *Waiver.*

a. An issue that is not raised in the original notice of appeal shall be deemed waived for purposes of any first-, second-, or third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such issues may not be raised for the first time at a second-tier review hearing.

b. If a competitive selection document or other solicitation document contains a request for clarification process, or other similar question and answer process, failure of a vendor to raise an issue (including but not limited to related to the bid specifications) that could have been raised as part of that process shall constitute a waiver of any objection or argument as part of any first-, second-, or third-tier review or judicial review; such waiver is intended to ensure that purchasing entities are able to correct material issues or errors with competitive selection documents or award processes as early as possible in an orderly and efficient fashion, in a manner that is fair to all prospective vendors, and in a manner that avoids costly and time-consuming litigation to purchasing entities and the state.

11.5(4) *Final decision and request for second-tier review.* The purchasing entity's written decision shall become final unless within five days of the issuance thereof a vendor that is aggrieved or adversely affected by such decision files a request for second-tier review. A request for second-tier review shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations, set forth in rule 129—11.3(8B) applicable to notices of appeal. An issue that was raised in the original notice of appeal but that is not again raised in a request for second-tier review shall be deemed waived for purposes of any second- or third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such unraised issues may not be raised for the first time at a second-tier review hearing.

11.5(5) *Nonparticipation of agency head or designee.* The head of the purchasing entity or that person's designee who will serve as final decision maker in the event of a third-tier review, as applicable, shall not participate in the internal review or formulation of the written decision required by this rule.

129—11.6(8B) Informal debriefing. Within five days of the issuance of a first-tier review decision, on the purchasing entity's own motion or if requested by the appellant or intervenor following an adverse first-tier review decision, the purchasing entity may grant an opportunity for the adversely affected party to appear before the purchasing entity for an informal discussion and debriefing of the basis of the first-tier decision and surrounding facts and circumstances forming the basis of such decision. This is an elective

step in the process and is not required as a prerequisite to initiating a second-tier review. Likewise, the purchasing entity is neither required to offer nor required to grant a request for an informal debriefing.

11.6(1) An informal debriefing is intended to provide an interested party with an opportunity to share in an informal setting the party's concerns with the process leading to the award. A party is not required to attend an informal debriefing, but attendance is strongly encouraged.

11.6(2) Because proposals, notices of appeal, and evaluation committee materials, documentation, analysis, and results may contain confidential or proprietary information, a party's participation may be contingent on the party's agreeing and consenting to the entry of a protective order in accordance with the provisions of this chapter governing protective orders, or the discussion will be limited to the public, redacted contents of materials or information forming the basis of any discussion.

11.6(3) A party may be represented by legal counsel at an informal debriefing.

11.6(4) Following the informal debriefing, the purchasing entity may affirm, modify, or reverse, in whole or in part, its prior decision, or the appellant may withdraw its appeal.

11.6(5) The head of the purchasing entity or that person's designee who will serve as final decision maker in the event of a third-tier review, as applicable, shall not participate in an informal debriefing conducted in accordance with this rule or in preparing any decision or order affirming, modifying, or reversing, in whole or in part, a prior decision.

129—11.7(8B) Second-tier review.

11.7(1) *Hearing scheduled.* Upon receipt of a request for second-tier review, the purchasing entity shall contact the administrative hearings division of the department of inspections and appeals to conduct a hearing. The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's administrative rules governing contested case proceedings, unless the provisions of this chapter provide otherwise. In applying the office's administrative rules governing contested case proceedings where the purchasing entity is an entity other than the office, the terms "office" and "chief information officer" shall be deemed to refer to the applicable purchasing entity and head of the purchasing entity as defined in this chapter, respectively. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the request for second-tier review was received by the purchasing entity.

11.7(2) *Appeal security.* To the extent required in the competitive selection documents or other applicable solicitation documentation, the vendor initiating the appeal shall supply to the purchasing entity an appeal security equal to 25 percent of total contract value with the request for second-tier review. For the purpose of this rule, "contract value" means the aggregate total compensation the vendor is likely to receive under the entire term of the contract, including all extensions and renewals, if awarded. If the contract value is not readily discernable, the purchasing entity will supply the vendor with an estimate upon request, which estimate shall be final. A vendor forfeits an appeal security if, as determined by the purchasing entity, following resolution of the appeal, the appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor. Failure to supply the purchasing entity with the appeal security required by this rule shall result in dismissal of the appeal.

11.7(3) *Discovery.* Any discovery by the appellant is limited to what actually occurred at the purchasing entity as it relates to the award process in accordance with the review standards set forth in this chapter. Overbroad or unduly burdensome discovery requests shall not be permitted.

a. Additional disclosures. In addition to the materials, documents, and information disclosed as part of the initial disclosures processes set forth in rules 129—11.3(8B) and 129—11.4(8B), and, to the extent such materials, documents, or information contain or are comprised of confidential or proprietary information, subject to a protective order entered in accordance with rule 129—11.11(8B), the purchasing entity will promptly transmit to the other parties any additional, relevant materials, documents, or information identified as part of its internal review during the first-tier review. Generally, relevant materials, documents, or information include:

(1) The competitive selection documents and any amendments thereto;

(2) Bids, proposals, or other like responses submitted by prospective vendors; and

(3) Documentation generated during the evaluation process, including the final results.

b. Discovery requests. As a condition of requesting a second-tier review, the appellant is required to promptly respond to discovery requests made by the purchasing entity to the appellant, which requests may, by way of example only, be designed to probe whether the appellant failed to disclose information relevant to the award process that would have resulted in the appellant's disqualification or whether the appellant engaged in any previously unreported inappropriate contact with the purchasing entity that would have resulted in the appellant's disqualification. An appellant that would have been disqualified lacks standing and is not prejudiced by the purchasing entity's decision to issue an award to a different vendor.

c. Protective orders. Because proposals, notices of appeal, and evaluation committee materials, documentation, analysis, and results may contain confidential or proprietary information, a party's access to such materials, documents, or information is contingent on the entry of a protective order in accordance with the provisions of this chapter governing protective orders, or the party's access will be limited to the public, redacted contents of such materials, documents, or information.

11.7(4) *Witnesses and exhibits.* The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the date set for the hearing. In order to avoid duplication or the submission of extraneous materials, the parties must meet either in person or by telephonic or electronic means prior to the hearing to discuss the evidence to be presented.

11.7(5) *Hearings.*

a. Telephonic or electronic hearings preferred. Except where the determination of material factual issues presented turns on the credibility of witnesses, or where otherwise ordered by the presiding officer on the presiding officer's own motion, hearings shall be conducted by telephonic or electronic means. A party requesting an in-person hearing shall bear the burden of forwarding sufficient reasons to justify an in-person hearing. If the hearing is conducted by telephonic or electronic means, the parties must deliver all exhibits to the office of the presiding officer at least three days prior to the time the hearing is conducted.

b. Recording and transcription. Oral proceedings in connection with a vendor appeal may be either recorded by mechanized means or transcribed by a certified shorthand reporter at the request of a party. A party requesting that a certified shorthand reporter transcribe the hearing shall bear the costs. Parties may obtain copies of recordings or transcriptions of proceedings from the presiding officer or certified shorthand reporter, as applicable, at the requester's expense.

c. Retention time. The purchasing entity shall file and retain the recording or transcription of oral proceedings for at least five years from the date of the decision.

11.7(6) *Proposed decision.* The presiding officer shall issue a proposed, written decision within 30 days of the hearing.

129—11.8(8B) Third-tier review. The proposed decision from a second-tier review shall become the final decision of the purchasing entity within ten days after the presiding officer has mailed the proposed decision to the parties unless prior to that time a party submits a request for third-tier review of the proposed decision in accordance with the provisions of this rule or the purchasing entity initiates review of the proposed decision on its own motion.

11.8(1) A party appealing the proposed decision to the head of the purchasing entity shall mail or deliver a request for third-tier review to the purchasing entity's headquarters and to the office's headquarters. A request for third-tier review shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations, set forth in rule 129—11.3(8B) applicable to notices of appeal. An issue that was raised in the original notice of appeal and again raised in a request for second-tier review but not raised in the request for third-tier review shall be deemed waived for purposes of any third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such unraised issues may not be raised for the first time at any oral proceedings held in connection with a request for third-tier review.

11.8(2) The party appealing the proposed decision shall be responsible for causing the transfer of and otherwise submitting the record forming the basis of prior stages to the presiding officer, including filing the recording and transcript generated as part of the second-tier review. The party appealing the proposed decision shall bear the cost of such transfer and submission, including the cost of obtaining the recording and transcript generated as part of the second-tier review.

11.8(3) Any party may submit to the purchasing entity exceptions to and a brief in support of or in opposition to the proposed decision within 15 days after the mailing of a request for third-tier review. The submitting party shall mail copies of any exceptions or brief it files to all other parties to the proceeding. The head of the purchasing entity shall notify the parties if the head of the purchasing entity deems oral arguments by the parties to be appropriate.

11.8(4) When the head of the purchasing entity consents or on the head of the purchasing entity's own motion, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. The head of the purchasing entity shall notify all parties in advance of the scheduled time and place for oral arguments. An oral argument may be either recorded by mechanized means or transcribed by a certified shorthand reporter at the request of a party. A party requesting that a certified shorthand reporter transcribe an oral argument shall bear the costs. Parties may obtain copies of recordings or transcriptions of proceedings from the head of the purchasing entity or certified shorthand reporter, as applicable, at the requester's expense.

11.8(5) The head of the purchasing entity shall review the proposed decision based on the record developed and issues properly raised and decided in all prior stages. The issues for review shall be those specified in the party's request for third-tier review and which were properly raised or decided during all prior stages. The head of the purchasing entity shall not take any further evidence. The head of the purchasing entity shall issue a final decision of the purchasing entity. The decision shall be in writing and shall conform to the requirements of Iowa Code chapter 17A.

11.8(6) The office may consult with and assist another purchasing entity in conducting a third-tier review.

11.8(7) Any party may file an application for rehearing in accordance with Iowa Code section 17A.16(2) and rule 129—6.30(8B,17A).

129—11.9(8B) Standards, burdens, and remedies applicable in vendor appeal. The following standards, burden of proof and persuasion, and available remedies shall apply at all stages of review before the purchasing entity, including first-, second-, and third-tier reviews.

11.9(1) *Standard of review/prejudice.* Before the purchasing entity, the standard of review to be applied during a vendor appeal, including for purposes of either a first-, second-, or third-tier review, is whether the procurement process substantially complied with the relevant rules or legally binding procedures applicable to the award process at issue and, if not, whether there is prejudice to the nonprevailing vendor(s) because:

a. The noncompliance demands a conclusion that the award process was not conducted fairly, openly or objectively; and

b. Compliance with the rule or legally binding procedure would have resulted in a different outcome.

11.9(2) *Burden of proof and persuasion.* Before the purchasing entity, including for purposes of a first-, second-, or third-tier review, the aggrieved or adversely affected vendor seeking to set aside a notice of intent to award bears the burden of proof and persuasion as the moving party. The burden of proof is clear and convincing evidence.

11.9(3) *Remedies for noncompliance.* Before the purchasing entity, at any stage, including as part of a first-, second-, or third-tier review, if a determination is made that an award process failed to substantially comply with the standard set forth in subrule 11.9(1) and resulted in the requisite prejudice, the remedy for such founded noncompliance shall be narrowly tailored and specifically designed to remediate the specific noncompliance. Wholesale remedies invalidating or voiding solicitations should be avoided unless the facts and circumstances are such that no conceivable measures could be taken to remediate the founded noncompliance.

a. Remedies for founded noncompliance may include, but shall not be limited to:

(1) Remanding the award back to the evaluation committee or other applicable selection group with directions to take steps to remedy the noncompliance and reissue the award if the purchasing entity determines the contract is still necessary to meet the purchasing entity's governmental or business needs or objectives;

(2) Where the facts and circumstances are such that no conceivable measures could be taken to remediate the founded noncompliance, voiding the award process and resulting contract and requiring that the contract be recompeted if the purchasing entity determines a contract is still necessary to meet the purchasing entity's governmental or business needs or objectives.

b. In determining the appropriate remedy, consideration shall be given to all the circumstances surrounding the award, including the seriousness of the deficiency, the degree of prejudice to other parties or to the integrity of the procurement system, the good faith of the parties, the cost to the purchasing entity, the urgency of the solicitation, and the impact on the purchasing entity's mission and best interests of the state.

11.9(4) *Award of costs against appellant.* If at any point in the appeal process an appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor, the purchasing entity may order any one or combination of the following against the appellant:

a. Dismissal of the appeal;

b. The payment of costs incurred in administering the process, including any hearing and related expenses;

c. The payment of attorneys' fees and consultant and expert witness fees;

d. Suspension or debarment from future opportunities; or

e. Forfeiture of the appeal security supplied in accordance with subrule 11.7(2).

129—11.10(8B) Stay of agency action for vendor appeal.

11.10(1) *When available.*

a. Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an additional appeal bond equal to 120 percent of the total contract value. If the contract value is not readily discernable, the office will supply the vendor with an estimate upon request, which estimate shall be determinative. A vendor forfeits an appeal security if, as determined by the purchasing entity, following resolution of the appeal the appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor.

b. Any party adversely affected by a final decision and order may petition the purchasing entity for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the purchasing entity within five days of receipt of the final decision and order and shall state the reasons justifying a stay.

11.10(2) *When granted.* In determining whether to grant a stay, the purchasing entity shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

11.10(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the purchasing entity or any other party.

11.10(4) *Where no stay.* Except where provided otherwise in the contract between the parties, in the absence of a stay, the purchasing entity may, in its discretion, proceed to enter into a contract with the awardee during the pendency of the appeal. In the event the purchasing entity enters into a contract with the awardee during the pendency of an appeal and the contract is ultimately determined to be void through this appeal process, following the exhaustion of all opportunities for further appeal including intra-agency appeal or judicial review or appeal therefrom, the original awardee shall only be entitled to amounts, if any, due and owing for actual services or deliverables provided up to the date the contract is declared void and the opportunity for further appeal has fully expired.

129—11.11(8B) Protective orders.

11.11(1) *General rule/purpose.* To facilitate the fair and objective evaluation of proposals and cost-effective administration of vendor appeal processes, information and materials of or related to procurement processes or awards will not be released or otherwise available for public inspection prior to the issuance of the notice of intent to award or final disposition of any vendor appeal taken in accordance with this chapter, whichever occurs later. By submitting materials, documents, or information to the office as part of a competitive selection process or other award process, the vendor agrees and consents to the purchasing entity's distribution of such materials, documents, or information to third parties, including other vendors that may be the submitting vendor's competitors, as part of an appeal process, including, subject to the entry of a protective order in accordance with this rule, materials, documents, or information comprised, in whole or in part, of confidential or proprietary information. For purposes of any materials, documents, or information disclosed as part of a vendor appeal, parties are only entitled to materials, documents, or information comprised, in whole or in part, of confidential or proprietary information after a protective order has been entered in accordance with this rule. By filing a notice of appeal in accordance with rule 129—11.3(8B) or a written justification in accordance with rule 129—11.4(8B), the appellant or the awardee, as applicable, agrees and consents to the entry of a protective order in substantially the same form as set forth in this rule as a condition precedent to receiving any documents or information containing or comprised of, in whole or in part, confidential or proprietary information related to the appeal. In the absence of a protective order, parties will only receive public, redacted copies of materials or information.

11.11(2) *How issued.* In order to facilitate the exchange of information and materials as is necessary to facilitate an efficient and effective appeal process, the purchasing entity may enter a protective order(s) on its own motion or on the request of any party seeking access to confidential or proprietary information. The purchasing entity generally will not issue a protective order where an appellant is not represented by counsel, in which case the parties will only receive a public, redacted copy(ies) of information and materials.

11.11(3) *Form of protective order.* Protective orders entered in accordance with this rule shall be issued in substantially the following form and shall establish procedures for access to confidential and proprietary information, identification and safeguarding of that information, and submission of redacted copies of documents omitting confidential and proprietary information.

(NAME OF PURCHASING ENTITY)

(NAME OF APPELLANT), **APPELLANT,** **V.** **(NAME OF PURCHASING ENTITY),** **RESPONDENT,** **(NAME OF INTERVENOR(S), IF ANY),** **INTERVENOR.**	**DOCKET NO. ____ ("ACTION")** **PROTECTIVE ORDER**

Certain information that may be exchanged in discovery involves the production of trade secrets, confidential business information, or other confidential or proprietary information. Accordingly, (Name of Purchasing Entity) ("Purchasing Entity") enters the following protective order ("Order") to govern the proceedings. Where the term "Purchasing Entity" as used herein refers to the Purchasing Entity serving in an adjudicatory capacity in connection with this Action, such reference, to the extent the procedural

posture of the Action at the time necessitates such an understanding, shall be understood as referring to any tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel.

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material ("Protected Material"). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: "CONFIDENTIAL" or "RESTRICTED – ATTORNEYS' EYES ONLY" (referred to both individually and collectively as "Label"). A Label shall be placed clearly on each page of the Protected Material (except native files, deposition and hearing transcripts) for which such protection is sought. A Label shall be included in the title of the designated native files. For any deposition and hearing transcripts, a Label shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as "CONFIDENTIAL" or "RESTRICTED – ATTORNEYS' EYES ONLY."

2. With respect to documents, information or material designated "CONFIDENTIAL" or "RESTRICTED – ATTORNEYS' EYES ONLY" (referred to both individually and collectively as "DESIGNATED MATERIAL"), subject to the provisions herein and unless otherwise stated herein or provided by applicable law or rule, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Iowa Rules of Civil Procedure; (b) all prehearing and hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pleadings, exhibits to pleadings and other filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

3. Protected Material (i.e., "CONFIDENTIAL" or "RESTRICTED – ATTORNEYS' EYES ONLY") may be designated as such at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL or Labeled shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s) as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Material and any documents, information or material derived from or based on such Protected Material.

4. "CONFIDENTIAL" documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the producing party, upon order of the Purchasing Entity, or as set forth in paragraph 12 herein:

(a) outside counsel of record in this Action for the Parties. The Attorney General's Office shall be considered outside counsel of the Purchasing Entity for purposes of this Order;

(b) employees of such outside counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;

(c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action, provided the names and titles of such in-house counsel have been disclosed to the designating party;

(d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that either party may in good faith request the other Party's consent to designate one or more additional representatives, the other Party shall not unreasonably withhold such consent, and the requesting Party may seek leave to designate such

additional representative(s) if the requesting Party believes the other Party has unreasonably withheld such consent;

(e) outside consultants or experts (i.e., not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; and (2) before access is given, the consultant or expert has completed the Acknowledgment Form attached as Exhibit A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert at least ten (10) days before access to the Protected Material is to be given to that consultant or expert to afford the producing Party an opportunity to object to and notify the receiving Party in writing that it objects to the disclosure of the Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Purchasing Entity within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking resolution of the dispute with respect to the proposed disclosure. No disclosure shall occur until all such objections are resolved by agreement of the Parties or order of the Purchasing Entity;

(f) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial/hearing consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and

(g) the Purchasing Entity serving in an adjudicatory capacity in connection and its personnel or tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel.

5. A Party shall designate documents, information or material as "CONFIDENTIAL" only upon a good faith belief that the documents, information or material contains confidential or proprietary information or trade secrets of the Party or a third party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.

6. Documents, information or material produced pursuant to any discovery request in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.

7. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material "RESTRICTED – ATTORNEYS' EYES ONLY."

8. For Protected Material designated RESTRICTED – ATTORNEYS' EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 4(a), 4(b), 4(e), 4(f) and 4(g).

9. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall gather all copies of such documents, information or other material and return them to the producing Party, except for any pages

containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party within ten (10) business days.

10. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties are hereby ORDERED to safeguard all such documents, information and material to protect against disclosure to any unauthorized persons or entities.

11. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating party; (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information; (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL; (iv) a current or former officer, director or employee of the producing Party or a current or former officer, director or employee of a company affiliated with the producing Party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to paragraphs 8 and 9 of this Order); (vi) an independent contractor, consultant, and/or expert retained for the purpose of litigating this Action (subject to paragraph 4 of this Order); (vii) court reporters and videographers; (viii) the Purchasing Entity serving in an adjudicatory capacity in connection and its personnel or tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel; or (ix) other persons entitled hereunder to access to DESIGNATED MATERIAL. Such DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or in an order issued by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

12. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as "CONFIDENTIAL" or "RESTRICTED – ATTORNEYS' EYES ONLY" pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as "Confidential" in accordance with this Order.

