



IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 1611 to 1681 include ARC 4836C to ARC 4851C

ADMINISTRATIVE SERVICES

DEPARTMENT[11]

- Filed, Procurements from targeted small businesses, 117.5(2), 117.15, 118.5
ARC 4845C 1652

AGENDA

- Administrative rules review committee 1603

AGRICULTURE AND LAND STEWARDSHIP

DEPARTMENT[21]

- Notice, Hemp, 40.1, ch 96 ARC 4841C 1611
Notice, Dairy—adoption by reference of public health service regulations, 68.1, 68.13 ARC 4838C 1612
Notice, National Institute of Standards and Technology (NIST) Handbook 130—adoption by reference of section relating to gasoline-ethanol blends, 85.39 ARC 4844C 1614
Filed Emergency, Hemp, 40.1, ch 96 ARC 4842C 1640
Delay, Animal welfare—dog day cares, 67.8(4)“b” 1682

ALL AGENCIES

- Agency identification numbers 1609
Citation of administrative rules 1601
Schedule for rule making 1602

DELAY

- Agricultural and Land Stewardship Department[21] Animal welfare—dog day cares, 67.8(4)“b” 1682

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Filed, Child abuse and dependent adult abuse mandatory reporter training, 10.6(3), 25.4(2) ARC 4846C 1654

EXECUTIVE DEPARTMENT

- Executive order number 5, B20 biodiesel procurement requirements 1683

HUMAN SERVICES DEPARTMENT[441]

- Filed, Medical prior authorizations—uniform process for managed care and fee-for-service payment and delivery systems, amendments to ch 73 ARC 4847C 1655

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

- Notice, Notice to suppliers of information, 2.10 ARC 4840C 1616
Filed, Licensing sanction prohibition for student loan debt and related service obligations, 50.53, 55.9(5)“c,” 55.12(1)“l,” 100.10(3)“a”(2), 100.17(6), 100.40(2)“k” ARC 4848C 1657

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Notice, Controlled substance registration—renewal, cancellation, 10.6(2), 10.9(7) ARC 4837C 1618

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]“umbrella”
 Filed, Funeral directors,
 funeral and cremation
 establishments—disinterment permits,
 100.9(6) **ARC 4849C**..... 1658

PUBLIC HEARINGS
 Summarized list 1606

REGENTS BOARD[681]
 Filed, Human resources
 management—merit system rules,
 amendments to ch 3 **ARC 4850C** 1660

REVENUE DEPARTMENT[701]
 Notice, Global intangible low tax income;
 apportionment of investment income,
 54.2, 59.28(2)“p” **ARC 4843C** 1620

**SOIL CONSERVATION AND WATER QUALITY
 DIVISION[27]**
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]“umbrella”
 Notice, State soil conservation and water
 quality committee—quorum, 2.6(1)
ARC 4839C 1627

TRANSPORTATION DEPARTMENT[761]
 Notice, Commercial driver licensing,
 amendments to ch 607 **ARC 4836C**..... 1628
 Filed, Electronic replacement of driver’s
 license or nonoperator’s identification
 card, 602.2(4), 605.11, 605.12(1)“a,”
 630.3 **ARC 4851C** 1679

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
Oct. 28	Nov. 18	Dec. 8	Dec. 23	**Dec. 23**	Jan. 13 '21	Feb. 17 '21	May 17 '21
Nov. 12	Dec. 2	Dec. 22	Jan. 6 '21	**Jan. 6 '21**	Jan. 27 '21	Mar. 3 '21	May 31 '21
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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
16	Wednesday, January 8, 2020	January 29, 2020
17	Friday, January 24, 2020	February 12, 2020
18	Friday, February 7, 2020	February 26, 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****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, January 10, 2020, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurements from targeted small businesses, 117.5(2), 117.15, 118.5 Filed **ARC 4845C**..... 1/1/20

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Dairy—adoption by reference of public health service regulations, 68.1, 68.13 Notice **ARC 4838C** 1/1/20
National Institute of Standards and Technology (NIST) Handbook 130—adoption by
reference of section relating to gasoline-ethanol blends, 85.39 Notice **ARC 4844C**..... 1/1/20
Hemp, 40.1, ch 96 Notice **ARC 4841C**, also Filed Emergency **ARC 4842C** 1/1/20

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Waivers, ch 7 Filed **ARC 4823C** 12/18/19
Information technology governance, ch 8 Filed **ARC 4824C** 12/18/19
Procurement of information technology, ch 10 Filed **ARC 4825C**..... 12/18/19
Vendor appeals, ch 11 Filed **ARC 4826C** 12/18/19

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Child abuse and dependent adult abuse mandatory reporter training, 10.6(3), 25.4(2) Filed **ARC 4846C**..... 1/1/20

EDUCATION DEPARTMENT[281]

Education program standards—contracted courses used to meet school or school district
requirements, 12.5 Filed **ARC 4808C** 12/18/19
Senior year plus program, amendments to ch 22 Filed **ARC 4809C** 12/18/19
Extracurricular interscholastic competition—scholarship rules, dead period, 36.15
Notice **ARC 4815C** 12/18/19
Career academy incentive fund, 46.13 Filed **ARC 4810C** 12/18/19
Statewide sales and services tax for school infrastructure, amendments to ch 96 Filed **ARC 4811C** 12/18/19
Supplementary weighting, 97.1, 97.2(5), 97.5, 97.8 Filed **ARC 4812C** 12/18/19
Physical plant and equipment levy (PEEL) fund—repairing transportation equipment for
transporting of students, 98.64(2)“l” Notice **ARC 4817C**..... 12/18/19
Financial management of categorical funding—secure an advanced vision for education
fund, school nutrition fund, 98.21, 98.69, 98.74(3)“b” Filed **ARC 4813C** 12/18/19
Corporal punishment, physical restraint, seclusion, and other physical contact with students,
ch 103 Notice **ARC 4816C** 12/18/19

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

Confidential records; ancient records; vital statistics, 3.9 Filed **ARC 4827C**..... 12/18/19

HUMAN SERVICES DEPARTMENT[441]

Medical prior authorizations—uniform process for managed care and fee-for-service
payment and delivery systems, amendments to ch 73 Filed **ARC 4847C** 1/1/20
Brain injury waiver budget cap; reimbursement rate for assertive community treatment
services, 79.1(2), 83.82(2)“d” Notice **ARC 4819C** 12/18/19
Medical assistance advisory council, 79.7 Notice **ARC 4818C** 12/18/19

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Notice to suppliers of information, 2.10 Notice **ARC 4840C** 1/1/20
Insurance producers—five-year review of rules, amendments to chs 10, 11, 13, 48
Notice **ARC 4821C** 12/18/19
Licensing sanction prohibition for student loan debt and related service obligations, 50.53,
55.9(5)“c,” 55.12(1)“l,” 100.10(3)“a”(2), 100.17(6), 100.40(2)“k” Filed **ARC 4848C** 1/1/20

LOTTERY AUTHORITY, IOWA[531]

Vendor and licensing appeals, 2.17, 5.2, 5.3, 5.6, 5.7, 5.12, 5.25 to 5.27, 5.29 Filed **ARC 4814C** 12/18/19

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Prohibition of licensing sanctions for student loan debt default or delinquency, amend chs 2,
20, 23; rescind ch 16 Notice **ARC 4806C**..... 12/18/19

Mandatory training for identifying and reporting abuse, 11.4 Notice **ARC 4820C** 12/18/19
 Expedited licensure for spouses of active duty military service members, amendments to ch
 18 Notice **ARC 4805C** 12/18/19
 Supervision of a conditional prescribing psychologist; collaboration with a prescribing
 psychologist; grounds for discipline, 19.10 to 19.12 Filed **ARC 4835C** 12/18/19

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Controlled substance registration—renewal, cancellation, 10.6(2), 10.9(7) Notice **ARC 4837C** 1/1/20

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

COMMERCE DEPARTMENT[181]"umbrella"

Expedited licensure for spouses of active duty military service members; prohibition of
 licensing sanctions for student loan debt repayment delinquency or default, amendments
 to chs 4, 8, 14 Filed **ARC 4828C** 12/18/19

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Funeral directors, funeral and cremation establishments—disinterment permits, 100.9(6)
Filed **ARC 4849C** 1/1/20

PUBLIC HEALTH DEPARTMENT[641]

Family planning services funding prioritization, restrictions and reporting, ch 75 Filed **ARC 4829C** 12/18/19
 Medical residency training state matching grants program, 108.3(5), 108.4, 108.5 Filed **ARC 4830C** 12/18/19

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Sports wagering; fantasy sports contests, amend chs 1, 3 to 6, 8; adopt chs 13, 14
Amended Notice **ARC 4807C** 12/18/19
 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)
Notice **ARC 4822C** 12/18/19

REGENTS BOARD[681]

Human resources management—merit system rules, amendments to ch 3 Filed **ARC 4850C** 1/1/20

REVENUE DEPARTMENT[701]

Global intangible low tax income; apportionment of investment income, 54.2, 59.28(2)"p"
Notice **ARC 4843C** 1/1/20

