

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Rule making related to applicants for executive branch positions

The Department of Administrative Services hereby amends Chapter 50, “Human Resources Definitions,” and Chapter 54, “Recruitment, Application and Examination,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 17A.3 and 17A.4 and sections 8A.403 and 8A.413(5A) as enacted by 2018 Iowa Acts, Senate File 2323.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8A.403 and 8A.413(5A) as enacted by 2018 Iowa Acts, Senate File 2323.

Purpose and Summary

2018 Iowa Acts, Senate File 2323, relates to prohibitions and disclosure requirements concerning outside employment or activities requiring registration as a foreign agent and makes penalties applicable. 2018 Iowa Acts, Senate File 2323, requires the Department of Administrative Services to establish by rule procedures for applicants applying for both nonmerit and merit-covered executive branch positions to disclose in the application for employment whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq. These amendments comport with 2018 Iowa Acts, Senate File 2323.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 10, 2018, as **ARC 4045C**. A public hearing was held on October 30, 2018, at 1 p.m. in the Procurement Conference Room, A Level, Hoover State Office Building, Des Moines, Iowa. Kim Schmett spoke about the scope of the rule and included comments about the constitutionality of ex post facto laws which he said he felt applied to this rule. One change from the Notice was made. The Department dropped new paragraph “1” in Item 3, subrule 54.2(6).

Adoption of Rule Making

This rule making was adopted by the Department on November 30, 2018.

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 Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department’s rules concerning waivers.

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 23, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of "Nonmerit" in rule **11—50.1(8A)**:
"Nonmerit" means a position that is exempt from the merit system.

ITEM 2. Amend subrule 54.2(1) as follows:

54.2(1) Applicant information. Applicant information shall be on forms prescribed by the director unless an alternate method has been authorized. Applicants must supply at least their name, current mailing address, signature and social security number; however, if an applicant requests, a nine-digit number will be assigned by the department to be used in lieu of the social security number. If other than the social security number is requested, it shall be the applicant's responsibility to ensure that all future correspondence directed to the department regarding the applicant's records contains the assigned nine-digit number. All other information requested on the application will assist the department in accurately and completely processing and evaluating the application. Applications that are not complete may not be regarded as an official application and may not be processed. The director may require an applicant to submit documented proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification to satisfactorily perform the essential duties of the job with or without a reasonable accommodation. An applicant shall also disclose in the application whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq.

ITEM 3. Amend subrule 54.2(6) as follows:

54.2(6) Disqualification or removal of applicants. The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

- a. Does not meet the minimum qualifications or selective requirements for the job class or position as specified in the job class description, vacancy announcement, administrative rules, or law.
- b. Is incapable of performing the essential functions of the job classification or position and a reasonable accommodation cannot be provided.
- c. Has knowingly misrepresented the facts when submitting information relative to an application, examination, certification, appeal, or any other facet of the selection process.
- d. Has used or attempted to use coercion, bribery or other illegal means to secure an advantage in the application, examination, appeal or selection process.
- e. Has obtained screening information to which applicants are not entitled.
- f. Has failed to submit the application within the designated time limits.
- g. Was previously discharged from a position in state government.
- h. Has resigned in lieu of discharge for cause.
- i. Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.
- j. Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.
- k. Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed ~~in accordance with rule 11—61.3(8A)~~. Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

ITEM 4. Adopt the following **new** rule 11—54.8(8A):

11—54.8(8A) Nonmerit hiring procedure. An applicant for employment to a position that is not covered by the merit system shall disclose to the appointing authority, in writing, whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq.

[Filed 11/30/18, effective 1/23/19]

[Published 12/19/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/19/18.