13. Any DESIGNATED MATERIAL that is filed in connection with this Action shall be filed under seal and shall remain under seal until further order of the Purchasing Entity. The filing party shall be responsible for informing the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action that the filing should be sealed and for placing the legend "FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER" above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a prehearing pleading filed with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall, except to the extent otherwise provided for or required by applicable law or rule, be redacted to the extent necessary and the pleading or exhibit filed publicly with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

14. The Order applies to prehearing discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at any hearing of this Action, or from using any information contained in DESIGNATED MATERIAL at any hearing of this Action, subject to any prehearing order issued by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

15. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) business days of receipt of the written request, the requesting Party may apply to the Purchasing Entity for relief. Upon any such application to the Purchasing Entity, the burden shall be on the designating Party to show why its classification is proper. Such application

shall be treated procedurally as a motion to compel pursuant to Iowa Rule of Civil Procedure 1.517, subject to that Rule's provisions relating to sanctions. In making such application, the requirements of the Iowa Rules of Civil Procedure shall be met. Pending the Purchasing Entity's ruling or order on such application, or the ruling or order by the tribunal serving as an agent of the Purchasing Entity in connection with this Action, the original designation of the designating Party shall be maintained and respected.

16. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has agreed to be bound by this Order. A copy of the Acknowledgment Form is attached as Exhibit A.

17. To the extent that any discovery is taken of persons who are not Parties to this Action and in the event that such third parties contended the discovery sought involves trade secrets, confidential business information, or other proprietary information, such third parties may agree to be bound by this Order.

18. To the extent that discovery or testimony is taken of third parties, the third parties may designate as "CONFIDENTIAL" or "RESTRICTED – ATTORNEYS' EYES ONLY" any documents, information, or other material, in whole or in part, produced or given by such third parties. The third parties shall have ten (10) business days after production of such documents, information, or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as "CONFIDENTIAL" in accordance with this Order.

19. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall be returned to the producing Party or, where agreed to by the producing Party, destroyed by the receiving Party. The receiving Party shall verify the return or destruction, as applicable, by affidavit furnished to the producing Party upon the producing Party's request.

20. The failure to designate documents, information, or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information, and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.

21. Any Party knowing or believing that any other Party subject to this Order is in violation of or intends to violate this Order and after raising the question of violation or potential violation with the opposing Party and having been unable to resolve the matter by agreement, such Party may move the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

22. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.

23. Nothing in this Order shall be construed to effect an abrogation, waiver, or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or hearing privilege.

24. Each of the Parties shall also retain the right to file a motion with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action: (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably

necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

25. Nothing in this Order applies to a Party's use of its own DESIGNATED MATERIAL which it designated as such pursuant to this Order, or to material which the Party had available to it through means other than discovery in this proceeding.

26. **(SAMPLE REGULATORY COMPLIANCE PROVISION—INSERT ALTERNATE OR ADDITIONAL LANGUAGE IF NATURE OF DATA OR INFORMATION POTENTIALLY INVOLVED IN ACTION REQUIRES AS MUCH)** The Parties recognize that they may be required to produce in response to discovery requests patient information protected by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations found at 45 C.F.R. parts 160, 162, and 164 ("HIPAA"). Any such information exchanged shall be subject to this Order, shall be used solely for the purpose of the litigation of this Action, and shall at all relevant times be protected by the Parties from further redisclosure by the Parties. Any document containing information protected by HIPAA shall be filed under seal and shall not be open to public examination. At the conclusion of the litigation of this Action, all documents exchanged that contain information protected by HIPAA shall be either returned to the disclosing Party or destroyed, with the exception that copies of such records may be retained for document retention purposes only. At the end of any relevant document retention obligation, the documents protected by this provision of this Order shall be either returned to the disclosing Party or destroyed.

EXHIBIT A—(NAME OF PURCHASING ENTITY)

(NAME OF APPELLANT), **APPELLANT,** **V.** **(NAME OF PURCHASING ENTITY),** **RESPONDENT,** **(NAME OF INTERVENOR(S), IF ANY),** **INTERVENOR.**	**DOCKET NO. ____ ("ACTION")** **PROTECTIVE ORDER ACKNOWLEDGMENT FORM ("ACKNOWLEDGMENT FORM")**

Certain information that may be exchanged in discovery involves the production of trade secrets, confidential business information, or other confidential or proprietary information.

I, ____, declare that:

1. My address is ____.
My current employer is ____.
My current occupation is ____.

2. I have received a copy of the Protective Order in this Action. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as "CONFIDENTIAL" or "RESTRICTED – ATTORNEYS' EYES ONLY" that is disclosed to me.

4. Promptly upon termination of these actions, I will return or destroy, as applicable, all documents and things designated as "CONFIDENTIAL" or "RESTRICTED – ATTORNEYS' EYES ONLY" that came into my possession, and all documents and things that I have prepared relating thereto, to or at the direction of the outside counsel for the party by whom I am employed.

5. I hereby submit to the jurisdiction of the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action for the purpose of enforcement of the Protective Order in this Action.

I declare under penalty of perjury that the foregoing is true and correct.
Signature ____
Date ____

IT IS SO ORDERED.

Dated this the ___ day of ____ ____.
(name of Purchasing Entity Representative or Agent Issuing Protective Order)

11.11(4) *Violation of terms of protective order.* Any violation of the terms of a protective order may result in the imposition of sanctions as the purchasing entity deems appropriate, including prohibition from participation in the remainder of the protest, dismissal of the protest, or suspension or debarment from future opportunities.

129—11.12(8B) Issues not for consideration. The following are types of challenges that shall not form the basis of a vendor appeal. Any attempted vendor appeal that fits into one of the following categories shall be dismissed anytime sufficient information is obtained to determine the appeal fits into one of the following categories.

11.12(1) *Contract administration.* Relating to contract administration. The administration of an existing contract is within the discretion of the purchasing entity. Disputes between a vendor and the agency are resolved pursuant to the disputes clause of the contract.

11.12(2) *Subcontract protests.* Appeals of the award or selection, or proposed award or selection, of a subcontractor. Such selection is determined pursuant to the applicable clauses of the contract.

11.12(3) *Protests of orders.* Individual orders, statements of work, or other transactional documents executed under an existing contract, including a master information technology agreement.

11.12(4) *Alternative procurement methods.* A decision to procure information technology through a method other than a competitive selection process, reverse auction process, or prequalification process. Alternative procurement methods that do not properly form the basis of a vendor appeal under this chapter include but are not limited to:

a. A cooperative procurement agreement pursuant to Iowa Code section 8B.24(5)*"a."*

b. A negotiated contract under any of the circumstances set forth in Iowa Code section 8B.24(5)*"b"*(1) to (3).

c. An intergovernmental agreement with a governmental entity that has the resources available to supply the information technology sought.

d. An emergency procurement.

e. A sole source procurement.

11.12(5) *Suspensions or debarments.* Suspensions or debarments.

These rules are intended to implement Iowa Code chapter 8B.

[Filed 11/27/19, effective 1/22/20]
[Published 12/18/19]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4808C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to concurrent enrollment programs

The State Board of Education hereby amends Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, chapter 164 [Senate File 603].

Purpose and Summary

These amendments to Chapter 12 reflect legislative changes from the 2019 Legislative Session. Item 1 makes conforming modifications pursuant to 2019 Iowa Acts, chapter 164. Item 2 adds a new subrule to Chapter 12 to clarify the conditions under which a school district or accredited nonpublic school may use community college courses to meet offer-and-teach requirements. Item 2 also makes reference to new rule 281—97.8(261E) adopted in **ARC 4812C**, IAB 12/4/19.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4682C**. A public hearing was held on October 29, 2019, at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board on November 20, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 12.5(16) as follows:

12.5(16) *Subject offering.* ~~A~~ Except as provided for under subrule 12.5(21), a subject shall be regarded as offered when the teacher of the subject has met the licensure and endorsement standards of the state board of educational examiners for that subject; instructional materials and facilities for that subject have been provided; and students have been informed, based on their aptitudes, interests, and abilities, about possible value of the subject.

A subject shall be regarded as taught only when students are instructed in it in accordance with all applicable requirements outlined herein. Subjects which the law requires schools and school districts to offer and teach shall be made available during the school day as defined in subrules 12.1(8) to 12.1(10).

ITEM 2. Adopt the following **new** subrule 12.5(21):

12.5(21) *Contracted courses used to meet school or school district requirements.* A school or school district may use contracted community college courses meeting the requirements of rule 281—22.8(261E) under the following conditions.

a. A course or courses used to meet the sequential unit requirement for career and technical education under paragraph 12.5(5)*"i."* One or more courses in only one of the six career and technical education service areas specified in paragraph 12.5(5)*"i"* may be eligible for supplementary weighting under the provisions of 281—subrule 97.2(5).

b. A course or courses comprising up to a unit of science or mathematics in accordance with paragraph 12.5(5)*"c"* or *"d."* Such courses may be eligible for supplementary weighting under the provisions of 281—subrule 97.2(5).

c. Courses offered pursuant to paragraph 12.5(21)*"a"* or *"b"* shall be deemed to have met the requirement that the school district offer and teach such a unit under the educational standards of this rule.

d. An accredited nonpublic school may use contracted community college courses to meet offer-and-teach requirements for career and technical education and math or science established under subrule 12.5(5). Such courses may be eligible for funding under rule 281—97.8(261E).

[Filed 11/20/19, effective 1/22/20]
[Published 12/18/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4809C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to senior year plus program

The State Board of Education hereby amends Chapter 22, "Senior Year Plus Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, chapter 164 [Senate File 603], and 2016 Iowa Acts, chapter 1108 [House File 2392], section 61.

Purpose and Summary

The amendments to Chapter 22 reflect legislative changes from the 2019 and 2016 Legislative Sessions. Items 1 to 4 and 7 conform the rules to 2019 Iowa Acts, chapter 164, allowing for direct contracts between an accredited nonpublic school and a community college to provide concurrent enrollment coursework. Item 6 contains a new cross reference to rule 281—97.8(261E), which is adopted in **ARC 4812C**, IAB 12/18/19.

Item 5 amends a definition and Item 6 adds a new definition to clarify part-time and full-time enrollment through concurrent enrollment and the postsecondary enrollment options program.

Item 8 reorganizes rule 281—22.17(261E) and adds a new subrule 22.17(3) to implement provisions of 2016 Iowa Acts, chapter 1108, section 61, that clarify when it is permissible for a school district to provide access to community college coursework through the postsecondary enrollment options program when the school district also has a contract in place to provide concurrent enrollment coursework.

Item 9 corrects a cross reference to a new rule in Chapter 46 (**ARC 4810C**, IAB 12/18/19).

Items 10 to 13 make clarifying changes to the project lead the way program in order to clearly signal the ways in which school districts and community colleges may offer project lead the way courses.

Item 14 designates a new division for the summer college credit program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4683C**. A public hearing was held on October 29, 2019, at 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. A reference to 2019 Iowa Acts, chapter 164, has been removed since the amendments in the chapter have been codified in the 2020 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the State Board on November 20, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 22.2(2) as follows:

22.2(2) *Requirements established by school district.*

a. The student shall have attained the approval of the school board or authorities in charge of an accredited nonpublic school, or its the designee of the respective school governing body, and the eligible postsecondary institution to register for the postsecondary course.

b. No change.

ITEM 2. Amend subrule 22.3(1) as follows:

22.3(1) *Eligibility.* The teacher shall meet the standards and requirements set forth which other full-time instructors teaching within the academic department are required to meet and which are approved by the appropriate postsecondary administration. An individual under suspension or revocation of an educational license or statement of professional recognition issued by the board of educational examiners shall not be allowed to provide instruction for any program authorized by this chapter. If the instruction for any program authorized by this chapter is provided at a school district facility, an accredited nonpublic school facility, or a neutral site, the teacher or instructor shall have successfully passed a background investigation conducted in accordance with Iowa Code section 272.2(17) prior to providing such instruction. The background investigation also applies to a teacher or instructor who is employed by an eligible postsecondary institution if the teacher or instructor provides instruction under this chapter at a school district facility, an accredited nonpublic school facility, or a neutral site. For purposes of this rule, "neutral site" means a facility that is not owned or operated by an institution.

ITEM 3. Amend paragraph **22.3(2)"b"** as follows:

b. As assisted by the school district or accredited nonpublic school, provide ongoing communication about course expectations, teaching strategies, performance measures, resource materials used in the course, and academic progress to the student and, in the case of students of minor age, to the parent or guardian of the student;

ITEM 4. Amend subrule 22.4(2) as follows:

22.4(2) *Requirements of school district or accredited nonpublic school only.*

a. The Except as provided under Iowa Code sections 257.11(3)*"c,"* 279.50A and 261E.8(2)*"b,"* the school district or accredited nonpublic school shall certify annually to the department, as an assurance in the district's or accredited nonpublic school's basic education data survey, that the course provided to a high school student for postsecondary credit in accordance with this chapter supplements, and does not supplant, a course provided by the school district or accredited nonpublic school in which the student is enrolled. For purposes of these rules, to comply with the "supplement, not supplant" requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school.

b. The school district or accredited nonpublic school shall ensure that the background investigation requirement of subrule 22.3(1) is satisfied. The school district or accredited nonpublic school shall pay for the background investigation but may charge the teacher or instructor a fee not to exceed the actual cost charged the school district or accredited nonpublic school for the background investigation conducted. If the teacher or instructor is employed by an eligible postsecondary institution, the school district or accredited nonpublic school shall pay for the background investigation but may request reimbursement of the actual cost to the eligible postsecondary institution.

ITEM 5. Amend rule **281—22.6(261E)**, definitions of "Concurrent enrollment," "Full time," "Institution" and "Student," as follows:

"Concurrent enrollment" means any course offered to students in grades 9 through 12 during the regular school year approved by the board of directors of a school district or authorities in charge of an accredited nonpublic school through a contractual agreement between a community college and the school district that meets or authorities in charge of an accredited nonpublic school. The course shall meet the provisions of Iowa Code section 257.11(3).

"Full time" means enrollment at any one eligible postsecondary institution through a school district or accredited nonpublic school in any one academic year, exclusive of any summer term, of in 24 or

more postsecondary credit hours. Enrollment in a course or courses that result in credit hours in excess of the part-time limit shall be subject to applicable provisions of this chapter including Division IV or Division V, except that the cost of enrollment shall be the responsibility of the student, or parent or legal guardian of the student.

"Institution" means a school district, accredited nonpublic school, or eligible postsecondary institution delivering the instruction in a given program as authorized by this chapter.

"Student" means any individual in grades 9 through 12 enrolled or dually enrolled in a school district, or any individual in grades 9 through 12 enrolled in an accredited nonpublic school, who meets the criteria in rule 281—22.2(261E). For purposes of Division III (Advanced Placement Program) and Division V (Postsecondary Enrollment Options Program) only, "student" also includes a student enrolled in an accredited nonpublic school or the Iowa School for the Deaf or the Iowa Braille and Sight Saving School.

ITEM 6. Adopt the following **new** definition of "Part time" in rule **281—22.6(261E)**:

"Part time" means enrollment at any one eligible postsecondary institution under Division IV or Division V in no more than 23 postsecondary credit hours per academic year, exclusive of any summer terms.

ITEM 7. Adopt the following **new** rule 281—22.13(261E):

281—22.13(261E) Accredited nonpublic school concurrent enrollment option.

22.13(1) *Authorization.* In addition to enrollment through a school district as authorized under subrule 22.11(2), students enrolled at an accredited nonpublic school may access concurrent enrollment coursework through a direct contract between the authorities in charge of an accredited nonpublic school and a community college.

22.13(2) *General requirements.* For any coursework delivered through a contract established pursuant to this rule, students, institutions, and instructors shall meet the requirements for concurrent enrollment established under rule 281—22.11(216E). However, such coursework is not eligible for funding under subrule 22.11(6).

22.13(3) *Funding.* Subject to the appropriation of funds by the Iowa legislature for such purposes, coursework delivered through a contract between the authorities in charge of an accredited nonpublic school and a community college pursuant to this rule may be eligible for funding under rule 281—97.8(261E).

22.13(4) *Data collection.* Institutions participating in a contract pursuant to this rule shall comply with data reporting and verification processes established by the department.

ITEM 8. Amend rule 281—22.17(261E) as follows:

281—22.17(261E) Eligible postsecondary courses. These rules are intended to implement the policy of the state to promote rigorous academic pursuits. ~~Therefore, postsecondary~~

22.17(1) Postsecondary courses eligible for students to enroll in under this division shall be limited to: ~~nonsectarian~~

a. Nonsectarian courses; ~~courses~~

b. Courses that are not comparable to courses offered by the school district where the student attends which are defined in rules adopted by the board of directors of the public school district; ~~credit-bearing~~

c. Credit-bearing courses that lead to an educational degree; ~~courses~~

d. Courses in the discipline areas of mathematics, science, social sciences, humanities, and vocational-technical education; and also the courses in career option programs offered by area schools established under the authorization provided in Iowa Code chapter 260C.

22.17(2) A school district or accredited nonpublic school district shall grant academic or vocational-technical credit to an eligible student enrolled in an eligible postsecondary course.

22.17(3) A course is ineligible for purposes of this rule if the school district has a contractual agreement with the eligible postsecondary institution under Iowa Code section 261E.8 that meets the

requirements of Iowa Code section 257.11(3) and if the course may be delivered through such an agreement in accordance with Iowa Code section 257.11(3).

ITEM 9. Amend rule 281—22.24(261E) as follows:

281—22.24(261E) Career academies. A career academy is a program of study as defined in 281—Chapter ~~47~~ 46. A course offered by a career academy shall not qualify as a regional academy course.

22.24(1) to **22.24(3)** No change.

ITEM 10. Adopt the following **new** paragraph **22.32(5)"c"**:

c. The teacher shall participate, on a regular basis, in available professional development provided by the national organization that administers the project lead the way program.

ITEM 11. Amend subrule 22.32(6) as follows:

22.32(6) *Accreditation standards.*

a. A project lead the way course may apply toward high school program accreditation standards pursuant to 281—subrule 12.5(5). To meet the requirement, the instructor must be appropriately licensed and endorsed by the board of educational examiners to teach the subject area of the accreditation standard.

b. If the project lead the way course being taught is within a career and technical education program or is one in a sequence of project lead the way courses which collectively are used to meet one of the career and technical education sequential unit requirements of 281—Chapter 12, the program must be approved by the department pursuant to 281—Chapter 46.

ITEM 12. Amend subrule 22.32(7) as follows:

22.32(7) ~~*Shared district-to-community college courses*~~ *Collaborative project lead the way courses.*

a. A ~~district-to-community college sharing~~ collaborative program for project lead the way courses is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits ~~at or through~~ in partnership with a community ~~colleges~~ college established under Iowa Code chapter 260C. The program shall be made available to all resident students in grades 9 through 12.

b. to *e.* No change.

~~*f.* A student may make application to a community college and the school district to allow the student to enroll for college credit in a project lead the way course offered by the community college.~~

~~*g.*~~ *f.* A district-to-community college sharing program for project lead the way courses that meets the requirements of 281—subrule 97.2(6) is eligible for funding under that provision for ~~shared college credit~~ collaborative project lead the way career and technical education courses.

ITEM 13. Amend paragraph **22.32(8)"c"** as follows:

c. The school district may offer a project lead the way course as an articulated course. Articulated courses shall be offered through an agreement between the district and postsecondary institution which allows students to receive college credit at the postsecondary institution upon matriculation based on the demonstrated mastery of concepts in the high school course. An articulated course shall not be delivered by a postsecondary institution ~~or through a sharing agreement with a community college and shall not generate supplementary weighting~~.

ITEM 14. Adopt the following **new** **281—Chapter 22**, Division X title, to precede rule 281—22.33(261E):

DIVISION X
SUMMER COLLEGE CREDIT PROGRAM

[Filed 11/20/19, effective 1/22/20]
[Published 12/18/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4810C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to career academy incentive fund

The State Board of Education hereby amends Chapter 46, "Career and Technical Education," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, chapter 166.

Purpose and Summary

This rule making adds a new rule 281—46.13(423F) to Chapter 46. The new rule establishes a policy framework for the career academy incentive fund, established through the reauthorization of the secure an advanced vision for education fund, 2019 Iowa Acts, chapter 166. The fund is intended to support the development of career academy programs, in particular, career academy programs delivered through regional centers (centralized facility through which multiple school districts and a community college deliver instruction to students). New rule 281—46.13(423F) establishes for the career academy incentive fund-eligible applicants, an application process, evaluation criteria, and an awarding mechanism, as well as clarifies allowable uses of funds. As used in the new rule, a career academy is a career-oriented or occupation-oriented program of study, the same as defined in rule 281—46.11(258). A regional center is a facility for the delivery of career and technical education programming, providing access to at least four career academy programs and serving either a combined minimum of 120 students from no fewer than two school districts or a minimum of four school districts, the same as defined in rule 281—46.12(258).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4684C**. A public hearing was held on October 29, 2019, at 11 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. The Department received public comment from the Iowa Association of School Boards on the rule, and changes were made to the rule to address the concerns that were raised. In addition, references to 2018 Iowa Acts, chapter 1067, section 7, were replaced with references to the upcoming 2020 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the State Board on November 20, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making action is adopted:

Adopt the following **new** rule 281—46.13(423F):

281—46.13(423F) Career academy incentive fund. A career academy incentive fund is a competitive grant program established by the department to expand opportunities for students to access high-quality career and technical education programming through innovative partnerships between school districts and community colleges.