SECRETARY OF STATE[721]

Felony conviction verification process, 28.4 Notice **ARC 4804C** 12/18/19

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

State soil conservation and water quality committee—quorum, 2.6(1) Notice **ARC 4839C** 1/1/20

TRANSPORTATION DEPARTMENT[761]

Electronic replacement of driver's license or nonoperator's identification card, 602.2(4),
 605.11, 605.12(1)"a," 630.3 Filed **ARC 4851C** 1/1/20
 Commercial driver licensing, amendments to ch 607 Notice **ARC 4836C** 1/1/20

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Regulation of telecommunications service, ch 22 Filed **ARC 4831C** 12/18/19

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Benefits; voluntary shared work, amendments to chs 23 to 25 Filed **ARC 4832C** 12/18/19
 Claims and benefits—failure to report, overpayment, 24.6(7)"f," 25.8(1) Filed **ARC 4833C** 12/18/19
 Collecting and recovering overpayment balances, 25.7(6), 25.8(1) Filed **ARC 4834C** 12/18/19

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

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St. Ansgar, Iowa 50472

Senator Mark Costello
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Imogene, Iowa 51645

Senator Robert Hogg
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Des Moines, Iowa 50317

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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Hemp, 40.1, ch 96 IAB 1/1/20 ARC 4841C	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 22, 2020 11 a.m. to 12 noon
Dairy—adoption by reference of public health service regulations, 68.1, 68.13 IAB 1/1/20 ARC 4838C	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 22, 2020 9 to 10 a.m.
National Institute of Standards and Technology (NIST) Handbook 130—adoption by reference of section relating to gasoline-ethanol blends, 85.39 IAB 1/1/20 ARC 4844C	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 22, 2020 1 to 2 p.m.

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)“1” 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]

Notice to suppliers of information, 2.10 IAB 1/1/20 ARC 4840C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	January 27, 2020 10:30 to 11:30 a.m. (If requested)
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 <i>To participate by conference call:</i> Dial 866.685.1580 and enter code 971-913-4151	January 8, 2020 9 to 10 a.m.
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MEDICINE BOARD[653] (cont'd)

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 <i>To participate by conference call:</i> 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 <i>To participate by conference call:</i> 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.
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SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

State soil conservation and water quality committee—quorum, 2.6(1) IAB 1/1/20 ARC 4839C	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 22, 2020 10 to 11 a.m.
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TRANSPORTATION DEPARTMENT[761]

Commercial driver licensing,
amendments to ch 607
IAB 1/1/20 **ARC 4836C**

Department of Transportation
Motor Vehicle Division
6310 SE Convenience Blvd.
Ankeny, Iowa

January 23, 2020
10 a.m.
(If requested)

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.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Soil Conservation and Water Quality Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
OMBUDSMAN[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Interior Design Examining Board[193G]
 Utilities Division[199]
CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
EARLY CHILDHOOD IOWA STATE BOARD[249]
ECONOMIC DEVELOPMENT AUTHORITY[261]
 City Development Board[263]
IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]
ENERGY INDEPENDENCE, OFFICE OF[350]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]

Status of Women Division[435]
Status of Iowans of Asian and Pacific Islander Heritage[436]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
Employment Appeal Board[486]
Child Advocacy Board[489]
Racing and Gaming Commission[491]
State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
IOWA PUBLIC INFORMATION BOARD[497]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
Appeal Board, State[543]
City Finance Committee[545]
County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
Energy and Geological Resources Division[565]
Environmental Protection Commission[567]
Natural Resource Commission[571]
Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]
Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Professional Licensure Division[645]
Dental Board[650]
Medicine Board[653]
Nursing Board[655]
Pharmacy Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
Labor Services Division[875]
Workers' Compensation Division[876]
Workforce Development Board and Workforce Development Center Administration Division[877]

ARC 4841C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 40, "Agricultural Seeds," and to adopt new Chapter 96, "Hemp," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 204.3(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 204.3(5).

Purpose and Summary

This proposed rule making outlines provisions for the Department to submit a state plan for approval from the United States Department of Agriculture (USDA) for the domestic production of hemp.

New Chapter 96 includes provisions for maintaining information on the land where hemp is produced, testing the levels of delta-9 tetrahydrocannabinol (THC), disposing of plants not meeting necessary requirements, establishing licensing requirements, and ensuring compliance with the requirements of the Agriculture Improvement Act of 2018, which amended the Agricultural Marketing Act of 1946, and with further restrictions found in 2019 Iowa Acts, Senate File 599.

Fiscal Impact

The fiscal impact of 2019 Iowa Acts, Senate File 599, increases expenditures for the Department by an estimated \$304,000 in FY 2020 and \$209,000 in FY 2021. The fee income that will be deposited into the hemp fund cannot be estimated, because it is unknown how many persons will participate in the manufacturing of industrial hemp. The other unknown factor is how much it will cost to destroy crops that exceed the maximum allowable THC levels.

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 21—Chapter 8.

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 22, 2020. Comments should be directed to:

Maison Bleam
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: maison.bleam@iowaagriculture.gov

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

Public Hearing

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

January 22, 2020
11 a.m. to 12 noon

Second Floor Conference Room
Wallace State Office Building
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.

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).

Emergency Rule Making Adopted by Reference

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 4842C**, IAB 1/1/20). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

ARC 4838C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action****Proposing rule making related to dairy standards
and providing an opportunity for public comment**

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 68, "Dairy," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 192.102 and 194.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 192 and 194.

Purpose and Summary

The Food and Drug Administration in cooperation with and with guidance from the National Conference of Interstate Milk Shippers (NCIMS) adopts new or updated language and clarifications to the Pasteurized Milk Ordinance (PMO) every two years. In 2015, NCIMS added the new Food Safety Modernization Act (FSMA) to the PMO, thus necessitating the Department's proposed adoption of the newer version to remain compliant with the Department's 21 CFR 20.88 agreement with the Food and Drug Administration.

Fiscal Impact

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

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 21—Chapter 8.

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 22, 2020. Comments should be directed to:

Maison Bleam
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: maison.bleam@iowaagriculture.gov

Public Hearing

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

January 22, 2020
9 to 10 a.m.

Second Floor Conference Room
Wallace State Office Building
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.

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 **21—68.1(192,194)**, definition of “P.M.O.,” as follows:
“P.M.O.” means the Grade A Pasteurized Milk Ordinance, ~~2015~~ 2019 Revisions, from the United States Public Health Service/Food and Drug Administration, a copy of which is on file with the department and is incorporated into this chapter by reference and made a part of this chapter.

ITEM 2. Amend subrules 68.13(1) and 68.13(2) as follows:
68.13(1) Certification. A rating of 90 percent or more calculated according to the rating system as contained in Public Health Service “Methods of Making Sanitation Ratings of Milk Shippers,” ~~2015~~ 2019 Revision, shall be necessary to receive or retain a Grade A certification under Iowa Code chapter 192. That publication is hereby incorporated into this rule by this reference and made a part thereof insofar as applicable, and a copy is on file with the department.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

68.13(2) Documents. The following publications of the Public Health Service of the Food and Drug Administration are hereby adopted. A copy of each is on file with the department:

~~1.~~ *a.* “Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments,” ~~2015~~ 2019 Revision.

~~2.~~ *b.* “Standards for the Fabrication of Single Service Containers and Closures for Milk and Milk Products,” as incorporated in the P.M.O., Appendix J.

~~3.~~ *c.* “Evaluation of Milk Laboratories,” ~~2015~~ 2019 Revision.

ARC 4844C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Proposing rule making related to adoption by reference of section of NIST Handbook and providing an opportunity for public comment

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 85, “Weights and Measures,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 189.2 and 215.24.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 189 and 215.

Purpose and Summary

This proposed rule making is limited in scope to adoption by reference of the National Institute of Standards and Technology (NIST) Handbook 130, (2020), Part IV, Section G, 2.1.2, specifically that section and not the entire manual. The Environmental Protection Agency (EPA) issued an amended administrative rule making that withdrew the “vapor pressure” prohibition on the retail marketing of motor fuel containing 15 percent ethanol from June 1 through September 15 of a calendar year. While the EPA made the regulatory change, the NIST had not yet completed its process to alter the requirements in the NIST Handbook. The lag created a regulatory inconsistency between the EPA’s regulations and the Department’s administrative rules that incorporate by reference the NIST standard that contains the “vapor pressure” seasonal sales prohibition. The Department issued a waiver of the rule from June 1, 2019, to September 15, 2019, to address this discrepancy.

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 21—Chapter 8.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

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 22, 2020. Comments should be directed to:

Maison Bleam
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: maison.bleam@iowaagriculture.gov

Public Hearing

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

January 22, 2020
1 to 2 p.m.

Second Floor Conference Room
Wallace State Office Building
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.

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 21—85.39(189,215) as follows:

21—85.39(189,215) Weights and measures.