46.13(1) *Allowable expenses.* Funding issued under this rule shall be used by the recipient for purposes outlined in the proposal approved by the department to support the development of career academy infrastructure, including regional centers as defined under rule 281—46.12(258). For purposes of this rule, allowable expenses include the following:

a. Purchase and improvement of grounds, including the legal costs relating to the property acquisition and surveys of the property.

b. Construction of buildings and roads to buildings.

c. Purchase or lease-purchase option agreements for buildings.

d. Rental of facilities under Iowa Code chapter 28E.

e. Purchase, lease, or lease-purchase of equipment or technology exceeding $500 in value per purchase or lease-purchase transaction. "Equipment" means both equipment and furnishings.

f. Repair, remodel, reconstruction, improvement, or expansion of buildings and the additions to existing buildings.

46.13(2) *Applicants.* Institutions eligible to apply for funds include a school district as defined under rule 281—12.2(256) or community college as defined under Iowa Code chapter 260C.

46.13(3) *Application proposals.* Institutions seeking funds under this rule shall submit an application proposal to the department in a format prescribed by the department. An application for funding that includes more than one institution shall designate a single institution to receive funds on behalf of all participating institutions. At a minimum, all applications shall include one school district and one community college, though applications consisting of multiple school districts and a community college are encouraged.

a. *Service area and aligned occupation.* Program information will be collected to identify the aligned service area and in-demand occupation as identified by the state workforce development board pursuant to Iowa Code section 84A.1B(14).

b. *Offerings and enrollments.* Information shall be provided on all career academy offerings made available by the participating institutions. All school districts shall provide actual or estimated enrollment by high school in each of the offered career academies over the proceeding five-year period.

c. *Program structure.* Each proposal shall include a response to the following components:

(1) A sequence of coursework, inclusive of all aligned middle school, high school, and postsecondary offerings that constitute the career academy. The sequence of coursework shall be developed collaboratively between the school district or school districts and community college, and shall be depicted in a template provided by the department.

(2) A description and evidence of integrated project-, problem-, and work-based learning experiences.

(3) Identification of the third-party industry certifications either made available to the student through the program or which the program prepares the student to complete.

d. Partnerships. If applicable, the applicant shall provide information on all partnering institutions, and the extent to which each partnering institution is contributing resources to the initiative, including but not limited to funds, staff, equipment, or other related resources.

e. Business and industry involvement. If applicable, the applicant shall provide information on business and industry involvement, including but not limited to input solicited on offerings, donation of equipment, and contribution of funds.

f. Approved contracts. Each district participating in the career academy shall submit as evidence the contract approved by the district's board established pursuant to subrule 46.11(2).

46.13(4) *Criteria for evaluating proposals.*

a. Priority. Application proposals shall be ranked and sorted according to the following priorities:

(1) First priority. Proposals for new career academies delivered collaboratively between multiple school districts and a community college through a regional center as defined under rule 281—46.12(258) shall receive priority consideration.

(2) Second priority. Proposals for existing career academies delivered collaboratively between multiple school districts and a community college through a regional center as defined under rule 281—46.12(258) shall receive second-priority consideration.

(3) Third priority. Proposals for new or existing career academies delivered through partnership arrangements other than a regional center, including but not limited to individual career academy offerings delivered by one school district, shall receive third-priority consideration.

b. Occupational alignment. Proposals for career academies aligned with high-demand occupations as identified by the state workforce development board pursuant to Iowa Code section 84A.1B(14) shall be given preferential consideration.

c. Improving access. Proposals for career academies that demonstrate that the grant funds will result in improved access to career and technical education programs for all students enrolled in participating school districts, including underrepresented and nontraditional students, as well as underserved geographical areas, shall be given preferential consideration.

d. Program structure. The proposals shall be evaluated to determine the extent to which the components of paragraph 46.13(3)*"c"* are evident in the career academy program.

e. Additional criteria. Subject to paragraphs 46.13(4)*"a"* and *"b,"* proposals shall be evaluated against additional criteria including, but not limited to, the following:

(1) Actual or projected enrollment for each participating high school over a five-year period is of sufficient size to support robust and sustainable offerings and justify the request for funding.

(2) Cumulative offerings provide students with access to a diverse array of coursework in multiple career and technical education service areas.

(3) If programming is delivered at an off-site location, the sending school district provides transportation to participating students.

f. Budget. Institutions shall submit a complete budget for the proposal, including a comprehensive summary of costs and a complete list of funding sources to be put toward implementing and sustaining the initiative.

g. Regional center plan. Evidence shall be provided to the department that the regional planning partnership established under this chapter and in which the applicants are participating members has developed a plan for regional centers as required under paragraph 46.10(4)*"h."* The plan shall identify any underserved areas of the region, including areas of low career and technical education enrollment and program offerings.

46.13(5) *Awarding grants.* The department may fully or partially award funds for proposals submitted pursuant to subrule 46.13(3).

a. The department will award funds for first-priority proposals that meet the criteria established in rank order. The department may award funds for second- and third-priority proposals based on availability of funds.

b. A grant award issued under this rule shall not exceed $1 million. A first-priority proposal selected for funding shall receive an award of no less than $1 million. A second-priority proposal selected for funding shall receive an award of no less than $250,000.

46.13(6) *Distribution of awarded grants.* The department will award funds to the designated fiscal agent for approved proposals according to a payment schedule set by the department in consultation with the applicant. Initiatives approved for funding under this rule must be completed within the agreed-upon time frame established in the payment schedule, with final payment awarded upon receipt of evidence that the initiative was completed as specified in the approved proposal, unless a waiver issued at the discretion of the director grants the recipient additional time to complete the approved proposal. Any unclaimed award balance will be used by the department to fund future initiatives under this rule.

[Filed 11/20/19, effective 1/22/20]
[Published 12/18/19]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4811C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to statewide sales and services tax for school infrastructure

The State Board of Education hereby amends Chapter 96, "Statewide/Local Option Sales and Services Tax for School Infrastructure," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 423E and 423F and 2019 Iowa Acts, chapter 166 [House File 546].

Purpose and Summary

Chapter 96 addresses the requirement for smaller districts to provide a certificate of need to expend funds received from the statewide sales and service tax for infrastructure (secure an advanced vision for education [SAVE]) fund. The amendments to Chapter 96 remove references to the former local option sales and services tax for school infrastructure, which was ended effective July 1, 2008, and reflect legislative changes brought about during the 2019 Legislative Session. A more detailed explanation of these amendments follows:

Items 1, 2, and 4 remove references to the former local option sales and services tax and definitions that were specifically related to this tax.

Item 3 implements 2019 Iowa Acts, chapter 166, which adds requirements pertaining to the request for a certificate of need, which is required for smaller districts to expend funds received from the SAVE fund. This item also includes an updated Iowa Code citation and changes references from the former budget guarantee to the budget adjustment under Iowa Code section 257.14.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4685C**. A public hearing was held on October 29, 2019, at 1 p.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. References to 2019 Iowa Acts, chapter 166, section

15, have been removed since the amendments in that chapter have been codified in the 2020 Iowa Code. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board on November 20, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend **281—Chapter 96**, title, as follows:

~~STATEWIDE/LOCAL OPTION~~ STATEWIDE SALES AND SERVICES TAX FOR SCHOOL INFRASTRUCTURE

ITEM 2. Amend rule 281—96.1(423E,423F) as follows:

281—96.1(423E,423F) Definitions. For purposes of these rules, the following definitions shall apply:

"Actual enrollment" means the number of students each school district certifies to the department by October 15 of each year in accordance with Iowa Code section ~~257.6, subsection 1~~ 257.6(1).

"Base year" means the school year ending during the calendar year in which the budget is certified.

"Certificate of need" means the written department of education approval a school district must obtain if the district has a certified enrollment of fewer than 250 students or a certified enrollment of fewer than 100 students in grades ~~9-12~~ 9 through 12. The certificate of need must be obtained by the school district before the district may expend the supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction against the supplemental school infrastructure amount or to expend the statewide sales and services amount ~~or remaining unobligated local option sales and services balances~~ for new construction.

"Combined actual enrollment" means the sum of the students in each school district located in whole or in part in a county who are residents of that county as determined by rule 281—96.2(423E,423F).

"Department" means the state department of education.

"Guaranteed school infrastructure amount" means for a school district the statewide tax revenues per student, multiplied by the quotient of the tax rate percent imposed in the county, divided by 1 percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year divided by four quarters.

"New construction" means any erection of a facility or any modification or addition to a facility except for repairing existing schoolhouses or school buildings or for construction necessary for compliance with the federal Americans with Disabilities Act, ~~pursuant to~~ 42 U.S.C. ~~Section 12101-12117~~ Sections 12101 to 12117.

"Nonresident student" means a student enrolled in a school district who does not meet the requirements of a resident as defined in Iowa Code section 282.1.

"Reconstruction" means rebuilding or restoring as an entity a thing that was lost or destroyed.

"Repair" means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance.

"Resident student" means a student enrolled in a school district who meets the requirements of a resident as defined in Iowa Code section 282.1.

"Revenue purpose statement" means a document prepared by the school district indicating the specific purpose or purposes for which the funding, pursuant to Iowa Code chapters 423E and 423F, will be expended.

"Sales tax" means ~~a local option sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423E and~~ the statewide sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423F.

~~*"Sales tax capacity per student"* means for a school district the estimated amount of revenues that a school district receives or would receive if a local sales and services tax for school infrastructure purposes is imposed at 1 percent in the county, divided by the school district's actual enrollment.~~

"School budget review committee" or *"SBRC"* means a committee that is established under Iowa Code section 257.30 in the department of education and that consists of the director of the department of education in an ex officio, nonvoting capacity, the director of the department of management, and ~~three~~ four members who are knowledgeable in the areas of Iowa school finance or public finance issues and who are appointed by the governor to represent the public.

"School district" means a public school district in Iowa accredited by the state department of education.

"School infrastructure" means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under Iowa Code section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, demolition, purchase, or remodeling of schoolhouses, stadiums, gymnasiums, fieldhouses, and bus garages; the procurement of schoolhouse sites and site improvements; and the payment or retirement of general obligation bonds issued for school infrastructure purposes or of sales and services tax for school infrastructure revenue bonds. Additionally, school infrastructure includes school safety and security infrastructure under Iowa Code section 423F.3(6). The definition of school infrastructure also includes activities for which revenues under Iowa Code sections 298.3 and 300.2 may be spent and property tax relief for the debt service property tax levy, regular physical plant and equipment property tax levy, voter-approved physical plant and equipment income surtax and property tax levy, and the public education and recreation property tax levy.

"Site improvement" means grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements defined in Iowa Code section 384.37.

"Statewide tax revenues per student" means the amount per student established by Iowa Code ~~subsection~~ section 423E.4(2)*"b"*(3).

~~*"Supplemental school infrastructure amount"* means the guaranteed school infrastructure amount for the school district less the pro rata share of local sales and services tax for school infrastructure purposes.~~

ITEM 3. Amend rules 281—96.4(423E,423F) and 281—96.5(423E,423F) as follows:

281—96.4(423E,423F) Application and certificate of need process.

96.4(1) *When application needed; application period.* ~~After July 1, 2008, a~~ A school district with a certified enrollment of fewer than 250 students in the entire district or a certified enrollment of fewer than 100 students in grades 9 through 12 shall not expend the amount of statewide ~~or local~~ sales and services tax received for new construction without prior application to the department and receipt of a certificate of need. A certificate of need is not required for repair of school facilities; for purchase of equipment, technology, or transportation equipment for transporting students as provided in Iowa Code section 298.3; school safety and security infrastructure as provided in Iowa Code section 423F.3(6) other than new construction; or for construction necessary to comply with the federal Americans With Disabilities Act, 42 U.S.C. Sections 12101 to 12117. Applications shall be hand-delivered or postmarked no later than eight weeks prior to a regularly scheduled meeting of the SBRC. Delivery of applications by way of facsimile transmission is not allowed. The SBRC holds regularly scheduled meetings ~~on the second Monday of September, December, March, and May~~ as stipulated in rule 289—1.4(257).

96.4(2) *Application form.* The department shall make available an application form to Iowa public school districts. Each applicant school district shall use the form prepared for this purpose and in the manner prescribed by the department. A school district may submit only one application during the application period. The application form shall include, but shall not be limited to, the following information:

a. and *b.* No change.

c. The description of need including ~~documentation of the infeasibility~~ a cost-benefit analysis of remodeling, reconstructing, or repairing the existing structure rather than implementing this project and a description of any alternatives considered and the reasons for rejection.

d. No change.

e. If a school district's enrollment in the current year or any of the five years of projected enrollments is fewer than 250 students, the school district shall attach a copy of a feasibility study pursuant to Iowa Code ~~subsection 256.9(34)~~ section 256.9(30) or similar study conducted within the past three years with an explanation of how the study supports the project that is the subject of the application.

f. A description of the ~~nature~~ benefits and effects of the project and its relationship to improving ~~educational opportunities for students~~ student learning including alignment with school district student achievement goals and including the school district's ability to meet or exceed the educational standards. A school district shall provide:

(1) A list of waivers applied for and granted to the school district or any deficiencies from educational standards if no waiver was granted.

(2) A list of courses offered by major curricular area in grades 9 through 12. The list shall include five years of history and three years of projected curricula if the proposed new construction will house any of the grades 9 through 12.

(3) A list of current and projected staffing patterns including assignments and licensure.

g. No change.

h. Evidence of a healthy financial condition and long-term financial stability. The school district shall provide:

(1) Calculation of unspent balance on the generally accepted accounting principles (GAAP) basis. The calculation shall include five years of history and three years of projected balances. The calculation of budget authority shall show and project the effect of the ~~phaseout of the~~ budget ~~guarantee~~ adjustment under Iowa Code section 257.14. Projected allowable growth shall be that known or generally anticipated at the time of the application. If the percent of allowable growth is not known or anticipated, an allowable growth of no more than 2 percent shall be utilized in the annual projections.

(2) If the unspent balance is negative in any current or projected year on the GAAP basis, the school district shall include a copy of the corrective action plan, if any, submitted to the SBRC.

(3) Calculation of fund balance on the GAAP basis by fund. The calculation shall include five years of history and three years of projected balances.

i. If a school district currently has bonded indebtedness, the voter-approved physical plant and equipment levy, or categorical funding for school infrastructure, the school district shall include a statement identifying the implementation date, final year of the bonded indebtedness or the final year of the levy or categorical funding, and the levy rate. The school district shall list any obligations against those current balances and future revenues or against the ~~local option or~~ statewide sales and services tax for school infrastructure amounts. The school district shall attach a copy of the school district's revenue purpose statement, if any.

j. to *l.* No change.

96.4(3) to **96.4(7)** No change.

281—96.5(423E,423F) Review process.

96.5(1) *Task force.* The department shall form a task force to review applications for certificate of need and to provide recommendations to the SBRC. The department shall invite participants from large, medium, and small school districts, the state fire marshal's office, education and professional organizations, or other individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, shall establish the parameters and criteria for awarding certificates of need based on information listed in Iowa Code section ~~423E.4, subsection 5~~ <u>423E.4(5)</u>, which includes required consideration of the following:

a. Enrollment trends in the grades that will be served at the new construction site.

b. The ~~infeasibility~~ <u>cost-benefit analysis</u> of remodeling, reconstructing, or repairing existing buildings.

c. The fire and health safety needs of the school district.

d. The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.

e. Unavailability of alternative, less costly, or more effective means of serving the needs of the students.

f. The financial condition of the school district, including the effect of the ~~decline of the~~ budget ~~guarantee~~ <u>adjustment</u> and unspent balance.

g. Broad and long-term ability of the school district to support the facility and the quality of the academic program.

h. Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

96.5(2) and **96.5(3)** No change.

96.5(4) *Ineligibility for approval.* If either of the following two descriptions applies to the school district, the school district shall not be eligible for a certificate of need unless a feasibility study conducted within the past three years pursuant to Iowa Code ~~subsection 256.9(34)~~ <u>section 256.9(30)</u> and the AEA plan pursuant to Iowa Code sections 275.1 to 275.4 determine that sharing, reorganization, or dissolution is not feasible for the school district.

a. ~~If either the~~ <u>The</u> current enrollment or any of the five years of projected enrollments for the school district is fewer than 250 students.

b. ~~If either the~~ <u>The</u> current enrollment or any of the five years of projected enrollments for the school district for grades 9 through 12 is fewer than a total of 100 students, if a high school building is the subject of the application.

96.5(5) *School budget review committee.* The SBRC shall review the recommendations from the task force for approval of certificates of need. The committee shall make recommendations on approval to the department for final consideration.

ITEM 4. Amend subrule 96.7(2) as follows:

96.7(2) *Accounting for the funding.* All revenues ~~from the local and statewide school infrastructure amounts~~ and all expenditures from the ~~local and~~ statewide school infrastructure amounts shall be

separately identified and accounted for in a capital projects fund established for the ~~local option and~~ statewide sales and services tax for school infrastructure proceeds.

[Filed 11/20/19, effective 1/22/20]
[Published 12/18/19]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4812C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to supplementary weighting

The State Board of Education hereby amends Chapter 97, "Supplementary Weighting," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, chapter 101 [House File 596], and 2019 Iowa Acts, chapter 164 [Senate File 603].

Purpose and Summary

Chapter 97 outlines supplementary weighting. The amendments to Chapter 97 reflect legislative changes to supplementary weighting brought about during the 2019 Legislative Session. A more detailed explanation of the amendments follows:

Item 1 adds accredited nonpublic schools to the definition of "supplant," which applies to concurrent enrollment coursework, and clarifies that supplementary weighting applies only to Iowa resident students.

Item 2 implements changes to eligibility for supplementary weighting pertaining to public school students attending community college-offered coursework resulting from 2019 Iowa Acts, chapter 164. The changes include eligibility for districts with basic educational data survey (BEDS) enrollment of less than 600 that have entered into a sharing agreement with a community college to provide one unit of coursework in science or one unit of coursework in mathematics that is used to meet accreditation standards to request supplemental weighting for that unit, provided certain conditions are met.

Item 3 implements changes to the time period for district eligibility for whole-grade sharing supplementary weighting resulting from 2019 Iowa Acts, chapter 101. This item also includes changes to the items required by the Department of Education for the report of progress that districts are required to submit when requesting the second or third year of whole-grade sharing supplementary weighting. Additionally, the amendment adds a process to follow in the event an election on reorganization fails to pass after the school budget review committee (SBRC) has approved a district's application for whole-grade sharing supplementary weighting.

Item 4 implements changes resulting from 2019 Iowa Acts, chapter 164, that create a weighting for accredited nonpublic schools that access concurrent enrollment coursework through an agreement directly with a community college. This weighting is used to generate payment to a community college subject to an appropriation to the Department of Education for this purpose.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4686C**. A public hearing was held on October 29, 2019, at 2 p.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. The Iowa Association of School Boards provided comments. The rule was reviewed, and no changes were made based on the comments. However, references to 2019 Iowa Acts, chapter 164, have been removed since the amendments in that chapter have been codified in the 2020 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the State Board on November 20, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule **281—97.1(257)**, definitions of "Supplant" and "Supplementary weighting plan," as follows:

"Supplant" shall mean the community college's offering a course that consists of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school or the community college's offering a course that is required by the school district or accredited nonpublic school in order to meet the minimum accreditation standards in Iowa Code section 256.11. If a student is unable to earn credit in both courses, then the two courses would be deemed similar enough in content and skills to be defined as supplanting.

"Supplementary weighting plan" shall mean a plan as defined in this chapter to add a weighting for each eligible Iowa resident student ~~eligible~~ who is enrolled in an eligible class taught by a teacher employed by another school district or taught by a teacher employed jointly with another school district or sent to and enrolled in an eligible class in another school district or sent to and enrolled in an eligible community college class. The supplementary weighting for each eligible class shall be calculated by multiplying the fraction of a school year that class represents by the number of eligible Iowa resident students enrolled in that class and then multiplying that figure by the weighting factor established in Iowa Code chapter 257.

ITEM 2. Amend subrule 97.2(5) as follows:

97.2(5) *Attend class in a community college.* All of the following conditions must be met for any Iowa resident public school student attending a community college-offered class to be eligible for supplementary weighting under paragraph 97.2(1)*"d."*

a. The course must supplement, not supplant, high school courses.

(1) For purposes of these rules, to comply with the "supplement, not supplant" requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district.

(2) The course must not be used by the school district in order to meet the minimum accreditation standards in Iowa Code section ~~256.11(5)*"a"* to *"j,"* with an exception to the career and technical limitation applicable to Iowa Code section 256.11(5)*"h."*~~ 256.11(5)*"b," "c," "f," "g," "i,"* and *"j."*

(3) A school district with total basic educational data survey enrollment of not more than 600 that contracts with a community college to provide one unit of science required in Iowa Code section 256.11(5)*"a"* or one unit of mathematics required in Iowa Code section 256.11(5)*"d"* or *"e"* and any of the three required sequential units in any one of the four career and technical education service areas identified as the district's career and technical program required in Iowa Code section 256.11(5)*"h"* may request supplementary weighting for any community college course within ~~one of the four service~~ these subject areas if the district's enrollment in the course ~~enrollment~~ or courses comprising the unit exceeds five. Additionally, for the science or mathematics unit, the following conditions must be met:

1. The school district has made every reasonable and good faith effort, as defined in Iowa Code section 279.19A(9), to employ a teacher licensed under Iowa Code chapter 272 for the unit of science or mathematics and is unable to employ such a teacher.