85.39(1) The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 amended or revised as of July 1, 2013, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

85.39(2) The National Institute of Standards and Technology (NIST) Handbooks 130 and 133: Weights and Measures Law, Packaging and Labeling, Method of Sale, Type Evaluation, Checking the Net Contents of Packaged Goods, and Uniform Engine Fuels and Automotive Lubricants Regulation, and all supplements, as published by the National Institute of Standards and Technology amended or revised as of July 1, 2013, are adopted in their entirety by reference except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship.

a. The National Institute of Standards and Technology (NIST) Handbook 130, Part IV, Section G, Section 2. Standard Specifications, 2.1.2. Gasoline-Ethanol Blends, as of November 1, 2020, is adopted in its entirety by reference except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

b. Reserved.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

ARC 4840C

INSURANCE DIVISION[191]

Notice of Intended Action

Proposing rule making related to notice to suppliers of information and providing an opportunity for public comment

The Insurance Division hereby proposes to amend Chapter 2, “Public Records and Fair Information Practices,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 22.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 22.11.

Purpose and Summary

This rule making is part of the Division’s rule review process and expands newly adopted rule 191—2.10(17A,22). The proposed subrules would provide for the statutorily permitted notice to certain suppliers of information pursuant to Iowa Code section 22.11(1)“f.” Also, the proposed subrules would cover applicants; licensees; Division investigations and regulatory and administrative functions; and other legal processes.

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 Division’s general waiver provisions of 191—Chapter 4 apply to these rules.

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 p.m. on January 27, 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

INSURANCE DIVISION[191](cont'd)

Public Hearing

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

January 27, 2020
10:30 to 11:30 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. Requests should be directed to Tracy Swalwell.

The public hearing will be canceled without further notice if no public hearing is requested by 4 p.m. on January 24, 2020.

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:

Adopt the following **new** subrules 2.10(1) to 2.10(6):

2.10(1) Notice. The notice shall generally be given at the first contact with the division and need not be repeated. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or when it would compromise the purpose of a department investigation.

2.10(2) License and examination applicants. License and examination applicants are requested to supply a wide range of information depending on the qualifications for licensure or sitting for an examination, as provided by division statutes, rules and application forms. Failure to provide requested information may result in denial of the application. Some requested information, such as social security numbers, home addresses, examination scores, and criminal histories, is confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information, freely available for public examination.

2.10(3) License renewal. Licensees are requested to supply a wide range of information in connection with license renewal, including continuing education information, criminal history and disciplinary actions, as provided by division statutes, rules and application forms, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information may be confidential under state or federal law.

2.10(4) Investigations. Persons and entities regulated by the division are required to respond to division requests for information as part of the investigation of a complaint or inquiry. Failure to timely respond may result in disciplinary action against the person or entity to which the request is made. Information provided in response to such a request is confidential pursuant to Iowa Code, including but not limited to Iowa Code section 502.607(2), 505.8(8) "a," 507E.5, or 523A.803, but may become public if introduced at a hearing which is open to the public, contained in a final order, or filed with a court of judicial review.

INSURANCE DIVISION[191](cont'd)

2.10(5) Discovery request, subpoenas, and investigations. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law or similar demands for information.

2.10(6) Regulatory and administrative functions. In general, the division requests information that is required to be provided to the division pursuant to state or federal law to perform regulatory and administrative functions. Information is routinely shared outside the division when required by rules or law. Consequences of failure to provide information include denial of licensure or regulatory approval.

ARC 4837C

PHARMACY BOARD[657]

Notice of Intended Action

Proposing rule making related to controlled substance registration and providing an opportunity for public comment

The Board of Pharmacy hereby proposes to amend Chapter 10, “Controlled Substances,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 124.301.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 124.302 and 124.303.

Purpose and Summary

The proposed amendments seek to allow an individual registrant to renew the registrant’s registration at the standard renewal rate when the registrant has not been practicing or doing business in Iowa as the registrant’s practice or business in Iowa relates to controlled substances during the period when the registration was delinquent.

Fiscal Impact

It is estimated that this rule making would impact approximately 120 practitioners per year who would be authorized to renew for the \$90 renewal fee instead of the \$360 reactivation fee. This fee change would potentially result in the Board foregoing approximately \$32,400 in fees annually.

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 657—Chapter 34.

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 Board no later than 4:30 p.m. on January 21, 2020. Comments should be directed to:

PHARMACY BOARD[657](cont'd)

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309
Email: sue.mears@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this 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 10.6(2) as follows:

10.6(2) *Delinquent registration reactivation beyond grace period.* If a registration renewal application is not postmarked or hand-delivered to the board office within 30 days following the registration's expiration date, the registrant may not conduct operations that involve controlled substances until the registrant reactivates the registration. A registrant may apply for reactivation by submitting a registration application for reactivation. The nonrefundable fee for reactivation shall be \$360 and may include a nonrefundable surcharge of not more than 25 percent of the applicable fee for deposit into the program fund. As part of the reactivation application, the registrant shall disclose the activities conducted with respect to controlled substances while the registration was expired. A registrant that continues to conduct activities with respect to controlled substances without an active registration may be subject to disciplinary sanctions. An individual registrant who was not practicing in Iowa during the delinquency period, or whose practice during the delinquency period did not involve possessing, administering, dispensing, or prescribing controlled substances, shall attest to such on the application and is only required to pay the nonrefundable fee for registration renewal of \$90 per biennium and a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

ITEM 2. Adopt the following **new** subrule 10.9(7):

10.9(7) *Cancellation of registration.* An individual registrant who no longer needs a registration due to discontinuation of practice in Iowa or discontinuation of possessing, administering, dispensing, or prescribing controlled substances shall contact the board to request cancellation of the registration. An individual registrant may renew the registration upon a return to practice in Iowa or a return to possessing, administering, dispensing, or prescribing controlled substances by submitting an application and a nonrefundable fee for registration renewal of \$90 per biennium and a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

ARC 4843C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rule making related to global intangible low income tax and apportionment of investment income and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 54, “Allocation and Apportionment,” and Chapter 59, “Determination of Net Income,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 422.33 and 422.63.

Purpose and Summary

Recent federal tax reform legislation, Public Law 115-97, commonly referred to as the Tax Cuts and Jobs Act (TCJA), created a new category of income, Global Intangible Low Tax Income (GILTI), which must be included in a taxpayer’s U.S. income. Beginning in tax year 2019, Iowa also requires taxpayers to include federal GILTI, after subtracting allowable federal deductions, if any, in the taxpayer’s Iowa net income. Where a business engages in its trade or business partly within and partly outside of Iowa, Iowa income taxes are imposed only on that portion of the business’s income reasonably attributable to its activities within Iowa. The amount of business income reasonably attributable to Iowa is determined using formulas provided either in the Iowa Code or in administrative rules adopted by the Department. Because GILTI represents a new category of income, it does not fit neatly into any of the existing categories of income for which the Iowa Code and rules provide methods of apportionment. Therefore, the Department proposes these amendments to provide a formula for apportioning GILTI within and without Iowa.

In addition to providing an apportionment formula for GILTI, the proposed amendments include some cleanup of rule 701—54.2(422), the existing rule for the apportionment of investment income. Subrule 54.2(2) was superseded by subrule 54.2(3) in 1995, but subrule 54.2(2) remains in rule 701—54.2(422) today. The proposed amendments strike the superseded text of subrule 54.2(2) and replace it with reorganized and expanded information about when investment income must, or may by election, be included in the Iowa apportionment factor and about when and how the election may be made or changed.

Fiscal Impact

This rule making has no fiscal impact beyond that of the legislation it is intended to implement. The income affected by this rule making is included in Iowa income as a result of 2018 Iowa Acts, Senate File 2417. The fiscal impact statement for Senate File 2417 did not specifically address the fiscal impact of these items of income but did include them in the overall impact of the legislation. In 2019, the Department performed a fiscal analysis for legislation that would have effectively removed most of the income covered by this rule from Iowa income tax. The Department can provide a copy of that analysis upon request.

Jobs Impact

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

REVENUE DEPARTMENT[701](cont'd)

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 701—7.28(17A).

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 21, 2020. Comments should be directed to:

Benjamin Clough
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2176
Email: ben.clough@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this 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 rule 701—54.2(422) as follows:

701—54.2(422) Allocation or apportionment of investment income.

54.2(1) *Investment business income.* The classification of investment income by the labels customarily given them, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business or nonbusiness income. Interest, dividends, rents, ~~and~~ royalties, and other investment income shall be apportioned as business income to the extent the income was earned as a part of a corporation’s unitary business, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes*, 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982); *F. W. Woolworth Co. v. Taxation and Revenue Dept.*, 458 U.S. 354, 73 L.Ed.2d 819, 102 S.Ct. 3128 (1982); *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 77 L.Ed.2d 545, 103 S.Ct. 2933 (1983). Whether investment income is part of a corporation’s unitary business income depends upon the facts and circumstances in the particular situation. The burden of proof is upon the taxpayer to show that the treatment of investment income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of corporations in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

54.2(2) *Inclusion in the apportionment factor.*

REVENUE DEPARTMENT[701](cont'd)

a. Income which must be included. All investment business income described in subrule 54.2(3), including capital gains or losses, shall be included in the computation of the denominator of the business activity formula if the income is derived from intangible property that has become an integral part of some business activity occurring regularly in or outside of Iowa. See 701—subrule 52.1(4).

b. Income included by election. All other investment business income, including capital gains or losses, described in subrule 54.2(3) may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include investment business income where the election would result in an understatement of net income reasonably attributable to Iowa. A taxpayer cannot elect to include some investment business income in and exclude other investment business income from the business activity formula. The election applies to all investment business income of the taxpayer subject to the election.

(1) Written election. If the taxpayer has investment income which is deemed to be business income under the provisions of this rule, a written election shall be made with the taxpayer's income tax return in the first year in which the taxpayer has such income. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the department to change the election. If the taxpayer fails to make a written election, the fact that investment business income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for all future tax years.

(2) Changing the election. If a taxpayer wishes to change the taxpayer's election to include or exclude investment business income in the taxpayer's Iowa apportionment factor, the taxpayer must request the department's permission to change the election not less than 90 days prior to the due date of the return for the tax year in which the taxpayer wishes the change to take effect. Permission to make a change in this election shall only be granted if the department determines that the change will more accurately reflect the net income reasonably attributable to Iowa.

All business income, including capital gains or losses, may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include business investment income where the election would result in an understatement of net income reasonably attributable to Iowa.

For a tax year which begins on or after January 1, 1984, if the taxpayer has investment income which is deemed to be business income under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for all future tax years.

If the taxpayer makes an election to include investment income deemed to be business income in the computation of the denominator of the business activity ratio, the computation of the business activity ratio is as follows:

a. Interest income from accounts receivable. Accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

EXAMPLE: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of \$300,000, total gross receipts everywhere of \$1,000,000, and accounts receivable interest income everywhere of \$10,000. Ten thousand dollars would be included in the denominator of the business activity formula,

REVENUE DEPARTMENT[701](cont'd)

and 30 percent of \$10,000, or \$3,000, would be included in the numerator of the business activity formula.

b.—Interest income other than accounts receivable. All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

c.—Dividend income. All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

d.—Rental income. All rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

e.—Royalty income. All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

f.—Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was used in the taxpayer's trade or business, shall be apportioned by the business activity ratio applicable to the return for the year the gain or loss is included in taxable income and shall be included in the computation of the business activity ratio as follows:

(1) Gain or loss from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state.

(2) Gain or loss from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if:

The property has a situs in this state at the time of sale; or

The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Gains or loss from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator if the taxpayer's commercial domicile is in this state.

(4) All gains or loss shall be included in the denominator of the activity ratio.

Noninclusive examples of gains or loss from the sale, exchange or other disposition of real or tangible or intangible property which may not be included in the computation of the business activity ratio because to do so would result in an understatement of net income reasonably attributable to Iowa are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code or gain recognized under Section 631(a) of the Internal Revenue Code.

g.—Other miscellaneous income. All other miscellaneous income determined to be business income shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense.

h.—Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.

Subrules 54.2(1) and 54.2(2) are effective for tax years beginning on or after January 1, 1983.

54.2(3) *Apportionment method by category of investment income.* For tax years beginning on or after January 1, 1995, all investment income that is business income, including capital gains or losses, shall be included in the computation of the denominator of the business activity formula if the investment

REVENUE DEPARTMENT[701](cont'd)

~~income is derived from intangible property that has become an integral part of some business activity occurring regularly in or outside of Iowa. See subrule 52.1(4). All other investment business income, including capital gains or losses, may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include investment business income where the election could result in an understatement of net income reasonably attributable to Iowa. A taxpayer cannot elect to include some investment business income in and exclude other investment business income from the business activity formula. The election applies to all investment income of the taxpayer subject to the election.~~

~~For a tax year which begins on or after January 1, 1995, if the taxpayer has investment income subject to an election under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income subject to election under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for future years.~~

The computation of the business activity formula associated with investment business income is as follows where the investment business income is required to be included in the business activity formula or where an election for inclusion has been made:

a. Interest income from accounts receivable. If an inclusion election is made, accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

EXAMPLE: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of \$300,000, total gross receipts everywhere of \$1,000,000, and accounts receivable interest income everywhere of \$10,000. \$10,000 would be included in the denominator of the business activity formula, and 30 percent of \$10,000, or \$3,000, would be included in the numerator of the business activity formula.

b. Interest income other than accounts receivable. All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula to the extent that the interest-bearing asset is an integral part of some business activity occurring regularly in Iowa. If the interest-bearing asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the interest therefrom (except nontaxable interest income) shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: The taxpayer earns interest income from loans to affiliated corporations, commercial paper, bonds issued by multistate corporations, and federal income tax refunds. The interest income is business income. None of these interest-bearing assets are an integral part of some business activity occurring regularly within or without Iowa. Accordingly, the interest income produced by such assets is subject to an election of inclusion in or exclusion from the business activity formula.

c. Dividend income. All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula to the extent that the dividend asset is an integral part of some business activity occurring regularly in Iowa. If the dividend asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the dividends shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: The taxpayer earns dividend income from dividends payable from a mutual fund. The dividend income is business income. The dividends are not an integral part of some business activity occurring regularly within or without Iowa. Assume that the taxpayer had also earned interest income

REVENUE DEPARTMENT[701](cont'd)

which was business income and which was not an integral part of some business activity occurring regularly within or without Iowa and that the taxpayer had included that interest income in the business activity formula. Under these circumstances, the taxpayer must also include the dividend income in the business activity formula. If no inclusion of investment business income had been made in the business activity formula, the taxpayer would exclude the dividend income from the formula.

d. Rental income. If an inclusion election is made, all rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

e. Royalty income and licensing fees. All royalty income and licensing fees from intangible personal property determined to be business income shall be included in the numerator of the business activity formula to the extent that the royalty or licensing asset is an integral part of some business activity occurring regularly in Iowa. If the royalty or licensing asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the royalties or licensing fees shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: A, a corporation with a commercial domicile outside of Iowa, derives royalties from a trade name that is used by other corporations doing business in Iowa in their Iowa businesses. Since the royalty asset is an integral part of an Iowa business activity, A must include the royalties associated with Iowa business activity in the numerator of A's business activity formula.

EXAMPLE: The taxpayer, a corporation with a commercial domicile in Iowa, derives license fees from others who do business solely outside of Iowa. The license fees are business income. The license fees are an integral part of some business activity carried on regularly by the others outside of Iowa. The taxpayer must include the license fees in the business activity formula. If the taxpayer also had other license fees which were business income and which were not an integral part of some business activity occurring regularly within or without Iowa, these other license fees would be subject to an election of inclusion in or exclusion from the business activity formula.

If an inclusion election is made, all royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

f. Gains or losses. Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa, shall be apportioned by the business activity ratio applicable to the return for the year the gain or loss is included in taxable income and shall be included in the computation of the business activity ratio as follows:

(1) Gain or loss from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state and if an election of inclusion has been made.

(2) Gain or loss from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if an election of inclusion has been made and if the property has a situs in this state at the time of sale, or the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Gain or loss from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator of the business activity formula to the extent that the intangible personal property is an integral part of some business activity occurring regularly in Iowa in the tax year that gain or loss is recognized. If the intangible personal property is not an integral part of some business activity occurring regularly in or outside of Iowa in the tax year that gain or loss is recognized and if an

REVENUE DEPARTMENT[701](cont'd)

election of inclusion has been made, the gain or loss shall be included in the numerator if the taxpayer's commercial domicile is in this state.

EXAMPLE: The taxpayer carries on its trade or business within and without Iowa. The taxpayer has patents which it licenses others to use in activities within and without Iowa. The patents are an integral part of business activity occurring regularly within and without Iowa. The taxpayer receives royalty income for the use of the patents. The taxpayer sells the patents and realizes a capital gain. The capital gain from the sale of the patents cannot be segregated by geographical source. Assume that the taxpayer is on a calendar tax year. Assume that the sale occurred on July 1. From January 1 to July 1, 5 percent of the royalties were attributable to some business activity regularly occurring in Iowa. The taxpayer should include 5 percent of the capital gain in the numerator of the business activity formula.

(4) All gain or loss shall be included in the denominator of the business activity ratio if an election of inclusion has been made or if the gain or loss is required to be included in the business activity ratio.

Noninclusive examples of gains or losses from the sale, exchange, or other disposition of real or tangible or intangible property, which may not be included in the computation of the business activity ratio, because to do so would result in an understatement of net income reasonably attributable to Iowa ~~and would include~~, are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code and the gain recognized under Section 631(a) of the Internal Revenue Code.

g. Other miscellaneous income. All other miscellaneous income determined to be business income which is not subject to an election or which is the subject of a proper election of inclusion shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense. The miscellaneous income shall be included in the numerator of the business activity formula if the income is from an Iowa source.

h. Other investment income. All other investment income shall be included in the numerator of the business activity formula to the extent that the intangible personal property which produced that income is an integral part of some business activity occurring regularly in Iowa. If the intangible personal property is not part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion has been made, the other investment income shall be included in the numerator if the taxpayer's commercial domicile is in this state.

i. Global intangible low tax income (GILTI). The net amount of global intangible low tax income (net GILTI) shall be included in the numerator of the business activity formula to the extent that the income arises from the taxpayer's ownership of controlled foreign corporation(s) (CFCs) that are an integral part of some business activity occurring regularly in Iowa.