2. The course or courses comprising the one unit are offered during the regular school day.

3. The course or courses comprising the one unit are made accessible to all eligible pupils by the school district.

b. to *h.* No change.

ITEM 3. Amend rule 281—97.5(257) as follows:

281—97.5(257) Supplementary weighting plan for whole-grade sharing.

97.5(1) *Whole-grade sharing.* A school district which participates in a whole-grade sharing arrangement executed pursuant to Iowa Code sections 282.10 to 282.12 and which has adopted a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization to take effect on or before July 1, ~~2019~~ 2024, is eligible to assign a weighting of one-tenth of the fraction of the school year during which resident pupils attend classes pursuant to ~~subrule 97.2(1),~~ paragraph 97.2(1)*"a," "b,"* or *"c."* A school district participating in a whole-grade sharing arrangement shall be eligible for supplementary weighting under this subrule for a maximum of three years. Receipt of supplementary weighting for the second year and for the third year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress or continued progress toward the objective of dissolution or reorganization on or before July 1, ~~2019~~ 2024.

97.5(2) No change.

97.5(3) *Consecutive years.* A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.5(1) is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose shall not be later than the school year that begins July 1, ~~2018~~ 2023.

97.5(4) and **97.5(5)** No change.

97.5(6) *Filing progress reports.* Each school district ~~that assigned a supplementary weighting to resident students attending class in a whole-grade sharing arrangement and~~ that intends to assign a supplementary weighting to resident students attending class in a whole-grade sharing arrangement in ~~the~~ any year following the initial year for which supplementary weighting for whole-grade sharing was approved shall file a report of progress toward reorganization with the school budget review committee,

on forms developed by the department of education, no later than August 1 preceding October 1 on which date the district intends to request the second or third year of supplementary weighting for whole-grade sharing.

a. The progress report shall include~~, but not be limited to,~~ the following information:

(1) Names of districts with which the district is studying reorganization.

(2) Descriptive information on the whole-grade sharing arrangement.

~~(3) If the district is studying dissolution, information on whether public hearings have been held, a proposal has been adopted, and an election date has been set.~~

~~(4)~~ (3) ~~If the district is studying reorganization, information~~ Information on whether ~~public hearings have been held,~~ a plan for reorganization has been approved by the AEA~~,~~ and an election date has been set.

~~(5) Description of joint activities of the boards such as planning retreats and community meetings.~~

~~(6) Information showing an increase in sharing activities with the whole-grade sharing partners such as curriculum offerings, program administration, personnel, and facilities.~~

b. The report must indicate progress toward a reorganization or dissolution to occur on or before July 1, ~~2019~~ 2024. ~~Indicators~~ The indicators of progress ~~may~~ include~~, but are not limited to~~:

(1) ~~Establishing substantially similar salary schedules or a plan by which the sharing districts will be able to develop a single salary schedule upon reorganization.~~ For the second year of supplementary weighting, establishing a reorganization committee.

(2) ~~Establishing a joint teacher evaluation process and instruments.~~ For the third year of supplementary weighting, having an AEA-approved plan for reorganization and a date set for an election on the proposed reorganization.

~~(3) Developing a substantially similar continuous school improvement plan (CSIP) with aligned goals including a district professional development plan.~~

~~(4) Increasing the number of grades involved in the whole-grade sharing arrangement.~~

~~(5) Increasing the number of shared teaching or educator positions.~~

~~(6) Increasing the number or extent of operational sharing arrangements.~~

~~(7) Increasing the number of shared programs such as career, at risk, gifted and talented, curricular, or cocurricular.~~

~~(8) Increasing the number of joint board meetings or planning retreats.~~

~~(9) Holding regular or frequent public meetings to inform the public of progress toward reorganization and to receive comments from the public regarding the proposed reorganization.~~

~~(10) Adopting a reorganization or dissolution proposal.~~

~~(11) Setting proposed boundaries.~~

~~(12) Setting a date for an election on the reorganization or dissolution proposal.~~

c. The school budget review committee shall consider each progress report at its first regular meeting of the fiscal year and shall accept the progress report or shall reject the progress report with comments. The reports will be evaluated on demonstrated progress within the past year toward reorganization or dissolution.

d. A school district whose progress report is not accepted shall be allowed to submit a revised progress report at the second regular meeting of the school budget review committee. The committee shall accept or reject the revised progress report.

e. If the school budget review committee rejects the progress report and the district does not submit a revised progress report or if the school budget review committee rejects the revised progress report, the school district shall not be eligible for supplementary weighting for whole-grade sharing but may reapply in a subsequent year.

f. In the event that an election on reorganization fails to pass after the school budget review committee has approved a district's application for whole-grade sharing supplementary weighting and prior to January 1 of the year in which the reorganization was to take effect, a district may rescind the request for whole-grade sharing supplementary weighting by submitting a request to the school budget review committee asking to withdraw the application. The request to withdraw the application must be completed no later than one week prior to the committee's second regular meeting.

ITEM 4. Adopt the following **new** rule 281—97.8(261E):

281—97.8(261E) Concurrent enrollment program contracts between accredited nonpublic schools and community colleges. For the purpose of determining funding to the community college, subject to an appropriation to the department for this purpose, a student enrolled in a unit of concurrent enrollment coursework offered through a contract by an accredited nonpublic school with an Iowa community college pursuant to Iowa Code section 261E.8(2) shall be counted as if the student were assigned a weighting as described in subrule 97.2(5).

97.8(1) *Eligibility.* All of the following conditions must be met for any Iowa resident accredited nonpublic school student attending a community college-offered course offered through a contract with an accredited nonpublic school to be eligible for funding under Iowa Code section 261E.8(2).

a. The course must supplement, not supplant, high school courses.

(1) For purposes of these rules, to comply with the "supplement, not supplant" requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the accredited nonpublic school.

(2) The course must not be used by the accredited nonpublic school in order to meet the minimum accreditation standards in Iowa Code section 256.11(5)*"b," "c," "f," "g," "i,"* and *"j."*

(3) A nonpublic school accredited under the standards required pursuant to Iowa Code section 256.11 with a total basic educational data survey enrollment in grades 9 through 12 of not more than 200 that contracts with a community college to provide one unit of science required in Iowa Code section 256.11(5)*"a"* or one unit of mathematics required in Iowa Code section 256.11(5)*"d"* or *"e"* and any of the five units of career and technical education required in Iowa Code section 256.11B may request weighting for any community college course if the accredited nonpublic school's course enrollment exceeds five.

b. The course must be included in the community college catalog or an amendment or addendum to the catalog.

c. The course must be open to all registered community college students, not just high school students.

d. The course must be for college credit, and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

e. The course must be taught by an instructor employed by or under contract with the community college who meets the requirements of Iowa Code section 261E.3(2).

f. The course must be taught utilizing the community college course syllabus.

g. The course must be taught in such a manner as to result in student work and student assessment which meet college-level expectations.

h. The course must not have been determined as failing to meet the standards established by the postsecondary course audit committee.

97.8(2) *Reporting and billing.* An accredited nonpublic school that enters into a contract for concurrent enrollment courses shall submit student and course information as determined by and according to the timeline established by the department of education. The community college and accredited nonpublic school shall verify the submitted information by semesters or the equivalent. Projected supplementary weighting calculations will be available midyear, but payments to community colleges will not be disbursed until final costs are known at the end of the school year. Community colleges will not bill the accredited nonpublic school until all calculations of supplementary weighting for accredited nonpublic schools are completed.

[Filed 11/20/19, effective 1/22/20]
[Published 12/18/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4813C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to financial management of categorical funding

The State Board of Education hereby amends Chapter 98, "Financial Management of Categorical Funding," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 283A, 298A, 423E and 423F and 2019 Iowa Acts, chapter 166 [House File 546].

Purpose and Summary

Chapter 98 outlines the financial management of categorical funding.

Item 1 is a nonsubstantive reference cleanup.

Item 2 reflects legislative changes brought about during the 2019 Legislative Session, which include additional stipulations for use of tax revenues generated through the statewide sales and services tax for school infrastructure (secure an advanced vision for education fund). These amendments also remove references to the former local option sales and services tax.

Item 3 clarifies that operating transfers from the school nutrition fund are allowed to claim indirect costs.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4687C**. A public hearing was held on October 29, 2019, at 3 p.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. References to 2019 Iowa Acts, chapter 166, have been removed since the amendments in that chapter have been codified in the 2020 Iowa Code. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board on November 20, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Review by Administrative Rules Review Committee

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

group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 281—98.21(257), introductory paragraph, as follows:

281—98.21(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount. A modified supplemental amount is available through a school district-initiated request to the school budget review committee pursuant to Iowa Code sections 257.38~~, 257.39, 257.40, and~~ through 257.41. This amount must account for no more than 75 percent of the school district's total at-risk program, alternative program or alternative school, and potential or returning dropout budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, local match, previous year carryforward, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

ITEM 2. Amend rule 281—98.69(76,273,298,298A,423E,423F) as follows:

281—98.69(76,273,298,298A,423E,423F) Capital projects fund. Capital projects funds are used to account for financial resources to acquire or construct major capital facilities and to account for revenues from the ~~previous local option sales and services tax for school infrastructure and the current~~ state sales and services tax for school infrastructure. Boards of directors of school districts are authorized to establish more than one capital projects fund as necessary.

98.69(1) No change.

98.69(2) *Appropriate uses of the capital projects fund.*

a. Appropriate expenditures in a capital projects fund, excluding state/local option sales and services tax for school infrastructure fund, include the following:

(1) Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, or teachers' or superintendents' home(s). Prior to approving the use of revenues for an athletic facility infrastructure project within the scope of the school district's approved revenue purpose statement, the board of directors shall adopt a resolution setting forth the proposal for the athletic facility infrastructure project and hold an additional public hearing on the issue of construction of the athletic facility as stipulated in Iowa Code section 423F.3(7).

(2) to (4) No change.

(5) School safety and security infrastructure listed in Iowa Code section 423F.3(6).

b. Appropriate expenditures in the state/local option sales and services tax for the school infrastructure capital projects fund shall be expended in accordance with a valid revenue purpose statement if a valid revenue purpose statement exists; otherwise, appropriate expenditures include the following in order:

(1) to (7) No change.

(8) School safety and security infrastructure listed in Iowa Code section 423F.3(6).

98.69(3) *Inappropriate uses of the capital projects fund.* Inappropriate expenditures in a capital projects fund include any expenditure not expressly authorized in the Iowa Code. Additionally, expenditures from the ~~state/local options~~ state sales and services tax ~~supplemental school infrastructure~~

~~amount~~ for new construction or for payments for bonds issued for new construction in any district that has a certified enrollment of fewer than 250 pupils in the district or a certified enrollment of fewer than 100 pupils in the high school without a certificate of need issued by the department of education. This restriction does not apply to payment of outstanding general obligation bonded indebtedness issued pursuant to Iowa Code section 296.1 before April 1, 2003. This restriction also does not apply to costs to repair school buildings; purchase of equipment, technology or transportation equipment authorized under Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act. ~~Expenditures from the state/local options sales and services tax revenues have the same restriction as expenditures from the supplemental school infrastructure amount, excluding the restriction on payments for bonds issued for new construction.~~

ITEM 3. Amend paragraph **98.74(3)"b"** as follows:

b. Operating transfers to any other fund other than to claim indirect costs.

[Filed 11/20/19, effective 1/22/20]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4827C

HISTORICAL DIVISION[223]

Adopted and Filed

Rule making related to public records and fair information practices

The Department of Cultural Affairs hereby amends Chapter 3, "Public Records and Fair Information Practices," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 303.1A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 22.16 and 144.43(3)"b."

Purpose and Summary

Through this rule making, the State Historical Society of Iowa clarifies what is considered a confidential record; defines "ancient records" and identifies the accessibility of these records; and adds "vital statistics" as a record series covered under rule 223—3.9(17A,22) and identifies when these records become public records.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 23, 2019, as **ARC 4721C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on November 27, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 3.9(2) as follows:

3.9(2) *Confidential records.* The state archives has custody of records which other state agencies have created. An agency which creates records shall identify which records are confidential when transferring those records to the state archives. ~~Any~~ Unless otherwise required by law, any confidential record in an agency shall retain its confidential record status after its transfer to the state archives.

ITEM 2. Adopt the following **new** subrules 3.9(3) and 3.9(4):

3.9(3) *Ancient records.* Notwithstanding any confidentiality designation by the transferring agency, once any record in the state archives is more than 100 years old, the record shall be available for public examination and copying unless:

a. The record is ordered to be sealed and is not subject to inspection by any court; or

b. Federal law, rule, or regulation prohibits disclosure of the record.

3.9(4) *Vital statistics.* Notwithstanding any confidentiality designation, the following vital statistics records in the state archive may be inspected and copied as of right:

a. A record of birth that is at least 75 years old.

b. A record of marriage that is at least 75 years old.

c. A record of divorce, dissolution of marriage, or annulment of marriage that is at least 75 years old.

d. A record of death or fetal death that is at least 50 years old.

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ARC 4814C

LOTTERY AUTHORITY, IOWA[531]

Adopted and Filed

Rule making related to appeals

The Board of Directors of the Iowa Lottery Authority hereby amends Chapter 2, "Purchasing," and Chapter 5, "Contested Cases," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 99G.9(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 99G.

Purpose and Summary

These amendments update the Lottery's processes on the receipt and review of administrative appeals. These amendments provide structure for vendor appeals and remove from licensing appeals the concept of the Lottery "hearing board" appointed by various Lottery officials. Rather, for both types of appeals, the Lottery's chief executive officer (CEO) will appoint an administrative law judge from the Administrative Hearings Division of the Iowa Department of Inspections and Appeals to serve as presiding officer and issue a proposed ruling. All appeals from proposed decisions are submitted to the Lottery's chief executive officer, who issues the final decision on behalf of the agency.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 31, 2019, as **ARC 4563C**. No public comments were received.

A Lottery representative appeared before the Administrative Rules Review Committee to discuss the proposed rule making at the Committee's August 12, 2019, meeting. Questions to the Lottery from Committee members focused on three general areas: (1) whether the proposed change in procedure would still provide vendors, retailers and other licensees with appropriate safeguards; (2) whether the proposed change would consolidate power with the Lottery CEO; and (3) whether other state entities have appeal procedures similar to the change proposed by the Lottery.

Following the August 12 meeting, the Lottery worked with the Iowa Attorney General's office to research the areas in question. The Lottery concurs that an administrative appeal process should involve a variety of perspectives and asked the Lottery Board at its meeting on November 19, 2019, to adopt a revised version of the rule making. The Lottery believes that the updated procedure will serve the public good by clarifying the Lottery's administrative appeal process and ensuring that a variety of viewpoints are involved in it.

Issue (1): Appropriate appeal safeguards

A member of the Administrative Rules Review Committee questioned whether the Lottery's rule making would provide vendors, retailers, and other licensees with appropriate safeguards in the appeal process.

Board response: This rule making will change the structure of the vendor appeal and licensing appeal process at the Lottery. Under the revised process, the Lottery CEO refers any appeal to an administrative law judge within the Department of Inspections and Appeals, who would issue a proposed decision. If desired by the party involved, that decision could be appealed to the Lottery CEO.

The model/uniform rules on agency procedure, which many state agencies have adopted, provide the option for a similar process.

Issue (2): Whether change would consolidate power with CEO

A member of the Administrative Rules Review Committee questioned whether the proposed rule making would consolidate power with the Lottery CEO.

Board response: In terms of consumer friendliness and ensuring due process, this rule making will make it clear that an appeal will be heard by an administrative law judge who is not affiliated with the Lottery. The current procedure, which utilizes a Lottery hearing board for appeals, is unable to uniformly specify the membership of the board because that membership has changed at times to ensure the involvement of neutral parties. Appeal beyond the administrative law judge would be to the Lottery CEO, and should an impacted party wish to appeal the Lottery's agency decision, this rule making preserves the party's ability to request judicial review within the court system.

This rule making will implement the Iowa Lottery Authority Act (Iowa Code chapter 99G), which directs the Lottery Board to adopt policies and procedures and promulgate administrative rules relating to the management and operation of the Lottery, while allowing the Board to delegate to the Lottery CEO those duties it deems appropriate. Likewise, the Act also authorizes the Lottery CEO to conduct hearings or administer oaths for the purpose of assuring the security and integrity of Lottery operations or determining the qualifications of or compliance by Lottery vendors and retailers.

Review of an appeal by the head of the agency also appears to be consistent with the Iowa Administrative Procedure Act (Iowa Code chapter 17A), which addresses and governs all agencies.

Issue (3): Similar appeal processes at other state entities

A member of the Administrative Rules Review Committee asked whether other state agencies have an appeal process similar to that proposed by the Lottery's rule making.

Board response: Numerous state agencies currently appear to have a similar appeal process to that proposed by the Lottery, where an administrative law judge issues a proposed decision that can be subsequently appealed to the agency head (director, commissioner, superintendent, etc.). Those include the following in alphabetical order of area of focus: Department of Administrative Services, Division of Banking, Department of Corrections, Division of Credit Unions, Department of Human Services, Department of Inspections and Appeals, Insurance Division, State Public Defender, Department of Public Health, Department of Public Safety, Department of Revenue (the Director of the Department can retain a contested case for hearing, but if it is not retained, an administrative law judge acts as presiding officer and the proposed decision is subject to appeal to the director), and Department of Transportation.

The amendments in this Adopted and Filed rule making differ from those published under Notice of Intended Action. The amendments have been revised to ensure that a variety of viewpoints are involved in the Lottery's decision-making process for administrative appeals.

Adoption of Rule Making

This rule making was adopted by the Board of Directors of the Iowa Lottery Authority on November 19, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Rescind rule 531—2.17(99G) and adopt the following **new** rule in lieu thereof:

531—2.17(99G) Vendor appeals.

2.17(1) *Filing vendor appeal.* Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the lottery may file a written notice of appeal of the procurement decision with the Iowa Lottery, 13001 University Avenue, Clive, Iowa 50325-8225, within five business days of the date of the award. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the lottery's award.

2.17(2) *Presiding officer.* Upon receipt of a notice of a vendor appeal, the chief executive officer shall appoint an administrative law judge within the administrative hearings division of the department of inspections and appeals to serve as presiding officer, who would then issue a proposed ruling that the chief executive officer may hear on appeal.

2.17(3) *Hearing.* Where feasible, vendor appeals shall be conducted in accordance with 531—Chapter 5. In the case of conflict, the rules and procedures set forth in Chapter 2 control for vendor appeals submitted to the lottery. The presiding officer shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the lottery, except that the administrative law judge has the ability to extend this duration where the administrative law judge determines good cause necessitates an extension.

2.17(4) *Discovery.* The parties shall serve any discovery requests upon the other parties at least 30 days prior to the date set for hearing. The parties must serve responses to discovery at least 20 days prior to the date set for the hearing.

2.17(5) *Witnesses and exhibits.* The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the time set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

2.17(6) *Contents of decision.* The administrative law judge shall issue and serve upon all parties a written proposed decision that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the appeal and shall conform with the requirements of Iowa Code chapters 17A and 99G.

2.17(7) *Status of ruling.* The ruling of the presiding officer constitutes a proposed ruling which may be appealed to the lottery's chief executive officer. The written decision of the chief executive officer on a vendor appeal constitutes a final decision of the lottery, which may be further appealed in accordance with Iowa Code section 17A.19.

2.17(8) *Stay of agency action for vendor appeal.*

a. Any party appealing the issuance of a notice of intent to award a contract may petition the presiding officer for a stay of the award pending its review. The petition for stay shall be filed with the notice of appeal and shall state the reasons justifying a stay. Any decision issued by a presiding officer regarding a stay may be appealed to the chief executive officer.

b. Any party adversely affected by a final decision and order may petition the chief executive officer for a stay of the agency decision and order pending judicial review. The petition for stay shall be filed with the chief executive officer within ten days of receipt of the final decision and order and shall state the reasons justifying a stay.

c. The presiding officer or chief executive officer may grant a stay upon a conclusion that the movant has satisfied the standards for the grant of a stay included in rule 531—5.29(17A) and Iowa Code section 17A.19(5).

This rule is intended to implement Iowa Code sections 99G.9, 99G.21, 99G.23, and 99G.37.

ITEM 2. Amend rule 531—5.2(17A) as follows:

531—5.2(17A) Definitions. Except where otherwise specifically defined by law:

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

~~*"Hearing board"* means the board designated to resolve license disputes pursuant to Iowa Code Supplement section 99G.27(3) and these rules.~~

"Issuance" means the date of mailing or otherwise electronically providing a copy of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrative law judge.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case ~~in which the hearing board did not preside~~.

ITEM 3. Rescind and reserve rule **531—5.3(17A)**.

ITEM 4. Amend rule 531—5.6(17A) as follows:

531—5.6(17A) Notice of hearing.

5.6(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal or electronic service as ~~provided~~ permitted in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

5.6(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 lottery 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 lottery or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding; and

~~*g.* Reference to the procedural rules governing informal settlement;~~

~~*h.*~~ *g.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer ~~(e.g., the hearing board, the chief executive officer of the lottery, members of the lottery authority board, administrative law judge from the department of inspections and appeals); and~~.

~~*i.* Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 531—5.6(17A), that the presiding officer be an administrative law judge.~~

ITEM 5. Rescind paragraph **5.7(2)"h."**

ITEM 6. Amend subrule 5.7(5) as follows:

5.7(5) Unless otherwise provided by law, the chief executive officer or a designee, ~~and members of the lottery authority board,~~ when reviewing a proposed decision upon appeal to the lottery, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

ITEM 7. Amend subrule 5.12(2) as follows:

5.12(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 paper or electronic mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

ITEM 8. Amend subrule 5.12(3) as follows:

5.12(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 ~~Office of the Chief Executive Officer, Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225~~ presiding officer. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously ~~in the office of the chief executive officer~~ with the presiding officer.

ITEM 9. Amend subrule 5.12(4) as follows:

5.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the ~~chief executive officer's office~~ presiding officer, delivered to an established courier service for immediate delivery to ~~that office~~ the presiding officer, delivered via electronic mail or fax, or mailed by first-class mail or state interoffice mail to ~~that office~~ the presiding officer, so long as there is proof of mailing.

ITEM 10. Amend rule 531—5.25(17A) as follows:

531—5.25(17A) Interlocutory appeals. Upon written request of a party or ~~on its own motion~~ sua sponte, the ~~hearing board~~ chief executive officer may review an interlocutory order of the presiding officer. In determining whether to do so, the ~~hearing board~~ chief executive officer shall weigh the extent to which ~~its~~ the chief executive officer's granting of the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews 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.

ITEM 11. Amend rule 531—5.26(17A) as follows:

531—5.26(17A) Final decision.

5.26(1) When the ~~hearing board~~ chief executive officer presides over the reception of evidence at the hearing, ~~its~~ the chief executive officer's decision is a final decision.

5.26(2) When the ~~hearing board~~ chief executive officer does not preside at the reception of evidence, the presiding officer shall make 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 ~~hearing board~~ chief executive officer within the time provided in rule 531—5.27(17A).

ITEM 12. Amend rule 531—5.27(17A) as follows:

531—5.27(17A) Appeals and review.

5.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the ~~hearing board~~ chief executive officer of the lottery within 30 days after issuance of the proposed decision.

5.27(2) *Review.* The ~~hearing board~~ chief executive officer may initiate review of a proposed decision on ~~its~~ the chief executive officer's own motion at any time within 30 days following the issuance of such a decision.

5.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the Iowa lottery. 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.

5.27(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 non-appealing party, within 14 days of service of the notice of appeal. The ~~hearing board~~ chief executive officer may remand a case to the presiding officer for further hearing or may ~~itself~~ personally preside at the taking of additional evidence.

5.27(5) *Scheduling.* The ~~presiding officer~~ chief executive officer shall issue a schedule for consideration of the appeal.

5.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The ~~hearing board~~ chief executive officer may resolve the appeal on the briefs or provide an opportunity for oral argument. The ~~hearing board~~ chief executive officer may shorten or extend the briefing period as appropriate.

ITEM 13. Amend rule 531—5.29(17A) as follows:

531—5.29(17A) Stays of agency actions.

5.29(1) *When available.*

a. Any party to a contested case proceeding may petition the lottery for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The ~~hearing board~~ chief executive officer of the lottery may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the lottery 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.

5.29(2) *When granted.* In determining whether to grant a stay, the chief executive officer or presiding officer ~~or hearing board~~ shall consider the factors listed in Iowa Code section 17A.19(5).

5.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the lottery or any other party.

[Filed 11/25/19, effective 1/22/20]

[Published 12/18/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4835C

MEDICINE BOARD[653]

Adopted and Filed

Rule making related to prescribing psychologists

The Board of Medicine hereby amends Chapter 19, "Prescribing Psychologists," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapters 17A, 154B and 272C and Iowa Code section 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 124, 147, 148, 154B and 272C.

Purpose and Summary

This rule making establishes new rules 653—19.10(17A,124,147,148,154B,272C) and 653—19.11(17A,124,147,148,154B,272C), which establish the standards of practice for physicians who supervise a conditional prescribing psychologist and physicians who collaborate with a prescribing psychologist, and new rule 653—19.12(17A,124,147,148,272C), which establishes grounds for discipline.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019, as **ARC 4663C**. A public hearing was held on October 15, 2019, at 9 a.m. at the Board's office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on November 8, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Review by Administrative Rules Review Committee

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

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making action is adopted:

Adopt the following **new** rules 653—19.10(17A,124,147,148,154B,272C) to 653—19.12(17A,124,147,148,272C):

653—19.10(17A,124,147,148,154B,272C) Standards of practice—supervision of a conditional prescribing psychologist. A supervising physician shall be a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice and who supervises a conditional prescribing psychologist. A supervising physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A supervising physician shall fully comply with the following standards of practice.

19.10(1) *Supervision.* A supervising physician shall provide appropriate oversight and direction to a conditional prescribing psychologist during the period of supervised practice to achieve patient safety and optimal clinical outcomes. A supervising physician shall ensure that appropriate clinical examinations and necessary testing are performed and that all psychopharmacology services provided are appropriate for the patient's condition. Supervision may be in person or via electronic communications in accordance with these rules.

19.10(2) *Primary supervising physician.* A supervising physician shall determine whether the supervising physician has been designated as a conditional prescribing psychologist's primary supervising physician and shall fulfill the responsibilities of the primary supervising physician in accordance with these rules. A conditional prescribing psychologist may have more than one supervising physician.

19.10(3) *Maximum number of conditional prescribing psychologists.* A supervising physician shall not supervise more than two conditional prescribing psychologists at one time.

19.10(4) *Minimum period of supervision.* The primary supervising physician shall ensure that a conditional prescribing psychologist completes a minimum of two years of supervised practice prescribing psychotropic medications to patients with mental disorders in accordance with these rules in order for the conditional prescribing psychologist to be eligible to apply for a prescription certificate.

19.10(5) *Minimum number of patients.* The primary supervising physician shall ensure that a conditional prescribing psychologist has seen a minimum of 300 patients who had a diagnosed mental disorder for whom pharmacological intervention was considered as a treatment option, even if a decision was made not to prescribe a psychotropic medication to the patient. The primary supervising physician shall ensure that a conditional prescribing psychologist has treated a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

19.10(6) *Initial assessment.* Prior to supervising a conditional prescribing psychologist, each supervising physician shall assess the conditional prescribing psychologist's relevant education, training, experience, and competence.

19.10(7) *Scope of practice.* Each supervising physician shall ensure that all psychopharmacology services provided by a conditional prescribing psychologist are within the competence and scope of practice of the supervising physician and the conditional prescribing psychologist.

19.10(8) *Prescriptive authority.* Each supervising physician shall ensure that a conditional prescribing psychologist only prescribes psychotropic medications for the treatment of mental disorders.

19.10(9) *Prescriptions.* A supervising physician shall ensure that each prescription issued by a conditional prescribing psychologist identifies the prescriber as a "psychologist certified to prescribe" and includes the Iowa license number of the conditional prescribing psychologist and the name of the supervising physician.

19.10(10) *Active DEA and CSA registration.* A supervising physician shall ensure that a conditional prescribing psychologist has an active DEA registration and CSA registration at all times during the period of supervision.

19.10(11) *Patient populations.* A supervising physician shall ensure that a conditional prescribing psychologist only provides psychopharmacology services to patient populations within the conditional prescribing psychologist's education, training, experience, and competence. A supervising physician may establish limitations on the types of populations to whom a conditional prescribing psychologist may provide psychopharmacology services based on the conditional prescribing psychologist's education, training, experience, and competence.

19.10(12) *Psychotropic medications.* A supervising physician shall ensure that a conditional prescribing psychologist only prescribes psychotropic medications that are within the conditional prescribing psychologist's education, training, experience, and competence. A supervising physician may establish limitations on the types of psychotropic medications that a conditional prescribing psychologist may prescribe based on the conditional prescribing psychologist's education, training, experience, and competence.

19.10(13) *Specialization.* A supervising physician shall ensure that a conditional prescribing psychologist has completed the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

a. *Children.* To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A pediatric practice,

(2) A child and adolescent practice, or

(3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

b. *Elderly patients.* To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A geriatric practice, or

(2) A general practice with patients across the lifespan including patients who are over 65 years of age.

c. *Serious medical conditions.* To prescribe to patients with serious medical conditions including, but not limited to, heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, a supervising physician shall ensure that a conditional prescribing psychologist has completed at least one year prescribing psychotropic medications to patients with serious medical conditions if the conditional prescribing psychologist intends to treat patients with serious medical conditions after the supervised practice period.

19.10(14) *Informed consent.* A supervising physician shall ensure that a conditional prescribing psychologist obtains appropriate informed consent before the conditional prescribing psychologist provides psychopharmacology services to a patient.

19.10(15) *Release of information.* A supervising physician shall ensure that a conditional prescribing psychologist obtains a release of information authorizing the conditional prescribing psychologist to share information with the supervising physician before the conditional prescribing psychologist provides psychopharmacology services to a patient.

19.10(16) *Primary care physician.* A supervising physician shall ensure that each patient has a designated primary care physician before a conditional prescribing psychologist provides psychopharmacology services to a patient. A supervising physician shall ensure that a conditional prescribing psychologist maintains a cooperative relationship with the primary care physician who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical condition, and significant changes in the patient's medical or psychological condition are discussed. A supervising physician shall ensure that a conditional prescribing psychologist engages in appropriate consultation with a patient's designated primary care physician while the conditional prescribing psychologist is providing psychopharmacology services to a patient.

19.10(17) *Chart reviews.* A supervising physician shall personally review a representative sample of the conditional prescribing psychologist's patient charts.

19.10(18) *Performance evaluations.* A supervising physician shall regularly evaluate the clinical judgment, skills and performance of a conditional prescribing psychologist to safely provide psychopharmacology services to patients and provide appropriate feedback to the conditional prescribing psychologist.

19.10(19) *Supervision plan.* Prior to supervising a conditional prescribing psychologist, a supervising physician shall ensure that a conditional prescribing psychologist has an approved written supervision plan in place. A template may be obtained from the boards of medicine and psychology. The supervision plan shall define the nature and extent of the supervisory relationship and outline specific parameters for review of the supervisory relationship. The supervision plan shall take into account the supervising physician's and conditional prescribing psychologist's relevant education, training, experience, and competence and the nature and scope of the psychopharmacology services to be provided. The supervising physician and conditional prescribing psychologist shall each maintain a copy of the supervision plan and provide a copy of the plan to the boards of medicine and psychology upon request. The supervision plan shall include the following:

a. *Conditional prescribing psychologist's information.* The name, license number, address, telephone number, and email address of the conditional prescribing psychologist.

b. *Supervising physician's information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the supervising physician.

c. *Designation of the primary supervising physician.* Designation of the conditional prescribing psychologist's primary supervising physician.

d. *Period of supervision.* The beginning date of the supervision plan and estimated date of completion.

e. *Locations and settings.* A description of the locations and settings where and with whom supervision will occur.

f. *Scope of practice.* A description of the scope of practice of the supervising physician and the conditional prescribing psychologist.

g. *Methods of communication.* A description of how the supervising physician and conditional psychologist may communicate for appropriate supervision.

h. *Initial assessment.* A description of the steps the supervising physician has taken to assess a conditional prescribing psychologist's relevant education, training, experience, and competence prior to supervising the conditional prescribing psychologist.

i. *Limitations on psychotropic medications.* A description of any limitations on the types of psychotropic medications the conditional prescribing psychologist may prescribe consistent with the supervising physician's and prescribing psychologist's relevant education, training, experience, and competence.

j. *Limitations on patient populations.* A description of any limitations on the types of populations the conditional prescribing psychologist may treat with psychotropic medications consistent with the supervising physician's and prescribing psychologist's relevant education, training, experience, and competence.

k. *Expectations and responsibilities.* A description of the expectations and responsibilities of the supervisory relationship.

l. *Specialization.* A description of the specialized training to be completed by the conditional prescribing psychologist in order to provide psychopharmacology services to children (less than 17 years of age), elderly persons (over 65 years of age), or patients with serious medical conditions, including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities in accordance with subrule 19.3(4).

m. *Chart reviews.* A description of the steps the supervising physician has taken to personally review a representative sample of the conditional prescribing psychologist's patient charts.

n. Consultation between the supervising physician and the primary care physician. A requirement that the supervising physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

o. Performance evaluations. A description of the steps the supervising physician has taken to regularly evaluate the clinical judgment, skills and performance of a conditional prescribing psychologist to safely provide psychopharmacology services to patients and provide appropriate feedback to the conditional prescribing psychologist.

p. Termination of the supervision plan. A description of how the supervision plan may be terminated and the process for notifying affected patients.

q. Signatures. Signatures of the conditional prescribing psychologist and all supervising physicians.

r. Amendment to the supervision plan. A requirement that a conditional prescribing psychologist shall inform the board of psychology of any amendments to the supervision plan, including the addition of any supervising physicians, within 30 days of the change and that any amendment to a supervisory plan be subject to approval of the board of psychology.

s. Request for extension. If the primary supervising physician determines that a conditional prescribing psychologist is unable to successfully complete the supervised practice prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist and the primary supervising physician can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time requested.

19.10(20) *Certification of completion.* At the conclusion of the supervised practice period, the primary supervising physician shall certify the following:

a. Supervision. That each supervising physician has provided supervision to the conditional prescribing psychologist in accordance with these rules.

b. Minimum period of supervised practice. That the conditional prescribing psychologist has successfully completed a minimum of two years of supervised practice.

c. Minimum number of patients. That the conditional prescribing psychologist has seen a minimum of 300 patients who had a diagnosed mental disorder with whom pharmacological intervention was considered as a treatment option, even if a decision was made not to prescribe a psychotropic medication to the patient, and that the conditional prescribing psychologist has treated a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

d. Specialization. That a conditional prescribing psychologist who intends to provide psychopharmacology services to children (less than 17 years of age), elderly persons (over 65 years of age), or patients with serious medical conditions, including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, has successfully completed a minimum of one year of supervised practice with the respective populations during the supervised practice period.

e. Demonstrated competence. That a conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones sufficient to obtain a prescription certificate in accordance with paragraph 19.2(3)*"f."*

653—19.11(17A,124,147,148,154B,272C) Standards of practice—collaboration with a prescribing psychologist. A collaborating physician shall be a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A collaborating physician shall fully comply with the following standards of practice:

19.11(1) *Collaboration.* A collaborating physician shall provide appropriate collaboration with a prescribing psychologist to achieve patient safety and optimal clinical outcomes. A collaborating physician shall ensure that appropriate clinical examinations and necessary testing are performed and that all psychopharmacology services provided are appropriate for the patient's condition. Collaboration may be in person or via electronic communications in accordance with these rules. A prescribing psychologist may have more than one collaborating physician.

19.11(2) *Maximum number of prescribing psychologists.* A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time.

19.11(3) *Initial assessment.* Prior to serving as a collaborating physician, a physician shall assess a prescribing psychologist's relevant education, training, experience, and competence.

19.11(4) *Scope of practice.* A collaborating physician shall ensure that all psychopharmacology services provided by a prescribing psychologist are within the competence and scope of practice of the collaborating physician and the prescribing psychologist.

19.11(5) *Prescriptive authority.* A collaborating physician shall ensure that a prescribing psychologist only prescribes psychotropic medications for the treatment of mental disorders.

19.11(6) *Delegation.* A collaborating physician shall ensure that a prescribing psychologist does not delegate prescriptive authority to any other person.

19.11(7) *Narcotics.* A collaborating physician shall ensure that a prescribing psychologist does not prescribe narcotics.

19.11(8) *Active DEA and CSA registration.* A collaborating physician shall ensure that a prescribing psychologist has an active DEA registration and CSA registration at all times during the period of collaboration.

19.11(9) *Patient populations.* A collaborating physician shall ensure that a prescribing psychologist only provides psychopharmacology services to patient populations within the prescribing psychologist's education, training, experience, and competence. A collaborating physician may establish limitations on the types of populations to whom a prescribing psychologist may provide psychopharmacology services based on the prescribing psychologist's education, training, experience, and competence.

19.11(10) *Psychotropic medications.* A collaborating physician shall ensure that a prescribing psychologist only prescribes psychotropic medications that are within the prescribing psychologist's education, training, experience, and competence. A collaborating physician may establish limitations on the types of psychotropic medications that a prescribing psychologist may prescribe based on the prescribing psychologist's education, training, experience, and competence.

19.11(11) *Specialization.* A collaborating physician shall ensure that a prescribing psychologist has completed at least one year of the required two years of supervised practice with the respective population in accordance with subrule 19.3(4) before the prescribing psychologist provides psychopharmacology services to children (less than 17 years of age), elderly persons (over 65 years of age), or patients with serious medical conditions, including but not limited to, heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities.

19.11(12) *Informed consent.* A collaborating physician shall ensure that a prescribing psychologist obtains appropriate informed consent before a prescribing psychologist provides psychopharmacology services to a patient.

19.11(13) *Release of information.* A collaborating physician shall ensure that a prescribing psychologist obtains a release of information authorizing the prescribing psychologist to share information with the collaborating physician before the prescribing psychologist provides psychopharmacology services to a patient.

19.11(14) *Primary care physician.* A collaborating physician shall ensure that each patient has a designated primary care physician before a prescribing psychologist provides psychopharmacology services to a patient. A collaborating physician shall ensure that a prescribing psychologist maintains a cooperative relationship with the primary care physician who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical condition, and significant changes in the patient's medical or

psychological condition are discussed. A collaborating physician shall ensure that a prescribing psychologist engages in appropriate consultation with a patient's designated primary care physician while the prescribing psychologist is providing psychopharmacology services to a patient.

19.11(15) *Chart reviews.* A collaborating physician shall personally review a representative sample of the prescribing psychologist's patient charts.

19.11(16) *Performance evaluations.* A collaborating physician shall regularly evaluate the clinical judgment, skills and performance of a prescribing psychologist to safely provide psychopharmacology services to patients and provide appropriate feedback to the prescribing psychologist.

19.11(17) *Collaborative practice agreement.* Prior to serving as a collaborating physician for a prescribing psychologist, the collaborating physician shall ensure that the prescribing psychologist has a written collaborative practice agreement in place. A template may be obtained from the boards of medicine and psychology. The collaborative practice agreement shall define the nature and extent of the collaborative relationship and outline specific parameters for review of the collaborative relationship. The collaborative practice agreement shall take into account the collaborating physician's and prescribing psychologist's relevant education, training, experience, and competence and the nature and scope of the psychopharmacology services to be provided. The collaborating physician shall review the terms of the collaborative practice agreement with the prescribing psychologist at least once each year. The collaborating physician and prescribing psychologist shall each maintain a copy of the collaborative practice agreement and provide a copy of the agreement to the boards of medicine and psychology upon request. The collaborative practice agreement shall include the following:

a. *Prescribing psychologist's information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.

b. *Collaborating physician's information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.

c. *Period of collaboration.* The time period covered by the collaborative practice agreement.

d. *Locations and settings.* A description of the locations and settings where and with whom collaborative practice will occur.

e. *Scope of practice.* A description of the scope of practice of the collaborating physician and the prescribing psychologist.

f. *Methods of communication.* A description of how the collaborating physician and prescribing psychologist may communicate for appropriate collaboration.

g. *Initial assessment.* A description of the steps the collaborating physician has taken to assess a prescribing psychologist's relevant education, training, experience, and competence prior to collaborating with a prescribing psychologist.

h. *Limitations on psychotropic medications.* A description of any limitations on the types of psychotropic medications the prescribing psychologist may prescribe consistent with the collaborating physician's and prescribing psychologist's relevant education, training, experience, and competence.

i. *Limitations on patient populations.* A description of any limitations on the types of populations the prescribing psychologist may treat with psychotropic medications consistent with the collaborating physician's and prescribing psychologist's relevant education, training, experience, and competence.

j. *Expectations and responsibilities.* A description of the expectations and responsibilities of the collaborative relationship.

k. *Specialization.* A description of the specialized training the prescribing psychologist has completed in order to provide psychopharmacology services to children (less than 17 years of age), elderly persons (over 65 years of age), or patients with serious medical conditions, including but not limited to, heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities in accordance with subrule 19.3(4).

l. *Chart reviews.* A description of the steps the collaborating physician has taken to personally review a representative sample of the prescribing psychologist's patient charts.

m. Consultation between the collaborating physician and the primary care provider. A requirement that the collaborating physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

n. Performance evaluations. A description of the steps the collaborating physician has taken to regularly evaluate the clinical judgment, skills and performance of the prescribing psychologist to safely provide psychopharmacology services to patients and provide appropriate feedback to the prescribing psychologist.

o. Termination of the collaborative practice agreement. A provision describing how the collaborative practice agreement may be terminated and the process for notifying affected patients.

p. Signatures. Signatures of the collaborating physician and the prescribing psychologist.