(1) If no portion of the net GILTI is part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion has been made, the net GILTI shall be included in the numerator if the taxpayer's commercial domicile is in this state.

(2) If net GILTI is either required to be included in the Iowa apportionment factor or included by election, the amount included in the denominator shall be the taxpayer's entire net GILTI.

(3) "Net GILTI" means the amount of global intangible low tax income as defined in Internal Revenue Code (IRC) Section 951A, less the deduction allowed under IRC Section 250(a)(1)(B) (if any).

~~i.j.~~ *Activity ratio.* Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.

54.2(4) Grossed-up foreign income. For purposes of administration of the Iowa corporation income tax law, gross-up (Section 78 of the Internal Revenue Code) shall be considered to be nonbusiness income, irrespective of the fact that the income creating the gross-up may be business income, and shall be allocated to the situs of the income payor.

This rule is intended to implement Iowa Code Supplement sections 422.32(2) and 422.33(1).

ITEM 2. Adopt the following new paragraph **59.28(2)“p”**:

p. The net amount of global intangible low tax income (net GILTI) shall be included in the numerator of the business activity formula to the extent that the income arises from the taxpayer's ownership of controlled foreign corporation(s) (CFCs) that are an integral part of some business activity occurring regularly in Iowa.

REVENUE DEPARTMENT[701](cont'd)

(1) If no portion of the net GILTI is part of some business activity occurring regularly in or outside of Iowa but the income is determined to be business income, the net GILTI shall be included in the numerator if the taxpayer's commercial domicile is in this state.

(2) Where net GILTI is included in the Iowa apportionment factor, the amount included in the denominator shall be the taxpayer's entire net GILTI.

(3) "Net GILTI" means the amount of global intangible low tax income as defined in Internal Revenue Code (IRC) Section 951A, less the deduction allowed under IRC Section 250(a)(1)(B) (if any).

ARC 4839C

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

Notice of Intended Action

Proposing rule making related to quorum of state soil conservation and water quality committee and providing an opportunity for public comment

The Soil Conservation and Water Quality Division hereby proposes to amend Chapter 2, "Operation of State Soil Conservation and Water Quality Committee," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 161A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 161A.

Purpose and Summary

This proposed rule making is intended to fix a discrepancy between the quorum requirement in the Iowa Administrative Code and that required by Iowa Code.

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 Division for a waiver of the discretionary provisions, if any, pursuant to 27—Chapter 8.

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 Division no later than 4:30 p.m. on January 22, 2020. Comments should be directed to:

Maison Blead
Iowa Department of Agriculture and Land Stewardship
502 East 9th Street
Des Moines, Iowa 50319
Email: maison.bleam@iowaagriculture.gov

SOIL CONSERVATION AND WATER QUALITY DIVISION[27](cont'd)

Public Hearing

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

January 22, 2020
10 to 11 a.m.

Wallace State Office Building
Second Floor Conference Room
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 action is proposed:

Amend subrule 2.6(1) as follows:

2.6(1) Quorum. ~~Two-thirds~~ A majority of the voting members of the committee constitutes a quorum.

ARC 4836C

TRANSPORTATION DEPARTMENT[761]**Notice of Intended Action****Proposing rule making related to commercial driver licensing and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 607, "Commercial Driver Licensing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 321.180, 321.187, 321.188 and 321.449.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.1(69) as amended by 2019 Iowa Acts, House File 499, section 1; 321.180; 321.187 as amended by 2019 Iowa Acts, House File 418, section 1; 321.188 as amended by 2019 Iowa Acts, House File 418, sections 2, 3, 6 and 7; and 321.449 as amended by 2019 Iowa Acts, House File 418, section 4.

Purpose and Summary

This proposed rule making conforms Chapter 607 with 2019 Iowa Acts, House File 418, sections 1 to 4 and 6 and 7, related to compliance with federal regulations regarding entry-level driver training (ELDT), the national drug and alcohol clearinghouse (DACH), third-party commercial driver's license (CDL) skills test examiners, and federal driver age qualifications. Additionally, the proposed amendments align the Department's rules with existing legal authority and Department practice, eliminate outdated

TRANSPORTATION DEPARTMENT[761](cont'd)

or irrelevant requirements or options and accommodate modern procedures. The following paragraphs further explain the proposed amendments:

ELDT. The existing rules relating to adoption of federal regulations, CDL classes, CDL endorsements and commercial learner's permits (CLPs) are proposed to be amended to add references to the Federal Motor Carrier Safety Administration (FMCSA) regulations addressing ELDT requirements. Iowa Code section 321.188 was amended by 2019 Iowa Acts, House File 418, sections 2 and 6, to provide that ELDT requirements apply to an applicant for a CDL if required by federal regulations. Federal regulations currently state that effective February 7, 2020, an applicant applying for a Class A or Class B CDL, an upgrade of the applicant's CDL, or a hazardous material (H), passenger (P), or school bus (S) endorsement for the first time will be required to complete ELDT prior to taking the applicable CDL knowledge test or skills test. ELDT training consists of knowledge (theory) training and behind-the-wheel (BTW) skills training. However, since the legislation was enacted during the 2019 Legislative Session, the Department was notified by FMCSA that FMCSA is seeking a delayed effective date of February 7, 2022, for the requirement for a state driver's licensing agency to verify completion of ELDT prior to administering the applicable CDL knowledge or skills test. This delay would not require a change to the underlying legislative language as the language is contingent on whether the provision is required by federal regulation.

DACH. The rule relating to application for a CDL already requires a CDL applicant to comply with the requirements of Iowa Code section 321.188, but that Iowa Code section was amended by 2019 Iowa Acts, House File 418, sections 3 and 7, to incorporate the federal requirement that state driver's licensing agencies check the DACH for violations prior to issuing a CDL if required by federal regulations. The DACH is a database operated by FMCSA that will contain information about violations of FMCSA's drug and alcohol testing program for CDL holders. The requirement for the Department to check the DACH prior to issuing a CDL was set to take effect January 6, 2020. However, since the legislation was enacted during the 2019 Legislative Session, the Department was notified by FMCSA that FMCSA is seeking a delayed effective date of January 6, 2023, for the requirement for a state driver's licensing agency to query DACH. Again, the delay would not require a change to the underlying legislative language as the language is contingent on whether the provision is required by federal regulation.

CDL driver age qualifications. The rule establishing CDL requirements is proposed to be amended to align with Iowa Code section 321.449 as amended by 2019 Iowa Acts, House File 418, section 4, which gave the Department authority to adopt rules authorizing an 18-year-old to obtain an interstate CDL once federal law allows it. Currently, federal regulations do not permit a person less than 21 years old to operate a commercial motor vehicle (CMV) between states (interstate) unless an exception under the federal regulations applies. Iowa Code currently does allow an 18-year-old to operate a CMV within Iowa (intrastate) only. However, there has been movement at the federal level to broadly amend the driver age qualifications law to lower the current age for an interstate CDL driver from 21 years old to 18 years old. While the federal law has not changed yet, the proposed amendment to the rule cross-references the driver age qualifications in the federal regulations and Iowa Code, thereby allowing an adjustment to the age requirement for an interstate CMV driver if the federal law is changed in the future to allow 18-year-old CMV drivers in interstate commerce.

Hazardous material endorsement. The hazardous material endorsement rule is proposed to be amended to add references to the federal regulations governing the requirements for obtaining and retaining the endorsement. The amendments also provide that the exception for retesting and paying the fee for the hazardous material endorsement applies if the applicant is intending to transfer the applicant's CDL and provides evidence of passing the knowledge test in another state within the preceding 24 months, as allowed by federal regulations.

Waiver of CDL knowledge test for military members. The CDL knowledge test rule is proposed to be amended to add a new subrule addressing waiver of the knowledge test for an applicant who is a current or former military service member. Iowa Code section 321.188 provides that the Department shall adopt rules to administer the CDL program in compliance with federal regulations, and 49 CFR Section 383.77 was recently amended to provide that the Department may waive the CDL knowledge test for an applicant who is regularly employed or was regularly employed within the past year in a military

TRANSPORTATION DEPARTMENT[761](cont'd)

position as outlined in the regulation and operated a vehicle representative of the CMV the applicant expects to operate. The Department already has the authority to waive a CDL skills test for a current or former military service member and, under this proposed rule making, would also have the ability to offer a waiver of the knowledge test.