653—19.12(17A,124,147,148,272C) Grounds for discipline. A physician who fails to comply with these rules may be subject to disciplinary action by the board of medicine.

[Filed 11/18/19, effective 1/22/20]
[Published 12/18/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4828C

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

Adopted and Filed

Rule making related to expedited licensure for spouses of active duty military service members and prohibition of licensing sanctions for student loan debt

The Professional Licensing and Regulation Bureau hereby amends Chapter 4, "Social Security Numbers and Proof of Legal Presence," Chapter 8, "Denial of Issuance or Renewal, Suspension, or Revocation of License for Nonpayment of Child Support, Student Loan, or State Debt," and Chapter 14, "Military Service and Veteran Reciprocity," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 272C as amended by 2019 Iowa Acts, House File 288, and 2019 Iowa Acts, Senate File 304; and Iowa Code sections 546.3 and 546.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 288, and 2019 Iowa Acts, Senate File 304.

Purpose and Summary

These amendments implement changes required by 2019 Iowa Acts, House File 288, providing for expedited licensure for spouses of active duty service members of the military forces of the United States, and by 2019 Iowa Acts, Senate File 304, prohibiting the suspension or revocation of a license issued by a licensing board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4680C**. A public hearing was held on October 29, 2019, at 9 a.m. at the

Bureau's office at 200 East Grand Avenue, Suite 350, Des Moines, Iowa. No one attended the public hearing. No public comments were received.

Two changes have been made from the Notice. Items have been added to delete a reference to Iowa Code chapter 261 in the parenthetical implementation statute for rule 193—4.4(252J,261,272D,546) and to update the implementation sentence for Chapter 8. The other items in the Notice have been renumbered accordingly.

Adoption of Rule Making

This rule making was adopted by the Accountancy Examining Board on November 18, 2019; the Architectural Examining Board on November 21, 2019; the Engineering and Land Surveying Examining Board on November 14, 2019; the Interior Design Examining Board on November 19, 2019; the Landscape Architectural Examining Board on November 13, 2019; and the Real Estate Commission on November 20, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Bureau for a waiver of the discretionary provisions, if any, pursuant to 193—Chapter 5.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 193—4.1(546) as follows:

193—4.1(546) Purpose. This chapter outlines a uniform process for applicants and licensees of all boards in the bureau to establish proof of legal presence pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C.1621). This chapter also addresses the requirement that a license applicant provide a social security number under 42 U.S.C. 666(a)(13) and Iowa Code sections 252J.8(1)~~, 261.126(1),~~ and 272D.8(1) for purposes including the collection of child support obligations~~, college student loan obligations,~~ and debts owed to the state of Iowa.

ITEM 2. Amend rule **193—4.4(252J,261,272D,546)**, parenthetical implementation statute, as follows:

193—4.4(252J,~~261,~~272D,546) Social security number disclosure.

ITEM 3. Amend **193—Chapter 8**, title, as follows:

DENIAL OF ISSUANCE OR RENEWAL, SUSPENSION, OR REVOCATION OF LICENSE FOR NONPAYMENT OF CHILD SUPPORT~~, STUDENT LOAN,~~ OR STATE DEBT

ITEM 4. Rescind rule 193—8.2(261) and adopt the following **new** rule in lieu thereof:

193—8.2(272C) Prohibited grounds for discipline. The board shall not suspend or revoke a license issued by the board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

ITEM 5. Amend **193—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 252J, 272C and 272D ~~and Iowa Code sections 261.126 and 261.127~~.

ITEM 6. Amend **193—Chapter 14** as follows:

CHAPTER 14

MILITARY SERVICE, ~~AND~~ VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY SERVICE MEMBERS

193—14.1(~~85GA,ch1116~~ 272C) Definitions.

"Board" means an examining board or commission within the professional licensing and regulation bureau.

"License" or *"licensure"* means any license, registration, certificate, or permit that may be granted by an examining board or commission within the professional licensing and regulation bureau.

"Military service" means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

"Military service applicant" means an individual requesting credit toward licensure for military education, training, or service obtained or completed in military service.

"Spouse" means a spouse of an active duty service member of the military forces of the United States.

"Veteran" means an individual who meets the definition of "veteran" in Iowa Code section 35.1(2).

193—14.2(~~85GA,ch1116~~ 272C) Military education, training, and service credit. A military service applicant may apply for credit for verified military education, training, or service toward any experience or educational requirement for licensure by submitting a military service application form to the board office.

14.2(1) to **14.2(8)** No change.

193—14.3(~~85GA,ch1116~~ 272C) Veteran and spouse of active duty service member reciprocity.

14.3(1) A veteran or spouse with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran or spouse must pass any examinations required for licensure to be eligible for licensure through reciprocity and will be given credit for examinations previously passed when consistent with board laws and rules on examination requirements. A fully completed application for licensure submitted by a veteran or spouse under this subrule shall be given priority and shall be expedited.

14.3(2) Such an application shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide

such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2) or spouse of an active duty service member of the military forces of the United States.

14.3(3) Upon receipt of a fully completed licensure application, the board shall promptly determine if the professional or occupational licensing requirements of the jurisdiction where the ~~veteran~~ applicant is licensed are substantially equivalent to the licensing requirements in Iowa. The board shall make this determination based on information supplied by the applicant and such additional information as the board may acquire from the applicable jurisdiction. As relevant to the license at issue, the board may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, postgraduate experience, and examinations required for licensure.

14.3(4) The board shall promptly grant a license to the ~~veteran~~ applicant if the applicant is licensed in the same or similar profession in another jurisdiction whose licensure requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example, the applicant's disciplinary or criminal background.

14.3(5) If the board determines that the licensing requirements in the jurisdiction in which the ~~veteran~~ applicant is licensed are not substantially equivalent to those required in Iowa, the board shall promptly inform the ~~veteran~~ applicant of the additional experience, education, or examinations required for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or criminal background, the following shall apply:

a. If ~~a veteran~~ an applicant has not passed the required examination(s) for licensure, the applicant may not be issued a provisional license but may request that the licensure application be placed in pending status for up to one year or as mutually agreed to provide the ~~veteran~~ applicant with the opportunity to satisfy the examination requirements.

b. If additional experience or education is required in order for the applicant's qualifications to be considered substantially equivalent, the applicant may request that the board issue a provisional license for a specified period of time during which the applicant will successfully complete the necessary experience or education. The board shall issue a provisional license for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare or safety of the public unless the board determines that the deficiency is of a character that the public health, welfare or safety will be adversely affected if a provisional license is granted.

c. If a request for a provisional license is denied, the board shall issue an order fully explaining the decision and shall inform the applicant of the steps the applicant may take in order to receive a provisional license.

d. If a provisional license is issued, the application for full licensure shall be placed in pending status until the necessary experience or education has been successfully completed or the provisional license expires, whichever occurs first. The board may extend a provisional license on a case-by-case basis for good cause.

14.3(6) ~~A veteran~~ An applicant who is aggrieved by the board's decision to deny an application for a reciprocal license or a provisional license or is aggrieved by the terms under which a provisional license will be granted may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. The provisions of 193—Chapter 7 shall apply, except that no fees or costs shall be assessed against the ~~veteran~~ applicant in connection with a contested case conducted pursuant to this subrule.

14.3(7) The licensure requirements for some professions regulated by the boards are very similar or identical across jurisdictions. Given federal mandates, for instance, the requirements to become certified as a real estate appraiser authorized to perform appraisals for federally related transactions are substantially the same nationwide. The requirements to become certified as a certified public accountant are also substantially equivalent nationwide as long as the certified public accountant also holds a license or permit to practice in those jurisdictions which have a two-tiered system of issuing a certificate and a separate license or permit to practice public accounting. For other professions, the ~~veteran~~ applicant

is encouraged to consult with board staff prior to submitting an application for reciprocal licensure to determine in advance whether there are jurisdictional variations that may impact reciprocal licensure.

These rules are intended to implement ~~2014 Iowa Acts, chapter 1116, division VI~~ Iowa Code chapter 272C.

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[Published 12/18/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/18/19.

ARC 4829C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to family planning services

The Public Health Department hereby adopts new Chapter 75, "Family Planning Services Funding Prioritization, Restrictions and Reporting," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in 2019 Iowa Acts, chapter 85, section 98.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, chapter 85, section 98.

Purpose and Summary

This new chapter is adopted to implement the funding prioritization, restrictions and reporting requirements outlined in 2019 Iowa Acts, chapter 85, section 98, for family planning services under Title X.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019, as **ARC 4672C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on November 13, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making action is adopted:

Adopt the following **new** 641—Chapter 75:

CHAPTER 75
FAMILY PLANNING SERVICES FUNDING PRIORITIZATION, RESTRICTIONS AND REPORTING

641—75.1(88GA,ch85) Program explanation. The Iowa department of public health is a designated agency to operate the family planning program pursuant to an agreement with the federal government. Congress authorized grants to assist in the establishment and operation of family planning projects which offer a broad range of acceptable and effective family planning methods, including natural family planning, infertility services and services to adolescents. The majority of the funding available is from the Title X, family planning services grant, administered by the United States Department of Health and Human Services (DHHS).

The purpose of the program is to promote the health of persons of reproductive age and families by providing access to family planning and reproductive health promotion services.

The department, bureau of family health, will annually apply to the DHHS for grant funding under Title X of the federal Public Health Services Act, 42 U.S.C. §300 et seq. The department, bureau of family health, enters into contracts according to these rules with selected private and public agencies within the department family planning service area for the provision of family planning services. A description of the department family planning service area can be obtained from the Chief, Bureau of Family Health, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

641—75.2(88GA,ch85) Definitions.

"Department" means the Iowa department of public health.

"Nonprofit health care delivery system" means an Iowa nonprofit corporation that controls, directly or indirectly, a regional health care network consisting of hospital facilities and various ambulatory and clinic locations that provide a range of primary, secondary, and tertiary inpatient, outpatient, and physician services.

641—75.3(88GA,ch85) Distribution of grant funds. Distribution of grant funds utilizing the following prioritization shall be made in a manner that continues access to family planning services.

75.3(1) *Priority.* The department shall distribute all grant funds received to applicants in the following order of priority:

a. Public entities that provide family planning services including state, county, or local community health clinics; federally qualified health centers; and community action organizations.

b. Nonpublic entities that, in addition to family planning services, provide required primary health services as described in 42 U.S.C. §254b(b)(1)(A).

c. Nonpublic entities that provide family planning services but do not provide required primary health services as described in 42 U.S.C. §254b(b)(1)(A).

75.3(2) *Funds restrictions—abortion.*

a. Funds shall not be distributed to any entity that performs abortions, promotes abortions, maintains or operates a facility where abortions are performed or promoted, contracts or subcontracts with an entity that performs or promotes abortions, becomes or continues to be an affiliate of any entity that performs or promotes abortions, or regularly makes referrals to an entity that performs or promotes abortions or maintains or operates a facility where abortions are performed.

b. This prohibition shall not be interpreted to include a nonpublic entity that is a distinct location of a nonprofit health care delivery system, if the distinct location provides family planning services but does not perform abortions or maintain or operate as a facility where abortions are performed.

c. For the purposes of these rules, "abortion" does not include any of the following:

(1) The treatment of a woman for a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death.

(2) The treatment of a woman for a spontaneous abortion, commonly known as miscarriage, when not all of the products of human conception are expelled.

75.3(3) *Distinct provider identification number and attestation.*

a. Each distinct location of a nonprofit health care delivery system receiving funds from the department under these rules shall be assigned a unique identification number by the department.

b. Each distinct location of a nonprofit health care delivery system receiving funds from the department under these rules shall provide to the department, on forms provided by the department, a signed attestation that abortions are not performed at the distinct location.

641—75.4(88GA,ch85) Indirect funds restrictions—abortion. Grant funds shall not be used for direct or indirect costs, including but not limited to administrative costs or expenses, overhead, employee salaries, rent, and telephone or other utility costs, related to performing or promoting abortions as specified in these rules.

641—75.5(88GA,ch85) Report requirement.

75.5(1) The department shall submit a report, by calendar year, to the governor and the general assembly annually by January 1.

75.5(2) The report shall include:

a. A list of each entity that received funds under 75.3(1)*"c"* and the amount and type of funds received.

b. A detailed explanation of how the department determined that the distribution of funds to each entity under 75.3(1)*"c,"* instead of an entity under 75.3(1)*"a"* or *"b,"* was necessary to prevent severe limitations or elimination of access to family planning services in the region of the state where the entity was located.

These rules are intended to implement 2019 Iowa Acts, chapter 85, section 98.

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ARC 4830C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to medical residency training state matching grants program

The Public Health Department hereby amends Chapter 108, "Medical Residency Training State Matching Grants Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 135.176 as amended by 2019 Iowa Acts, chapter 55.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.176 as amended by 2019 Iowa Acts, chapter 55.

Purpose and Summary

2019 Iowa Acts, chapter 55, section 1, adds to the criteria for awarding medical residency training state matching grants a preference for candidates who are residents of Iowa, attended and earned an undergraduate degree from an Iowa college or university, or attended and earned a medical degree from a medical school in Iowa. This preference is in addition to the existing preference in the residency specialty. 2019 Iowa Acts, chapter 55, section 2, adds a requirement that the residency program offer the residency participants the opportunity to participate in a rural rotation to expose the residents to the rural areas of the state. The amendments incorporate these changes.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019, as **ARC 4671C**. No public comments were received. The Department received one comment from the Department's finance bureau noting that subrule 108.4(3), which specifies annual contract periods, was not required since standard contracting rules set the limits for contracts. The specificity of the contracting subrule was found to be administratively burdensome and without benefit to the program. Therefore, Items 2 and 3 have been added to rescind subrule 108.4(3) and to renumber the subrules that follow. Items 2 and 3 in the Notice have been renumbered as Items 4 and 5. Also, there was a minor wording change from "This residency specialty" to "The residency specialty" in Item 5 for grammatical clarity. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on November 13, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** subrule 108.3(5):

108.3(5) A sponsor shall offer persons to whom a primary care, including psychiatry, residency position is awarded, the opportunity to participate in a rural rotation to expose the resident to the rural areas of the state.

ITEM 2. Rescind subrule **108.4(3)**.

ITEM 3. Renumber subrules **108.4(4)** and **108.4(5)** as **108.4(3)** and **108.4(4)**.

ITEM 4. Amend rule 641—108.5(135), catchwords, as follows:

641—108.5(135) ~~Review~~ Application and review process.

ITEM 5. Amend subrule 108.5(2) as follows:

108.5(2) The department shall establish a request for proposal process for sponsors eligible to receive funding. The request for proposal and review process and review criteria for preference in awarding the grants shall be described in the request for proposal, including preference in the residency specialty and preference for candidates who are residents of Iowa, attended and earned an undergraduate degree from an Iowa college or university, or attended and earned a medical degree from a medical school in Iowa. ~~This~~ The residency specialty preference may be reflective of a subspecialty where particular demands for services have been demonstrated, of geographic areas of preference, or of other particular preferences that advance the objectives of the program.

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ARC 4831C

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to telecommunications service

The Utilities Board hereby rescinds Chapter 22, "Service Supplied by Telephone Utilities," and adopts a new Chapter 22, "Regulation of Telecommunications Service," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 476.2 and 476.103.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 476.

Purpose and Summary

The Board deregulated local telecommunications service in 2017, and significant changes in the statutes regarding regulation of telecommunications service became effective July 1, 2018. To address these changes in telecommunications regulation, the Board is rescinding its current rules in Chapter 22 and adopting a new Chapter 22 with updated rules regarding telecommunications service.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 8, 2019, as **ARC 4419C**. An oral presentation was held on June 13, 2019, at 1 p.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

Comments were presented at the oral presentation by telecommunications companies and the Office of Consumer Advocate, a division of the Iowa Department of Justice. The comments addressed several issues regarding registration, customer complaints, exchange maps, unauthorized changes in service, and alternative service providers.

Written comments received were very similar to the comments made at the oral presentation. The Board allowed for additional written comments after the oral presentation addressing a draft Adopted and Filed rule making. There were only a few additional comments filed addressing the draft, and those repeated earlier comments.

The Board issued an order adopting amendments on November 27, 2019. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2018-0022.

Based upon the comments from stakeholders and the Office of Consumer Advocate, the Board made revisions to the rules proposed under Notice. The major revisions to the Notice are to retain the current rules on originating access charges and high-volume access service and to establish additional requirements for registration by telecommunications service providers. The Board then provided stakeholders with a draft Adopted and Filed rule making, with the Board's decision on rules to be adopted. There were only a few comments on the draft Adopted and Filed rule making.

Adoption of Rule Making

This rule making was adopted by the Utilities Board on November 27, 2019.

Fiscal Impact

These rules will not have a financial impact on city utilities since the rules reflect the current competitive environment for telecommunications providers, including municipal telecommunications providers.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 199—1.3(17A,474,476).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making action is adopted:

Rescind 199—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
REGULATION OF TELECOMMUNICATIONS SERVICE

199—22.1(476) General information.

22.1(1) *Application and purpose of rules.* These rules shall apply to any telecommunications service provider operating within the state of Iowa subject to Iowa Code chapter 476, including local exchange telecommunications service providers, interexchange telecommunications service providers, or alternative operator services companies. These rules are intended to govern the exercise of the board's powers and duties relating to the provision of telecommunications service in the state of Iowa, and to govern the form, contents, and filing of registrations, tariffs, and other documents necessary to carry out the board's powers and duties. A request to waive the application of any rule on a permanent or temporary basis may be made in accordance with rule 199—1.3(17A,474,476).

22.1(2) *Definitions.* For the administration and interpretation of these rules, the following words and terms shall have the meanings indicated below:

"Alternative operator services company" or *"AOS company"* means a nongovernmental company which receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. This definition is further limited to include only companies which provide operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, and does not include services provided under contract to rate-regulated local exchange telecommunications service providers. Alternative operator services companies as defined are telecommunications service providers subject to the rules in this chapter.

"Board" means the Iowa utilities board.

"Calls" means telephone messages attempted by customers or users.

"Competitive local exchange carrier" or *"CLEC"* means a telecommunications service provider, other than an incumbent local exchange telecommunications service provider, that provides local exchange service.

"Customer" means any person as defined in Iowa Code section 4.1(20) responsible by law for payment for communications service from the telecommunications service provider.

"Exchange" means a unit established by a telecommunications service provider for the administration of communications services.

"Exchange service" means communications service furnished by means of exchange plant and facilities.

"Exchange service area" or *"exchange area"* means the general area in which the telecommunications service provider holds itself out to furnish local exchange telephone service.

"High-volume access service" or *"HVAS"* is any service that results in an increase in total billings for intrastate exchange access for a local exchange telecommunications service provider in excess of 100 percent in less than six months. By way of illustration and not limitation, HVAS typically results in significant increases in interexchange call volumes and can include chat lines, conference bridges, call center operations, help desk provisioning, or similar operations. These services may be advertised to consumers as being free or for the cost of a long distance call. The call service operators often provide marketing activities for HVAS in exchange for direct payments, revenue sharing, concessions, or commissions from local telecommunications service providers.

"Incumbent local exchange carrier" or *"ILEC"* means a telecommunications service provider, or successor to a telecommunications service provider, that was the historical provider of local exchange service pursuant to an authorized certificate of public convenience and necessity within a specific geographic area described in maps approved by the board as of September 30, 1992.

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the

management, control, or operation of a telecommunications system or the management of a telecommunications service.

"Interexchange service" is the provision of intrastate telecommunications services and facilities between local exchanges.

"Interexchange telecommunications service provider" means a telecommunications service provider, a resale telecommunications service provider or other entity that provides intrastate telecommunications services and facilities between exchanges within Iowa, without regard to how such traffic is carried. A local exchange telecommunications service provider that provides exchange service may also be considered an interexchange telecommunications service provider. An interexchange telecommunications service provider that provides local exchange service may also be considered a local exchange service provider.

"InterLATA toll service" means toll service that originates and terminates between local access transport areas.

"Internet protocol-enabled service" means any service, capability, functionality, or application that uses Internet protocol or any successor protocol and enables an end user to send or receive voice, data, or video communications in Internet protocol format or a successor format.

"IntraLATA toll service" means toll service that originates and terminates within the same local access transport area.

"Intrastate access services" are services of telecommunications service providers which provide the capability to deliver intrastate telecommunications services which originate from end users to interexchange telecommunications service providers and the capability to deliver intrastate telecommunications services from interexchange telecommunications service providers to end users.

"Local exchange service" means telephone service furnished between customers or users located within an exchange area.

"Local exchange telecommunications service provider" means a registered telecommunications service provider that provides local exchange service. The telecommunications service provider may also provide other services and facilities such as access services.

"Message" means a completed telephone call by a customer or user.

"Rates" means amounts billed to customers for alternative operator services or intrastate access services.

"Registration" means compliance by all telecommunications service providers with Iowa Code chapter 476. Registration shall be in the form as provided by the board in 199—Chapter 23.

"Retail services" means those communications services furnished by a telecommunications service provider directly to end-user customers. For an alternative operator services company, the terms and conditions of its retail services are addressed in an approved intrastate tariff.

"Tariff" means the entire body of rates, classifications, rules, procedures, policies, etc., adopted and filed with the board by a local exchange telecommunications service provider for wholesale services, not governed by an interconnection agreement or commercial agreement, or by an alternative operator services company for retail services, in fulfilling its role of furnishing telecommunications services.

"Telecommunications service provider" or *"service provider"* means a provider of local exchange or long distance telephone services, or both, other than commercial mobile radio service. "Telecommunications service provider" includes alternative operator service companies and providers of wholesale service. "Telecommunications service provider" includes companies formerly included in the definition of "telephone utility" or "utility" and means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing communications service to the public for compensation.

"Toll message" means a message made between different exchange areas for which a charge is made, excluding message rate service charges.

"Traffic" means telephone call volume, based on number and duration of calls.

"Transitional intrastate access service" means annual reductions affecting terminating end office access service that was subject to intrastate access rates as of December 31, 2011; terminating tandem-switched transport access service subject to intrastate access rates as of December 31, 2011;

and originating and terminating dedicated transport access service subject to intrastate access rates as of December 31, 2011.

"Voice over Internet protocol service" means an Internet protocol-enabled service that facilitates real-time, two-way voice communication that originates from, or terminates at, a user's location and permits the user to receive a call that originates from the public switched telephone network and to terminate a call on the public switched telephone network.

"Wholesale services" means those communications services furnished by one telecommunications service provider to another provider of communications services. The terms and conditions of wholesale services may be addressed in a telecommunications service provider's approved intrastate access tariff, local interconnection tariff, interconnection agreement reached under Sections 251 and 252 of the federal Telecommunications Act, or in a commercial agreement reached between the providers. Nothing in this chapter shall affect, limit, modify, or expand an entity's obligations under Sections 251 and 252 of the federal Telecommunications Act; any board authority over wholesale telecommunications rates, services, agreements, interconnection, providers, or tariffs; or any board authority addressing or affecting the resolution of disputes regarding compensation between telecommunications service providers.

199—22.2(476) Tariffs.

22.2(1) *Tariffs to be filed with the board.* Telecommunications service providers which are required to file tariffs with the board, such as alternative operator service companies and telecommunications service providers offering intrastate access, shall maintain tariffs in a current status. A copy of the tariffs shall be available upon request. The tariffs shall be classified, designated, arranged, and submitted so as to conform to the requirements of this chapter or board order. Provisions in the tariffs shall be definite and stated so as to minimize ambiguity or the possibility of misinterpretation. The form, identification, and content of tariffs shall be in accordance with these rules unless otherwise provided.

22.2(2) *Form and identification.* All tariffs shall conform to the following requirements:

a. The tariff shall be printed so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side. In the case of telecommunications service providers subject to regulation by any federal agency, the format of the sheets of the tariff filed with the board may be the same format as is required by the federal agency, provided that the requirements of the board as to title page; identity of superseding, replacing or revising sheets; identity of amending sheets; identity of the filing telecommunications service provider, issuing official, date of issue and effective date; and the words "Filed with the board" shall be applied to modify the federal agency format for the purposes of filing with this board.

b. The title page of every tariff and supplement shall show the following in the order set forth below:

(1) The first page shall be the title page, which shall show:

Name of Telecommunications Service Provider

Telecommunications Tariff

Filed with Iowa Utilities Board

Date

(2) When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on its title page that it is a revision of a tariff on file.

(3) When a revision or amendment is made to a filed tariff, the revision or amendment shall show on each sheet the designation of the original tariff or the number of the immediately preceding revision or amendment which it replaces.

(4) When a new part of a tariff eliminates an existing part of a tariff, it shall so state and clearly identify the part eliminated.

c. Any tariff modifications as described above shall be marked in the right-hand margin of the replacing tariff sheet with symbols as here described to indicate the place, nature and extent of the change

in text. The marked version shall show all additions and deletions, with all new language marked by underlined text and all deleted language indicated by strike-through. The following symbols are to be used in identifying changes to tariffs.

Symbol	Meaning
(C)	A change in regulation.
(D)	A discontinued rate or regulation.
(I)	An increased rate.
(N)	A new rate, treatment or regulation.
(R)	A reduced rate or new treatment resulting in a reduced rate.
(T)	A change in the text that does not include a change in rate, treatment, or regulation.

d. All sheets except the title page shall have, in addition to the information required above, the following further information:

(1) The name of the telecommunications service provider, which shall be set forth above the words "Telecommunications Service Provider Tariff" under which shall be set forth the words "Filed with board." If the telecommunications service provider is not a corporation and a trade name is used, the name of the individual or partners must precede the trade name.

(2) The issue date and the name of the issuing official.

(3) The effective date.

199—22.3(476) Customer complaints. Complaints from customers about telecommunications service shall be processed pursuant to the board's rules in 199—Chapter 6. Unless a customer agrees to an alternative form of notice, local exchange telecommunications service providers shall notify customers by bill insert or notice on the bill form of the address and telephone number where a telecommunications service provider representative can be reached. The bill insert or notice shall also include a statement: "If (telecommunications service provider name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by writing to the Iowa Utilities Board, 1375 E. Court Avenue, Des Moines, Iowa 50319; by calling 515-725-7321 or toll-free 877-565-4450; or by email to customer@iub.iowa.gov." The bill insert or notice on the bill shall be provided no less than annually.

199—22.4(476) Intrastate access charge application, tariff procedures, and rates.

22.4(1) *Application of intrastate access charges.*

a. Intrastate access charges shall apply to all intrastate access services rendered to interexchange telecommunications service providers. Intrastate access charges shall not apply to extended area service (EAS) traffic. In the case of resale of services of interexchange telecommunications service providers, access charges shall apply as follows:

(1) The interexchange telecommunications service provider shall be billed as if no resale were involved.

(2) The resale telecommunications service provider shall be billed only for access services not already billed to the underlying interexchange telecommunications service provider.

(3) Specific billing treatment and administration shall be provided pursuant to tariff.

b. Except as provided in subparagraph 22.4(1)*"b"*(3), no person shall make any communication of the type and nature transmitted by telecommunications service providers, between exchanges located within Iowa, over any system or facilities, which are or can be connected by any means to the intrastate telecommunications network, and uses exchange telecommunications service provider facilities, unless the person shall pay to the exchange telecommunications service provider or telecommunications service providers which provide service to the exchange where the communication is originated and the exchange where it is terminated, in lieu of the carrier common line charge, a charge in the amount of $25 per month per circuit that is capable of interconnection. However, if the person provides actual access minutes to the exchange telecommunications service provider, the charge shall be the charge per access minute or

fraction thereof, not to exceed $25 per line per month. The charge shall apply in all exchanges. However, if the person attests in writing that the person's facility cannot interconnect and is not interconnected with the exchange in question, the person will not be subject to the charge in that exchange.

(1) In the event that a communication is made without compliance with this rule, the telecommunications service provider or telecommunications service providers serving the person shall terminate telecommunications service after notice to the person. The telecommunications service provider shall not reinstate service until the board orders the telecommunications service provider to restore service. The board shall order service to be restored when the board has reasonable assurance that the person will comply with this rule.

(2) In any action concerning this rule, the burden of proof shall be upon the person making intrastate communications.

(3) This rule shall be inapplicable to administrative communications made by or to a telecommunications service provider.

22.4(2) *Filing of intrastate access service tariffs.*

a. Tariffs providing for intrastate switched access services shall be filed with the board by a local exchange telecommunications service provider that provides such services. A local exchange telecommunications service provider whose tariff or concurring tariff does not contain automatic reductions to implement the applicable transitional intrastate access service reductions shall file revised transitional intrastate access services rates with the board to become effective on or about July 1 of each year until such terminating rates are removed from the tariff. A competitive local exchange carrier that is required to benchmark its intrastate access service rates to the rates of an incumbent local exchange carrier shall file revised transitional intrastate access rates with the board to become effective on or about August 1 of each year until such terminating rates are removed from the tariff. Unless otherwise provided, the filings are subject to the applicable rules of the board.

b. Except in situations involving HVAS, a local exchange telecommunications service provider may concur in the intrastate access tariff filed by another local exchange telecommunications service provider serving the same exchange area. However, a competitive local exchange carrier may not concur in the intrastate access tariff of an incumbent local exchange carrier that qualifies as a rural telephone company pursuant to 47 U.S.C. § 153(44) unless the competitive local exchange carrier is also a rural CLEC pursuant to 47 CFR 61.26(a)(6).

(1) Alternatively, a local exchange telecommunications service provider may voluntarily elect to join another local exchange telecommunications service provider or telecommunications service providers in forming an association of local exchange telecommunications service providers. The association may file intrastate access service tariffs.

(2) All elements of the filings under this rule, including access service rate elements, shall be subject to review and approval by the board.

c. All intrastate access service tariffs shall incorporate the following:

(1) Carrier common line charge. The rate for the intrastate carrier common line charge shall be three cents per access minute or fraction thereof for the originating segments of the communication unless a lower rate is required by the transitional intrastate access service reductions or if numbered paragraphs 22.4(2)*"c"*(1)"1," "2," and "3" are applicable. The carrier common line charge shall be assessed to exchange access made by an interexchange telecommunications service provider, including resale telecommunications service providers. In lieu of this charge, interconnected private systems shall pay for access as provided in paragraph 22.4(1)*"b."*

1. Incumbent local exchange telecommunications service provider intrastate access service tariffs shall include the carrier common line charges approved by the board.

2. A competitive local exchange telecommunications service provider that concurs in or mirrors the rates in the access services tariff of the Iowa Communications Alliance, or its successor, shall deduct the originating and terminating carrier common line charges from its intrastate access service tariff.

3. Carrier common line charge for originating segments of the communication may be stepped down in compliance with requirements established by the Federal Communications Commission for originating access.

(2) End-user charge. No intrastate end-user charge shall be assessed.

(3) Universal service fund. No universal service fund shall be established.

(4) Transitional and premium rates. There shall be no discounted transitional rate elements applied in Iowa except as otherwise specifically set forth in these rules.

(5) A telecommunications service provider may, pursuant to tariff, bill for access on the basis of assumed minutes of use where measurement is not practical. However, if the interexchange telecommunications service provider provides actual minutes of use to the billing telecommunications service provider, the actual minutes shall be used.

(6) In the absence of a waiver granted by the board, local exchange telecommunications service providers shall allow any interexchange telecommunications service provider the option to use its own facilities that were in service on March 19, 1992, to provide local access transport service to terminate its own traffic to the local exchange telecommunications service provider. The interexchange telecommunications service provider may use its facilities in the manner and to a meet point agreed upon by the local exchange telecommunications service provider and the interexchange telecommunications service provider as of March 19, 1992. Changes mutually agreeable to the local exchange telecommunications service provider and the interexchange telecommunications service provider after that date also shall be recognized in allowing the interexchange telecommunications service provider to use its own local access transport facilities to terminate its own traffic. Recognition under this rule will also be extended to improvements by an interexchange telecommunications service provider that provided all the transport facilities to an exchange on March 19, 1992, whether the improvements were mutually agreeable or not, unless the improvements are inconsistent with an agreement between the interexchange telecommunications service provider and the local exchange telecommunications service provider.

(7) A provision prohibiting the application of association access service rates to HVAS traffic.

d. A local exchange telecommunications service provider that is adding a new HVAS customer or otherwise reasonably anticipates an HVAS situation shall provide notice of the situation, the telephone numbers that will be assigned to the HVAS customer (if applicable), and the expected date service to the HVAS customer will be initiated, if applicable. Notice may be sent to each interexchange telecommunications service provider that paid for intrastate access services from the local exchange telecommunications service provider in the preceding 12 months; to any telecommunications service provider with whom the local exchange telecommunications service provider exchanged traffic in the preceding 12 months; and to all other local exchange telecommunications service providers authorized to provide service in the subject exchange, by a method calculated to provide adequate notice. Any interexchange telecommunications service provider may request negotiations concerning the access rates applicable to calls to or from the HVAS customer.

(1) Any interexchange telecommunications service provider that believes a situation has occurred or is occurring which does not specifically meet the HVAS threshold requirements defined in subrule 22.1(2), but which raises the same general concerns and issues as an HVAS situation, may file a complaint with the board.

(2) A local exchange telecommunications service provider that experiences an increase in intrastate access billings that qualifies as an HVAS situation, but did not add a new HVAS customer or otherwise anticipate the situation, shall notify interexchange telecommunications service providers of the HVAS situation at the earliest reasonable opportunity, as described in the preceding paragraph. Any interexchange telecommunications service provider may request negotiations concerning whether the local exchange telecommunications service provider's access rates, as a whole or for HVAS only, should be changed to reflect the increased access traffic. When a telecommunications service provider requests negotiations concerning intrastate access services, the companies shall negotiate in good faith to achieve reasonable terms and procedures for the exchange of traffic. No access charges shall apply to the HVAS traffic until an access tariff for HVAS has been approved by the board. At any time that any telecommunications service provider believes negotiations will not be successful, the telecommunications service provider may file a written complaint with the board. In any such proceeding, the board will consider setting the rate for access services for HVAS traffic based upon the

incremental cost of providing HVAS, although any other relevant evidence may also be considered. The incremental cost will not include marketing or other payments made to HVAS customers. The resulting rates for access services may include a range of rates based upon the volume of access traffic or other relevant factors. Any negotiations pursuant to this subparagraph shall conclude within 60 days. After 60 days, a telecommunications service provider may petition the board to extend the period of negotiations or may petition the board to establish a procedural schedule and hearing date.

22.4(3) *Notice of intrastate access service tariffs.*

a. Each telecommunications service provider that files new or changed tariffs relating to access charges or access service shall give written notice of the new or changed tariffs to the telecommunications service provider's interexchange telecommunications service provider access customers, the board, and the consumer advocate. Notice shall be given on or before the date of the filing of the tariff. The notice shall consist of: the file date and proposed effective date of the tariff, a description of the proposed changes, and the tariff section number where the service description is located. If two or more local exchange telecommunications service providers concur in a single tariff filing, the local exchange telecommunications service providers may send a joint written notice to the board, the consumer advocate, and the interexchange telecommunications service providers.

b. The board shall not approve any new or changed tariff described in paragraph 22.4(3)*"a"* until after the period for resistance.

22.4(4) *Resistance to intrastate access service tariffs.*

a. If an interexchange telecommunications service provider affected by an access service filing or the consumer advocate desires to file a resistance to a proposed new or changed access service tariff, it shall file its resistance within 14 days after the filing of the proposed tariff. The interexchange telecommunications service provider shall send a copy of the resistance to all telecommunications service providers filing or concurring in the proposed tariff.

b. After receipt of a timely resistance, the board may:

(1) Deny the resistance if it does not on its face present a material issue of adjudicative fact or the board determines the resistance to be frivolous or otherwise without merit and approve the tariff; or

(2) Either suspend the tariff or approve the tariff to become effective subject to refund; and initiate informal complaint proceedings; or

(3) Either suspend the tariff or approve the tariff to become effective subject to refund; and initiate contested case proceedings; or

(4) Reject the tariff, stating the grounds for rejection.

c. The interexchange telecommunications service provider or the consumer advocate shall have the burden to support its resistance.

d. If contested case proceedings are initiated upon resistance filed by an interexchange telecommunications service provider, the interexchange telecommunications service provider may be required to pay the expenses reasonably attributable to the proceedings. The board will assess the costs of the proceeding on a case-by-case basis.

22.4(5) *Access charge rules to prevail.* The provisions of this rule shall be determinative of the procedures relating to intrastate access service tariffs and shall prevail over all inconsistent rules.

199—22.5(476) Interexchange telecommunications service provider service and access.

22.5(1) *Interexchange telecommunications service provider service.* An interexchange telecommunications service provider may provide interexchange service by complying with the laws of this state and the rules of this board. Any company or other entity accessing local exchange facilities or services in order to provide interexchange communication services to the public shall be considered to be an interexchange telecommunications service provider and subject to the rules herein, unless otherwise exempted. Such telecommunications service providers are required to file a registration form, reports, and other items and are subject to service standards as specified in board rules, unless otherwise exempted.

22.5(2) *Interexchange telecommunications service provider intrastate access.* Intrastate access to local exchange services or facilities may be obtained by an interexchange telecommunications service

provider by ordering and paying for such intrastate access pursuant to the applicable tariff filed by the exchange telecommunications service provider in question, or as otherwise provided by agreement between the parties.

199—22.6(476) Alternative operator services.

22.6(1) *Tariffs.* Alternative operator service companies must provide service pursuant to board-approved tariffs covering both rates and service.

22.6(2) *Blocking.* AOS companies shall not block the completion of calls which would allow the caller to reach a long distance telecommunications service provider different from the AOS company. All AOS company contracts with contracting entities must prohibit call blocking by the contracting entity. The contracting entity shall not violate that contract provision.

22.6(3) *Posting.*

a. Contracting entities must post on or in close proximity to all telephones served by an AOS company the following information:

(1) The name and address of the AOS company;

(2) A customer service number for receipt of further service and billing information; and

(3) Dialing directions to the AOS operator for specific rate information.

b. Contracts between AOS companies and contracting entities shall contain provisions for posting the information. The AOS companies also are responsible for the form of the posting and shall make reasonable efforts to ensure implementation, both initially and on an updated basis.

22.6(4) *Oral identification.* All AOS companies shall announce to the end-user customer the name of the provider carrying the call and, before billing begins, shall include a sufficient delay period to permit the caller to terminate the call or advise the operator to transfer the call to the end-user customer's preferred telecommunications service provider.

22.6(5) *Billing.* All AOS company bills to end-user customers shall comply with the following requirements:

a. All calls, except those billed to commercial credit cards, shall be itemized and identified separately on the bill. All calls will be rated solely from the end-user customer's point of origin to point of termination.

b. All bills, except those for calls billed to commercial credit cards, shall be rendered within 60 days of the provision of the service.

c. All charges for the use of a telephone instrument shall be shown separately for each call, except for calls billed to a commercial credit card.

22.6(6) *Emergency calls.* All AOS companies shall have a board-approved methodology to ensure the routing of all emergency zero-minus (0-) calls in the fastest possible way to the proper local emergency service agency.

22.6(7) *Service to inmates in correctional facilities.* AOS companies that provide local or intrastate calling services to inmates housed in correctional facilities may provide service that is not consistent with the requirements in this rule by including a statement of noncompliance in the AOS company's tariffs, which tariffs are required to be approved by the board before service is provided. AOS companies providing inmate calling services shall file a copy of each contract in support of the statement of noncompliance.

199—22.7(476) Service territories. Service territories are defined by the telephone exchange area boundary maps on file with the board.

22.7(1) *Map availability.* The maps are available for viewing at the board's office during regular business hours, and copies are available at the cost of reproduction.

22.7(2) *Map specifications.* All ILECs shall have on file with the board maps which identify their exchanges and both the internal exchange boundaries where the telecommunications service provider's own exchanges abut and the ultimate boundaries where the telecommunications service provider's exchanges abut the exchanges of other telecommunications service providers. A CLEC shall either file its own exchange boundary map or adopt the exchange boundary map filed by the ILEC serving

that exchange. Maps shall be filed in electronic format as approved by the board. ILECs and CLECs shall file updated exchange maps when the company adds service to an exchange or when the company ceases providing service to an exchange.

199—22.8(476) Registration of telecommunications service providers. Each telecommunications service provider required to register with the board pursuant to Iowa Code section 476.95A shall register with the board annually thereafter. Registration shall be completed electronically as provided by the board. If a telecommunications service provider is not required to register, the telecommunications service provider shall file an annual report in compliance with 199—Chapter 23.

22.8(1) The board shall issue an acknowledgment of registration within five business days of receipt of a provider's completed application for registration. Such acknowledgment shall authorize the applicant to obtain telephone numbers, interconnect with other telecommunications service providers, cross railroad rights-of-way pursuant to Iowa Code section 476.27, and provide telecommunications services within the state.

22.8(2) Registration may be transferred to another telecommunications service provider by filing a new or updated registration form. The board shall serve an acknowledgment of the new registration within five business days of receipt.

22.8(3) Registration is required even though a telecommunications service provider has a certificate of public convenience and necessity issued prior to July 1, 2018, and the provider retains the rights conferred by that certificate.

22.8(4) Telecommunications service providers that have not previously provided telecommunications service in Iowa shall register with the board prior to providing telecommunications service in Iowa.

22.8(5) Telecommunications service providers shall include with the registration a list of the exchanges where the telecommunications service provider offers telecommunications service, if applicable. A telecommunications service provider shall file an amended registration prior to expanding service to an exchange not listed on the registration or when exiting an exchange listed on the registration.