CDL skills test vehicles. The rule regarding representative vehicles used for the CDL skills test is proposed to be amended to provide that an applicant seeking a tank endorsement must take the CDL skills test in a representative vehicle, such as a Class A, Class B, or Class C CMV, but the representative vehicle does not necessarily need to include a tank as tank vehicles are harder to gain access to and any tank vehicle containing flammable or hazardous materials must be purged of any contents prior to the CDL skills test. The amendments also align the rule with the Department's current process for an applicant seeking to remove a manual transmission restriction to require the applicant to take only the on-road segment of the CDL skills test, rather than all three segments of the CDL skills test.

CDL retests. The rule relating to CDL skills retests are proposed to be amended to include the requirement to repeat a CDL skills or knowledge test if the Department determines the test was improperly administered, for example, as the result of an audit.

Third-party CDL skills test examiners. The rule addressing CDL skills tests administered by a third party is proposed to be amended to conform with Iowa Code section 321.187 as amended by 2019 Iowa Acts, House File 418, section 1, which added an "Iowa nonprofit corporation that serves as a trade association for Iowa-based motor carriers" to the list of entities authorized to perform third-party CDL skills tests. This change will provide additional opportunities for applicants to receive the skills test necessary to obtain a CDL. The amendments also align with 49 CFR Section 383.75, which provides an exception to a third-party skills test examiner's certificate revocation for failure to perform at least ten skills tests per year if the examiner provides proof of completion of the examiner refresher training or successfully completes one skills test under the observation of a Department examiner. Finally, the amendments conform with existing Department policy that a third-party skills test examiner may only administer CDL skills tests for the examiner's primary employer unless the examiner is authorized by the Department to perform CDL skills tests for another county or third-party tester.

CDL knowledge and skills tests for nondomiciled military members. The Department proposes to add a new rule to allow for the ability to perform and transmit CDL knowledge and skills tests for nondomiciled military personnel, as well as the ability to accept the same from another state's driver's licensing agency. This rule would adopt 49 CFR Section 383.79, which was recently amended to provide that a state may accept an application for a CDL or CLP from a military service member stationed, but not domiciled, in Iowa if the Department has an agreement to accept such applications with the applicant's state of domicile. Typically, a person can only apply and be tested for a CDL or CLP in the person's state of domicile. This regulation attempts to address barriers experienced by military members stationed in a state other than the state of domicile. The rule also would provide that if a military service member is domiciled in Iowa, but stationed in another state, and applies for a CDL or CLP where the service member is stationed, the Department may accept the application and CDL test results from the other state if the Department has an agreement to do so, and the Department may also issue the CDL or CLP.

Reduction of a lifetime CDL disqualification. This rule is proposed to be amended to align with the current process for reinstatement of an applicant's CDL after a lifetime CDL disqualification. A lifetime CDL disqualification is required pursuant to federal regulations in 49 CFR Section 383.51 for certain offenses committed by a CDL holder, for example, when a CDL holder has two operating while intoxicated (OWI) convictions. However, the federal regulations further provide that a CDL holder subject to a lifetime disqualification for certain offenses may be eligible to apply for reinstatement of the person's CDL if it has been more than ten years since the lifetime disqualification became effective and the person meets certain criteria. A person reinstated under these provisions once is not eligible for reinstatement again if the person subsequently is convicted of any of the disqualifying offenses listed in 49 CFR Sections 383.51(b)(1) through 383.51(b)(8).

CDL disqualification due to fraud. The rule related to CDL disqualifications is proposed to be amended to add a new subrule that aligns with 49 CFR Section 383.73(k), Iowa Code section 321.201(2)"b," and the Department's current process for disqualifying a person's CDL or CLP if the

TRANSPORTATION DEPARTMENT[761](cont'd)

person is convicted or suspected of fraud related to the testing or issuance of a commercial driving privilege. Upon the Department's receipt of a person's conviction for fraud, the person's CDL shall be disqualified for one year. Upon the Department's receipt of credible evidence that the person is suspected of committing fraud, the person shall be required to retake the applicable knowledge or skills test and will face a disqualification if the person either fails or does not retake the applicable test.

Restricted CDL. The restricted CDL rule is proposed to be amended to align with 49 CFR Section 383.3(f)(3)(vi), which states that a person may not hold a restricted CDL and an unrestricted CDL at the same time. However, the regulations do not prohibit a person from holding a restricted CDL and a commercial learner's permit (CLP) at the same time. The rule relating to self-certification for CDL holders is also proposed to be amended to provide that a restricted CDL holder is required to self-certify to the type of driving the holder intends to undertake while operating a CMV.

Fiscal Impact

The fiscal impact to the State of Iowa cannot be determined. The federal regulations proposed to be adopted by this rule making were subject to fiscal impact review by the FMCSA when the regulations were enacted and were determined not to be cost-prohibitive.

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 21, 2020. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy Bureau
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

January 23, 2020
10 a.m.

Department of Transportation
Motor Vehicle Division
6310 SE Convenience Boulevard
Ankeny, 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 Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

TRANSPORTATION DEPARTMENT[761](cont'd)

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 761—607.2(17A) as follows:

761—607.2(17A) Information.

607.2(1) Information and location. Applications, forms and information about the commercial driver's license (CDL) are available at any driver's license ~~examination station~~ service center. Assistance is also available by mail from the Driver and Identification Services Bureau, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)244-8725; by facsimile at (515)239-1837; or on the department's website at www.iowadot.gov.

607.2(2) Manual. A copy of a study manual for the commercial driver's license tests is available upon request at any driver's license ~~examination station~~ service center and on the department's website.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 2. Amend rule **761—607.3(321)**, definition of "School bus," as follows:

"School bus" means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events unless otherwise provided in Iowa Code section 321.1(69). "School bus" does not include a bus used as a common carrier.

ITEM 3. Amend subrule 607.10(1) as follows:

607.10(1) Code of Federal Regulations. The department's administration of commercial driver's licenses shall be in compliance with the state procedures set forth in 49 CFR Section 383.73, and this chapter shall be construed to that effect. The department adopts the following portions of the Code of Federal Regulations which are referenced throughout this chapter of rules:

a. and *b.* No change.

c. 49 CFR Part 380, Subpart F.

~~*e.*~~ *d.* The following portions of 49 CFR Part 383 (October 1, 2018):

(1) to (4) No change.

ITEM 4. Amend rule 761—607.16(321) as follows:

761—607.16(321) Commercial driver's license (CDL).

607.16(1) No change.

607.16(2) Validity.

a. A Class A commercial driver's license allows a person to operate a combination of commercial motor vehicles as specified in Iowa Code ~~paragraph~~ section 321.189(1)"a." With the required endorsements and subject to the applicable restrictions, a Class A commercial driver's license is valid to operate any vehicle. Before the department administers the skills test for a Class A commercial driver's license to an applicant for the first time, the applicant must comply with the entry-level driver training requirements as provided in Iowa Code section 321.188.

b. A Class B commercial driver's license allows a person to operate a commercial motor vehicle as specified in Iowa Code ~~paragraph~~ section 321.189(1)"b." With the required endorsements and subject to the applicable restrictions, a Class B commercial driver's license is valid to operate any vehicle except a truck-tractor semitrailer combination as a chauffeur (Class D) or a vehicle requiring a Class A commercial driver's license. Before the department administers the skills test for a Class B commercial

TRANSPORTATION DEPARTMENT[761](cont'd)

driver's license to an applicant for the first time, the applicant must comply with the entry-level driver training requirements as provided in Iowa Code section 321.188.

c. to h. No change.

607.16(3) Requirements.

a. The minimum age to obtain a commercial driver's license is ~~18 years~~ set out in 49 CFR, Part 391, Subpart B, except that, for a person operating solely intrastate, the driver age qualifications are set out in Iowa Code section 321.449(3).

b. No change.

607.16(4) No change.

This rule is intended to implement Iowa Code sections 321.177, 321.182, 321.188, 321.189, and 321.196, and 321.449 and 2013 Iowa Acts, chapter 104, section 2.

ITEM 5. Amend rule 761—607.17(321) as follows:

761—607.17(321) Endorsements. All endorsements except the hazardous material endorsement continue to be valid without retesting or additional fees when renewing or upgrading a license. The endorsements that authorize additional commercial motor vehicle operations with a commercial driver's license are:

607.17(1) Hazardous material. A hazardous material endorsement (H) is required to transport hazardous materials. ~~Upon license renewal, retesting and fee payment are required. The hazardous material endorsement is only valid when the applicant or holder of the endorsement complies with the Transportation Security Administration's security threat assessment standards specified in 49 CFR Sections 383.71(b)(8) and 383.141. Before the department administers the knowledge test for a hazardous material endorsement to an applicant for the first time, the applicant shall comply with the entry-level driver training requirements as provided in Iowa Code section 321.188. To obtain or retain the hazardous material endorsement, the applicant or holder must pass a knowledge test as required under 49 CFR Section 383.121 and pay the endorsement fee. Retesting and fee payment are also required when an applicant upgrades an Iowa license or transfers a commercial driver's license from another state unless, as provided in 49 CFR Section 383.73, the transfer applicant provides evidence of passing the endorsement knowledge test as required under 49 CFR Section 383.121 within the preceding 24 months. A farmer or a person working for a farmer is not subject to the hazardous material endorsement while operating either a pickup or a special truck within 150 air miles of the farmer's farm to transport supplies to or from the farm.~~

607.17(2) Passenger vehicle. A passenger vehicle endorsement (P) is required to operate a passenger vehicle as defined in rule 761—607.3(321). ~~Before the department administers the skills test for a passenger vehicle endorsement to an applicant for the first time, the applicant shall comply with the entry-level driver training requirements as provided in Iowa Code section 321.188.~~

607.17(3) to 607.17(5) No change.