22.8(6) Updated registrations are required when the contact information on the registration changes.

199—22.9(476) Unauthorized changes in telecommunications service.

22.9(1) *Definitions.* As used in this rule, unless the context otherwise requires:

"Change in service" means the designation of a new provider of a telecommunications service to a customer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a customer account.

"Consumer" means a person other than a service provider who uses a telecommunications service.

"Cramming" means the addition or deletion of a product or service for which a separate charge is made to a telecommunications service customer's account without the verified consent of the affected customer. "Cramming" does not include the addition of extended area service to a customer account pursuant to board rules, even if an additional charge is made. "Cramming" does not include telecommunications services that are initiated or requested by the customer, including dial-around services such as "10-10-XXX," directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling by the customer.

"Customer" means the person other than a service provider whose name appears on the account and others authorized by that named person to make changes to the account.

"Executing service provider" means, with respect to any change in telecommunications service, a telecommunications service provider who executes an order for a change in service received from another telecommunications service provider or from its own customer.

"Jamming" means the addition of a preferred telecommunications service provider freeze to a customer's account without the verified consent of the customer.

"Letter of agency" means a written document complying with the requirements of paragraph 22.9(2)*"b."*

"Preferred telecommunications service provider freeze" means the limitation of a customer's preferred telecommunications service provider choices so as to prevent any change in preferred telecommunications service provider for one or more services unless the customer gives the telecommunications service provider from which the freeze was requested the customer's express consent.

"Service provider" means a telecommunications service provider providing telecommunications service, not including commercial mobile radio service.

"Slamming" means the designation of a new telecommunications service provider to a customer, including the initial selection of a telecommunications service provider, without the verified consent of the customer. "Slamming" does not include the designation of a new provider of a telecommunications service to a customer made pursuant to the sale or transfer of another telecommunications service provider's customer base, provided that the designation meets the requirements of paragraph 22.9(2)*"e."*

"Soft slam" means an unauthorized change in service by a telecommunications service provider that uses the telecommunications service provider identification code of another telecommunications service provider, typically through the purchase of wholesale services for resale.

"Submitting service provider" means a telecommunications service provider who requests another telecommunications service provider to execute a change in service.

"Telecommunications service" means a local exchange or long distance telephone service other than commercial mobile radio service.

"Verified consent" means verification of a customer's authorization for a change in service.

22.9(2) *Prohibition of unauthorized changes in telecommunications service.* Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited. Telecommunications service providers shall comply with Federal Communications Commission requirements regarding verification of customer authentication of a change in service and change in service provider as provided for in 47 CFR 64.1120 and 47 CFR 64.2401.

a. Verification required.

(1) No service provider shall submit a preferred telecommunications service provider change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with one of the following procedures:

1. The service provider has obtained the customer's written authorization in a form that meets the requirements of this rule; or

2. The service provider has obtained the customer's electronic authorization to submit the preferred telecommunications service provider change order. Such authorization must be placed from the telephone number(s) on which the preferred telecommunications service provider is to be changed and must confirm the information required in numbered paragraph 22.9(2)*"a"*(1)"1" above. Service providers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit or to a similar mechanism that records the required information regarding the preferred telecommunications service provider change, including automatically recording the originating automatic numbering identification; or

3. An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred telecommunications service provider change order that confirms and includes appropriate verification data. The independent third party must not be owned, managed, controlled, or directed by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred telecommunications service provider change orders for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred telecommunications service provider change; or

4. The local service provider may change the preferred service provider, for customer-originated changes to existing accounts only, through maintenance of sufficient internal records to establish a valid customer request for the change in service. At a minimum, any such internal records must include the date

and time of the customer's request and adequate verification of the identification of the person requesting the change in service. The burden will be on the local service provider to show that its internal records are adequate to verify the customer's request for the change in service.

All verifications shall be maintained for at least two years from the date the change in service is implemented, and all complaints regarding a change in preferred service provider must be brought within two years of the date the change in service is implemented. Verification of service freezes shall be maintained for as long as the preferred telecommunications service provider freeze is in effect.

(2) For other changes in service resulting in additional charges to existing accounts only, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in numbered paragraphs 22.9(2)*"a"*(1)"1" to "3" are also acceptable. The burden will be on the telecommunications service provider to show that its internal records are adequate to verify the customer's request for the change in service. Where the additional charge is for one or more specific telephone calls, examples of internal records a telecommunications service provider may submit include call records showing the origin, date, time, destination, and duration of the calls, and any other data the telecommunications service provider relies on to show the calls were made or accepted by the customer, along with an explanation of the records and data.

b. Letter of agency form and content.

(1) A service provider may use a letter of agency to obtain written authorization or verification of a customer's request to change the customer's preferred service provider selection. A letter of agency that does not conform with this subrule is invalid for purposes of this rule.

(2) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or web page and contain only the authorizing language described in subparagraph 22.9(2)*"b"*(5) having the sole purpose of authorizing a service provider to initiate a preferred service provider change. The letter of agency must be signed and dated by the customer to the telephone line(s) requesting the preferred service provider change. A local exchange telecommunications service provider may use a written or electronically signed letter of agency to obtain authorization or verification of a customer's request to change service.

(3) The letter of agency shall not be combined on the same document, screen, or web page with inducements of any kind.

(4) Notwithstanding subparagraphs 22.9(2)*"b"*(2) and (3), the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in subparagraph 22.9(2)*"b"*(5) and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a preferred service provider change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(5) At a minimum, the letter of agency must be printed in a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

1. The customer's billing name and address and each telephone number to be covered by the preferred service provider change order;

2. The decision to change the preferred service provider from the current service provider to the soliciting service provider;

3. That the customer designates [insert the name of the submitting service provider] to act as the customer's agent for the preferred service provider change;

4. That the customer understands that only one service provider may be designated as the customer's interstate or interLATA preferred interexchange service provider for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred service providers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international

interexchange), the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

5. That the customer understands that any preferred service provider selection the customer chooses may involve a charge to the customer for changing the customer's preferred service provider.

(6) Any service provider designated in a letter of agency as a preferred service provider must be the service provider directly setting the rates for the customer.

(7) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current service provider.

(8) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

c. Customer notification. Every change in service shall be followed by a written notification to the affected customer to inform the customer of the change. Such notice shall be provided within 30 days of the effective date of the change. Such notice may include, but is not limited to, a conspicuous written statement on the customer's bill, a separate mailing to the customer's billing address, or a separate written statement included with the customer's bill. Each such statement shall clearly and conspicuously identify the change in service, any associated charges or fees, the name of the service provider associated with the change, and a toll-free number by which the customer may inquire about or dispute any provision in the statement.

d. Preferred telecommunications service provider freezes.

(1) A preferred telecommunications service provider freeze (or "freeze") prevents a change in a customer's preferred service provider selection unless the customer gives the service provider from whom the freeze was requested express consent. All local exchange service providers who offer preferred telecommunications service provider freezes must comply with the provisions of this subrule.

(2) All local exchange service providers who offer preferred telecommunications service provider freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customers' service provider selections.

(3) Preferred telecommunications service provider freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred telecommunications service provider freeze. The service provider offering the freeze must obtain separate authorization for each service for which a preferred telecommunications service provider freeze is requested.

(4) Solicitation and imposition of preferred telecommunications service provider freezes.

1. All solicitation and other materials provided by a service provider regarding preferred telecommunications service provider freezes must include:

● An explanation, in clear and neutral language, of what a preferred telecommunications service provider freeze is and what services may be subject to a freeze;

● A description of the specific procedures necessary to lift a preferred telecommunications service provider freeze; an explanation that these steps are in addition to the verification requirements in this rule for changing a customer's preferred service provider selections; and an explanation that the customer will be unable to make a change in service provider selection unless the freeze is lifted; and

● An explanation of any charges associated with the preferred telecommunications service provider freeze.

2. No local exchange telecommunications service provider shall implement a preferred telecommunications service provider freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

● The local exchange telecommunications service provider has obtained the customer's written or electronically signed authorization in a form that meets the requirements of this rule; or

● The local exchange telecommunications service provider has obtained the customer's electronic authorization, placed from the telephone number(s) on which the preferred telecommunications service provider freeze is to be imposed, to impose a preferred telecommunications service provider freeze. The

electronic authorization shall confirm appropriate verification data. Service providers electing to confirm preferred telecommunications service provider freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit or to a similar mechanism that records the required information regarding the preferred telecommunications service provider freeze request, including automatically recording the originating automatic numbering identification; or

● An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred telecommunications service provider freeze and confirmed the appropriate verification data and the information required in this rule. The independent third party must not be owned, managed, or directly controlled by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred telecommunications service provider freeze requests for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred telecommunications service provider freeze.

3. A local exchange service provider may accept a written and signed authorization to impose a freeze on the customer's preferred service provider selection. Written authorization that does not conform with this subrule is invalid and may not be used to impose a preferred telecommunications service provider freeze.

● The written authorization shall comply with this rule concerning the form and content for letters of agency.

● At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

○ The customer's billing name and address and the telephone number(s) to be covered by the preferred telecommunications service provider freeze;

○ The decision to place a preferred telecommunications service provider freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred telecommunications service provider freezes on additional preferred service provider selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

○ That the customer understands that the customer will be unable to make a change in telecommunications service provider selection unless the preferred telecommunications service provider freeze is lifted; and

○ That the customer understands that any preferred telecommunications service provider freeze may involve a charge to the customer.

(5) All local exchange telecommunications service providers that offer preferred telecommunications service provider freezes must, at a minimum, offer customers the following procedures for lifting a preferred telecommunications service provider freeze:

1. A local exchange service provider administering a preferred telecommunications service provider freeze must accept a customer's written or electronically signed authorization stating the intention to lift a preferred telecommunications service provider freeze; and

2. A local exchange service provider administering a preferred telecommunications service provider freeze must accept a customer's oral authorization stating the intention to lift a preferred telecommunications service provider freeze and must offer a mechanism that allows a submitting service provider to conduct a three-way conference call with the service provider administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a preferred telecommunications service provider freeze, the service provider administering the freeze shall confirm appropriate verification data and the customer's intent to lift the particular freeze.

e. Procedures in the event of sale or transfer of customer base. A telecommunications service provider may acquire, through a sale or transfer, either part or all of another telecommunications service provider's customer base without obtaining each customer's authorization if the acquiring

telecommunications service provider complies with the following procedures. A telecommunications service provider may not use these procedures for any fraudulent purpose, including any attempt to avoid liability for violations under this rule.

(1) No later than 30 days before the planned transfer of the affected customers from the selling or transferring telecommunications service provider to the acquiring telecommunications service provider, the acquiring telecommunications service provider shall file with the board a letter notifying the board of the transfer and providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected customers, and the date of the transfer of the customer base to the acquiring telecommunications service provider. In the letter, the acquiring telecommunications service provider also shall certify compliance with the requirement to provide advance customer notice in accordance with this rule and with the obligations specified in that notice. In addition, the acquiring telecommunications service provider shall attach a copy of the notice sent to the affected customers.

(2) If, subsequent to the filing of the letter of notification with the board any changes to the required information develop, the acquiring telecommunications service provider shall file written notification of these changes with the board no more than ten days after the transfer date announced in the prior notification. The board may require the acquiring telecommunications service provider to send an additional notice to the affected customers regarding such material changes.

(3) Not later than 30 days before the transfer of the affected customers from the selling or transferring telecommunications service provider to the acquiring telecommunications service provider, the acquiring telecommunications service provider shall provide written notice to each affected customer. The acquiring telecommunications service provider must fulfill the obligations set forth in the written notice. The written notice must inform the customer of the following:

1. The date on which the acquiring telecommunications service provider will become the customer's new telecommunications service provider;

2. The rates, terms, and conditions of the service(s) to be provided by the acquiring telecommunications service provider upon the customer's transfer to the acquiring telecommunications service provider, and the means by which the acquiring telecommunications service provider will notify the customer of any change(s) to these rates, terms, and conditions;

3. The acquiring telecommunications service provider will be responsible for any telecommunications service provider change charges associated with the transfer;

4. The customer's right to select a different preferred telecommunications service provider for the telecommunications service(s) at issue, if an alternative telecommunications service provider is available;

5. All customers receiving the notice, even those who have arranged preferred telecommunications service provider freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring telecommunications service provider unless the customers select a different telecommunications service provider before the transfer date; existing preferred telecommunications service provider freezes on the service(s) involved in the transfer will be lifted; and the customers must contact their local service providers to arrange a new freeze;

6. Whether the acquiring telecommunications service provider will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring telecommunications service provider; and

7. The toll-free customer service telephone number of the acquiring telecommunications service provider.

These rules are intended to implement Iowa Code sections 476.1D, 476.2, 476.91, 476.95, 476.95A, 476.95B, 476.100, and 476.103.

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ARC 4832C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rule making related to benefits and voluntary shared work

The Director of the Workforce Development Department hereby amends Chapter 23, "Employer's Contribution and Charges," Chapter 24, "Claims and Benefits," and Chapter 25, "Benefit Payment Control," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 96.

Purpose and Summary

These amendments are largely in response to law changes made in 2018 Iowa Acts, House File 2321 and House File 2493. The Department needs to ensure its rules are properly updated and address these changes. Updates to deductibility of vacation pay and pensions, as well as the way in which the Department handles fraudulent overpayments and offsets, are made by these amendments. The additional rules for the implementation and administration of voluntary shared work assist the Department in adding efficiency and clarity to the Voluntary Shared Work Program for the benefit of employers and employees.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 11, 2019, as **ARC 4649C**. The Notice was reviewed by the Administrative Rules Review Committee at its meeting held on October 8, 2019. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Director of the Department on November 15, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **23.43(4)"b"** as follows:

b. An individual who voluntarily quits supplemental part-time employment without good cause ~~part-time employment~~ and has not requalified for benefits following the voluntary quit of supplemental part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting without good cause the supplemental part-time employer. The individual and the supplemental part-time employer which was voluntarily quit without good cause shall be notified on Form 65-5323 or 60-0186, Decision of the Workforce Development Representative, that benefit payments ~~shall not be made~~ which are based on the wages paid by the supplemental part-time employer shall not be made, and benefit charges shall not be assessed against the supplemental part-time employer's account; however, once the individual meets the requalification requirements following the voluntary quit without good cause of the supplemental part-time employer, the wages paid in the supplemental part-time employment shall be restored for benefit payment and charging purposes as determined by applicable requalification requirements.

ITEM 2. Amend paragraph **24.2(1)"k"** as follows:

k. Any individual who is disqualified for benefits because of the individual's failure to report ~~as directed to file a claim following the date specified~~ 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 shall be allowed to file a claim for and receive full benefits for each week for which such claim is filed, if otherwise eligible.

ITEM 3. Amend subrule 24.13(1) as follows:

24.13(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 shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 871—24.16(96) shall 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 which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, 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, ~~and the unemployment insurance representative cannot otherwise determine the period,~~ the unemployment insurance representative shall determine ~~the week or weeks~~ 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) shall 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—24.18(96) not to exceed five workdays following the separation date of employment. If the employer reports vacation pay in more than one format and the effect on the benefit payment varies depending on how the vacation pay is applied, the unemployment insurance representative shall apply the vacation pay to the individual's weekly benefit payment 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 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) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

ITEM 4. Amend paragraph **24.13(3)"e"** as follows:

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 ~~by that portion of the payment~~ if the base period employer has made 100 percent of the contributions to the plan which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

ITEM 5. Rescind and reserve subrule **24.16(2)**.

ITEM 6. Amend paragraph **24.17(1)"d"** as follows:

d. The claimant shall be instructed to only report vacation pay applicable to the first ~~week~~ five workdays following the last date worked. The claimant shall also be instructed that vacation pay designated by the employer in excess of one week may result in an overpayment of benefits.

ITEM 7. Amend subrule 24.58(1) as follows:

24.58(1) A shared work plan ~~will last no longer than 52 weeks from the date on which the plan is first effective. The minimum length of a plan is four weeks~~ shall be no shorter than 4 weeks and no longer than 52 weeks in duration. Any requests for subsequent plans will be reviewed by the department.

ITEM 8. Adopt the following **new** subrule 24.58(7):

24.58(7) *Employer requirements.*

a. For each week that a voluntary shared work employer has an active plan, the voluntary shared work employer shall submit a certification of hours worked by employees covered by an employer's approved work share plan in the form or manner directed by the department for each employee covered by the employer's approved work share plan.

b. The first employer weekly certification shall be due no later than the Monday following the effective date of the employer's approved work share plan. All subsequent weekly employer certifications shall be 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.

ITEM 9. Amend paragraph **25.8(2)"b,"** introductory paragraph, as follows:

b. The claimant may make refund of an overpayment by cash or by other means ~~of an offset against future benefit payments,~~ at the discretion of the department.

ITEM 10. Amend paragraph **25.8(2)"c"** as follows:

c. ~~Any benefits which may become due an individual against whom a fraudulent overpayment is outstanding may be used to reduce the amount of the fraudulent overpayment.~~ The employer's account will be noncharged for overpayments caused by fraud or misrepresentation.

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ARC 4833C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rule making related to claims and benefits

The Director of the Workforce Development Department hereby amends Chapter 24, "Claims and Benefits," and Chapter 25, "Benefit Payment Control," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 96.

Purpose and Summary

These amendments rescind a previous change that the Department has determined was not appropriate regarding the role of the administrative law judge in determining a disqualification for failure to report at a work development center as directed. Further clarifying rules may be proposed in the future.

Also, current procedures allow for an inequity to develop in cases of overpayment in which a claimant may have exhausted the claimant’s entire claim. This rule making ensures that claimants who are overpaid do not have that overpayment eliminated by the simple addition of claim weeks the claimants would otherwise have been ineligible to receive.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 11, 2019, as **ARC 4648C**. The Notice was reviewed by the Administrative Rules Review Committee at its meeting held on October 8, 2019. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Director of the Department on October 16, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Rescind paragraph **24.6(7)“f.”**

ITEM 2. Amend subrule 25.8(1), introductory paragraph, as follows:

25.8(1) *Good faith overpayment.* If an individual has acted in good faith in claiming benefits for any week and it is later determined that the individual ~~is~~ <u>was</u> not entitled to receive the benefits, the department shall recover the overpayment of benefits either by having a sum equal to the overpayment

deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. During a benefit year in which the maximum benefit amount has been paid or the maximum number of weeks has been paid and an overpayment is established for any benefits paid that the individual was not entitled to during that benefit year, no additional benefits will be payable to offset the overpayment. The department shall mail the overpayment decision to the claimant's last-known address. Once the overpayment amount has been established, an overpayment schedule shall be set up to leave a proper audit trail even if the claimant pays to the department a sum equal to the overpayment.

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ARC 4834C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rule making related to benefit payment control

The Director of the Workforce Development Department hereby amends Chapter 25, "Benefit Payment Control," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 96.

Purpose and Summary

These amendments update Department policies for collecting and recovering overpayment balances from claimants who have received benefits to which the claimants were not entitled. Adding the ability to pay by credit card, and specifying that the second notice will be a demand letter rather than another billing statement, assists the Department in recovering these balances and restoring the moneys to the unemployment insurance trust fund.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 11, 2019, as **ARC 4647C**. The Notice was reviewed by the Administrative Rules Review Committee at its meeting held on October 8, 2019. A Committee member asked if a credit card fee is assessed, and it was confirmed that a fee is assessed and that notice of the assessment of the fee is provided to the claimant. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Director of the Department on October 16, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 22, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **25.7(6)"c,"** introductory paragraph, as follows:

c. If a claimant fails to respond to the first statement of overpayment, a ~~second statement~~ demand letter shall be sent 30 days later. The ~~second statement~~ 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 ~~second billing~~ demand letter. The first repayment is expected ~~10~~ ten days from the date of the ~~second repayment statement~~ demand letter and the additional repayments every 30 days thereafter until the debt is paid in full. The department reserves the right to accept or reject any proposed repayment agreement. The following minimum repayment agreement is acceptable to the department.

ITEM 2. Amend paragraph **25.7(6)"d"** as follows:

d. If a claimant fails to respond to the ~~second~~ first repayment statement, a ~~third notice~~ demand letter shall be sent automatically in approximately 30 days. ~~The department has the option to send a notice which allows the claimant another 10 days to make full repayment of the indebtedness or a partial payment with an acceptable signed repayment agreement to prevent further collection action by the department, or the department may send a lien warning letter as the third billing notice. This warning gives 10 days to make full payment which will prevent lien filing.~~ 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 same type of action may be pursued by the department in those cases where a claimant defaults on a repayment schedule.

ITEM 3. Amend paragraph **25.8(1)"a"** as follows:

a. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment in the form of a negotiable check, money order, credit card payment, or bank draft payable to the Department of Workforce Development.

ITEM 4. Amend paragraph **25.8(1)"b"** as follows:

b. If a claimant fails to respond to the first statement of overpayment, a ~~second statement~~ demand letter shall be sent 30 days later. The ~~second statement~~ 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.

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