607.17(6) School bus. ~~After September 30, 2005, a~~ A school bus endorsement (S) is required to operate a school bus as defined in rule 761—607.3(321). An applicant for a school bus endorsement must also qualify for a passenger vehicle endorsement. ~~Before the department administers the skills test for a school bus endorsement to an applicant for the first time, the applicant shall comply with the entry-level driver training requirements as provided in Iowa Code section 321.188.~~

607.17(7) No change.

This rule is intended to implement Iowa Code sections 321.1, 321.176A, 321.188 and 321.189.

ITEM 6. Amend paragraph **607.20(1)“d”** as follows:

d. The issuance of a commercial learner's permit is a precondition to the initial issuance of a commercial driver's license. The issuance of a commercial learner's permit is also a precondition to the upgrade of a commercial driver's license if the upgrade requires a skills test. If the permit holder is subject to the requirement to complete entry-level driver training as provided in Iowa Code section 321.188, the permit holder shall complete the training after the permit holder obtains the commercial learner's permit, but before the permit holder takes the required skills test. The holder of a commercial

TRANSPORTATION DEPARTMENT[761](cont'd)

learner's permit is not eligible to take a required driving skills test for the first 14 days after the permit holder is issued the permit. The 14-day period includes the day the commercial learner's permit was issued.

EXAMPLE: The commercial learner's permit is issued on September 1. The earliest date the permit holder would be eligible to take the skills test is September 15.

ITEM 7. Amend rule 761—607.27(321) as follows:

761—607.27(321) Knowledge tests.

607.27(1) and 607.27(2) No change.

607.27(3) *Test methods.* All knowledge tests shall be administered in compliance with 49 CFR Section 383.133(b). All tests other than the hazardous material endorsement test may be administered in written form, verbally, or in automated format and can be administered in a foreign language, provided no interpreter is used in administering the test. A verbal test shall be offered only at specified locations. Information about the locations is available at any driver's license ~~examination station~~ service center.

607.27(4) *Waiver.* A waiver of any knowledge test is permitted only as provided in Iowa Code ~~subsection~~ section 321.188(5) and this chapter. The burden of proof of having passed the hazardous material endorsement test within the preceding 24 months rests with the applicant.

607.27(5) *Military waiver.* The department may waive the requirement that an applicant pass a required knowledge test for an applicant who is a current or former military service member as defined in 49 CFR Section 383.5. An applicant for a waiver of the knowledge test under this subrule shall certify and provide evidence, as required by the department, that the following apply:

a. The applicant is regularly employed or was regularly employed within the past year in a military position specifically designated in 49 CFR Section 383.77.

b. The applicant is or was operating a vehicle representative of the commercial motor vehicle the applicant operates or expects to operate immediately preceding honorable separation from military service as evidenced by the applicant's certificate of release or discharge from active duty, commonly referred to as a DD form 214.

c. The applicant has not had more than one driver's license, other than a military license.

d. The applicant has not had any driver's license suspended, revoked, or canceled.

e. The applicant has not been convicted of an offense committed while operating any type of motor vehicle that is listed as a disqualifying offense in 49 CFR Section 383.51(b).

f. The applicant has not had more than one conviction for an offense committed while operating any type of motor vehicle that is listed as a serious traffic violation in 49 CFR Section 383.51(c).

g. The applicant has not had a conviction for violation of a military, state, or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident, and has no record of an accident in which the applicant was at fault.

607.27(5) 607.27(6) *Requirement.* An applicant must pass the applicable knowledge test(s) before taking the skills test. Passing scores for a knowledge test shall meet the standards contained in 49 CFR Section 383.135(a).

This rule is intended to implement Iowa Code sections 321.186 and 321.188.

ITEM 8. Amend rule 761—607.28(321) as follows:

761—607.28(321) Skills test.

607.28(1) to 607.28(3) No change.

607.28(4) *Vehicle.* The applicant shall provide a representative vehicle for the skills test. "Representative vehicle" means a commercial motor vehicle that meets the statutory description for the class of license applied for.

a. No change.

b. To obtain a school bus endorsement, the applicant must qualify for a passenger vehicle endorsement and take the skills test in a school bus, as defined in rule 761—607.3(321), in the same vehicle class as the applicant will drive, as required in 49 CFR Section 383.123. ~~Up to and including~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~September 30, 2005, the skills test for a school bus endorsement is waived for an applicant meeting the requirements of 49 CFR Section 383.123(b).~~

c. To obtain a tank endorsement, the applicant must take the skills test in a representative vehicle for the class of license applied for, but the representative vehicle is not required to be a tank vehicle.

~~e. d.~~ To remove an air brake or full air brake restriction, the applicant must take the skills test in a vehicle equipped with an air brake system, as defined in rule 761—607.3(321) and as required in 49 CFR Section 383.113.

~~d. e.~~ To remove a manual transmission restriction, the applicant must take the on-road segment of the skills test in a vehicle equipped with a manual transmission, as defined in rule 761—607.3(321).

607.28(5) and **607.28(6)** No change.

607.28(7) Locations. The skills test for a commercial driver's license shall be given only at specified locations where adequate testing facilities are available. An applicant may contact any driver's license ~~examination station~~ service center for the location of the nearest skills testing ~~station~~ center. A skills test by appointment shall be offered only at specified regional test sites.

This rule is intended to implement Iowa Code sections 321.186 and 321.188.

ITEM 9. Amend rule 761—607.30(321) as follows:

761—607.30(321) Third-party testing.

607.30(1) Purpose and definitions. The skills test required by rule 761—607.28(321) may be administered by third-party testers and third-party skills test examiners approved and certified by the department. For the purpose of administering third-party skills testing and this rule, the following definitions shall apply:

“Community college” means an Iowa community college established under Iowa Code chapter 260C.

“Iowa-based motor carrier” means a motor carrier or its subsidiary that has its principal place of business in the state of Iowa and operates a permanent commercial driver training facility in the state of Iowa.

“Iowa nonprofit corporation” means a nonprofit corporation that serves as a trade association for Iowa-based motor carriers.

“Motor carrier” means the same as defined in 49 CFR Section 390.5.

“Permanent commercial driver training facility” means a facility dedicated to a program of commercial driving instruction that is offered to employees or potential employees of the motor carrier as incident to the motor carrier's commercial operations, that requires at least 40 hours of instruction, and that includes fixed and permanent structures and facilities for the off-road portions of commercial driving instruction, including classroom, pretrip inspection, and basic vehicle control skills. A permanent commercial driver training facility must include a fixed and paved or otherwise hard-surfaced area for basic vehicle control skills testing that is permanently marked and capable of inspection and measurement by the department.

“Skills test” means the skills test required by rule 761—607.28(321).

“Subsidiary” means a company that is partly or wholly owned by a motor carrier that holds a controlling interest in the subsidiary company.

“Third-party skills test examiner” means the same as defined in 49 CFR Section 383.5.

“Third-party tester” means the same as defined in 49 CFR Section 383.5.

607.30(2) Certification of third-party testers.

a. The department may certify as a third-party tester a community college, ~~or~~ Iowa-based motor carrier ~~or~~ Iowa nonprofit corporation to administer skills tests. A community college, ~~or~~ Iowa-based motor carrier ~~or~~ Iowa nonprofit corporation that seeks certification as a third-party tester shall contact the ~~department's office of driver and identification services bureau~~ and schedule a review of the proposed testing program, which shall include the proposed testing courses and facilities, information sufficient to identify all proposed third-party skills test examiners, and any other information necessary to demonstrate compliance with 49 CFR Section 383.75.

TRANSPORTATION DEPARTMENT[761](cont'd)

b. No community college, ~~or~~ Iowa-based motor carrier or Iowa nonprofit corporation shall be certified to conduct third-party testing unless and until the community college, ~~or~~ Iowa-based motor carrier or Iowa nonprofit corporation enters an agreement with the department that meets the requirements of 49 CFR Section 383.75 and demonstrates sufficient ability to conduct skills tests in a manner that consistently meets the requirements of 49 CFR Section 383.75.

c. No change.

607.30(3) *Certification of third-party skills test examiners.*

a. A certified third-party tester shall not employ or otherwise use as a third-party skills test examiner a person who has not been approved and certified by the department to administer skills tests. Each certified third-party tester shall submit for approval the names of all proposed third-party skills test examiners ~~on a form provided by~~ to the department. The department shall not approve as a third-party skills test examiner a person who does not meet the requirements, qualifications and standards of 49 CFR Sections 383.75 and 384.228, including but not limited to all required training and examination and a nationwide criminal background check. The criteria for passing the nationwide criminal background check shall include no felony convictions within the last ten years and no convictions involving fraudulent activities.

b. No change.

c. The department shall revoke the certificate if the person holding the certificate does not administer skills tests to at least ten different applicants per calendar year; does not successfully complete the refresher training required by 49 CFR Section 384.228 every four years; is involved in fraudulent activities related to conducting skills tests; or otherwise fails to comply with and meet the requirements, qualifications and standards of this chapter or 49 CFR Sections 383.75 and 384.228. Notwithstanding anything in this paragraph to the contrary, as provided in 49 CFR Section 383.75, if the person does not administer skills tests to at least ten different applicants per calendar year, the certificate will not be revoked for that reason if the person provides proof of completion of the examiner refresher training in 49 CFR Section 384.228 to the department or successfully completes one skills test under the observation of a department examiner.

d. No change.

e. A third-party skills test examiner may only administer CDL skills tests for the examiner's primary employer, unless authorized by the department to administer CDL skills tests for another county or third-party tester.

607.30(4) *Bond.* As a condition of certification, an Iowa-based motor carrier or Iowa nonprofit corporation must maintain a bond in the amount of \$50,000 to pay for the retesting of drivers in the event that the third-party tester or one or more of its third-party skills test examiners are involved in fraudulent activities related to conducting skills tests of applicants for a commercial driver's license.

607.30(5) and **607.30(6)** No change.

This rule is intended to implement Iowa Code section 321.187.

ITEM 10. Amend subrule 607.31(2) as follows:

607.31(2) *Retesting.* Subject to rule 761—607.28(321), an applicant shall be required to repeat only the knowledge test(s) or part(s) of the skills test that the applicant failed. An applicant who fails a test shall not be permitted to repeat that test the same day. An applicant may be required to repeat a test if the department determines the test was improperly administered.

ITEM 11. Adopt the following **new** rule 761—607.32(321):

761—607.32(321) Knowledge and skills testing of nondomiciled military personnel.

607.32(1) *Role of state of duty station.* The department may accept an application for a CLP or CDL, including an application for waiver of the knowledge test as provided in subrule 607.27(5), if the applicant is an active duty military service member stationed, but not domiciled in Iowa, and the department has an agreement to accept such applications with the applicant's state of domicile as provided in 49 CFR Section 383.79.

a. The applicant shall certify and provide evidence that the following apply:

TRANSPORTATION DEPARTMENT[761](cont'd)

- (1) The applicant is regularly employed or was regularly employed within the past year in a military position requiring operation of a commercial motor vehicle.
- (2) The applicant has a valid driver's license from the applicant's state of domicile.
- (3) The applicant has a valid active duty military identification card.
- (4) The applicant has a current copy of either the applicant's military leave and earnings statement or the applicant's orders.

b. If the applicant meets the requirements of paragraph 607.32(1) "a" and the department has an agreement with the applicant's state of domicile as provided in this subrule, the department may do either of the following:

- (1) Administer the knowledge and skills tests to the applicant as appropriate in accordance with 49 CFR Part 383, Subparts F, G, and H, if the state of domicile requires those tests; or
- (2) Waive the knowledge and skills tests in accordance with 49 CFR Section 383.77 and this chapter if the state of domicile also permits waiver of the knowledge and skills test.

c. The department may destroy the applicant's driver's license on behalf of the state of domicile unless the state of domicile requires the driver's license to be surrendered to the state of domicile's driver's licensing agency.

607.32(2) *Electronic transmission of application and test results.* The department shall transmit to the state of domicile the applicant's application, any supporting documents and the results of any skills or knowledge tests administered as provided under this rule.

607.32(3) *Role of state of domicile.* If the department has an agreement with the applicant's state of duty station, upon completion of the applicant's application pursuant to 49 CFR Section 383.71 and any testing administered by the applicant's state of duty station pursuant to 49 CFR Sections 383.71 and 383.73, the department may do all of the following:

a. Accept the completed application, any supporting documents, and the results of the knowledge and skills tests administered by the applicant's state of duty station.

b. Issue the applicant a CLP or CDL.

This rule is intended to implement Iowa Code sections 321.180, 321.186, 321.187, and 321.188 and 49 CFR Part 383.

ITEM 12. Amend subrule 607.37(1), introductory paragraph, as follows:

607.37(1) *Licensee requirements.* To renew a commercial driver's license, the licensee shall apply at a driver's license ~~examination station~~ service center and complete the following requirements:

ITEM 13. Amend rule 761—607.39(321) as follows:

761—607.39(321) Disqualification.

607.39(1) to 607.39(3) No change.

607.39(4) *Reduction of lifetime disqualification.* ~~Reserved.~~

a. As permitted by 49 CFR Section 383.51, a person subject to lifetime disqualification of the person's commercial driving privileges may apply to the department for reinstatement. The approval is subject to the discretion of the department and subject to the following requirements:

(1) The request may not be made prior to ten years from the effective date of the lifetime disqualification.

(2) The person must submit the request in a manner prescribed by the department.

(3) If the driving record contains alcohol-related or drug-related offenses that resulted in the lifetime disqualification, the person must have completed an alcohol or drug evaluation and have completed any recommended treatment which meets or exceeds the minimum standards approved by the Iowa department of public health. Evidence of a completed evaluation and treatment must be on file with the department or submitted with the application for reinstatement.

(4) Within the ten years preceding the request, the person must not have any of the following moving violation convictions:

1. A drug or alcohol offense.
2. Leaving the scene of an accident.

TRANSPORTATION DEPARTMENT[761](cont'd)

3. A felony involving the use of any motor vehicle.
4. Any moving violation while operating a commercial motor vehicle.
- (5) The department may request, and the person shall provide, any additional information or documentation necessary to determine the person's eligibility for reinstatement or general fitness for licensure.
 - b. If the department finds the person is eligible for reinstatement under this subrule, the person shall do all of the following prior to reinstatement:
 - (1) Pay all outstanding reinstatement fees.
 - (2) Meet all outstanding reinstatement requirements.
 - (3) Pass the required knowledge, vision, and skills tests as specified in Iowa Code section 321.188.
 - (4) Complete any other courses or requirements as required by the director.
 - c. As provided in 49 CFR Section 383.51(a)(6), a person who has previously had the person's commercial driving privileges reinstated pursuant to this subrule shall not be eligible to apply for reinstatement following conviction of a subsequent disqualifying offense.
 - d. If the department determines the person is not eligible for reinstatement as provided in this subrule, the department shall send notice by first-class mail to the person's mailing address as shown on departmental records that the lifetime disqualification remains in effect.

607.39(5) *Fraud related to testing and issuance.*

- a. As required by 49 CFR Section 383.73(k) and Iowa Code section 321.201(2)“b,” the department shall disqualify the commercial driver's license or commercial learner's permit of a person convicted or suspected of fraud related to the testing for or issuance of a commercial driver's license or commercial learner's permit.
- b. Upon receipt of a person's conviction of fraud related to the issuance of the commercial driver's license or commercial learner's permit, the department shall disqualify the person's commercial driver's license or commercial learner's permit for one year.
- c. Upon receipt of credible evidence that a person is suspected of committing fraud relating to the issuance of a commercial driver's license or a commercial learner's permit, the department shall notify the person of the requirement to retake the applicable knowledge or skills test. Within 30 days of receiving notice from the department, the person is required to contact the department to retake the knowledge or skills test. If the person fails to contact the department within 30 days after the notice, or the person fails the knowledge or skills test, or does not take the test, the department shall disqualify the person's commercial driver's license or commercial learner's permit.
- d. Once a person's commercial driver's license or commercial learner's permit has been disqualified, the person must reapply following the usual procedures as provided in Iowa Code section 321.188 and this chapter.

This rule is intended to implement Iowa Code chapter 17A and section 321.208.

ITEM 14. Amend rule 761—607.45(321), introductory paragraph, as follows:

761—607.45(321) Reinstatement. To reinstate a commercial driver's license after completion of a period of disqualification, a person shall appear at a driver's license ~~examination station~~ service center. The person must also meet the vision standards for licensing, pass the applicable knowledge test(s) and the skills test, and pay the required reinstatement fee and the fees for a new license.

ITEM 15. Amend rule 761—607.49(321) as follows:

761—607.49(321) Restricted commercial driver's license.

607.49(1) to 607.49(3) No change.

607.49(4) Requirements.

a. and b. No change.

c. An applicant who currently holds a an unrestricted commercial driver's license ~~or a commercial learner's permit~~ is not eligible for issuance of a restricted commercial driver's license.

607.49(5) No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

607.49(6) Issuance.

a. to e. No change.

~~*f.*~~ On or before December 31, 2016, there are two periods of validity for commercial motor vehicle operation: March 15 through June 30, and October 4 through December 14. Validity shall not exceed 180 days in any 12-month period. Any period of validity authorized previously by another state's license shall be considered a part of the 180-day maximum period of validity.

~~*g. f.*~~ On or after January 1, 2017, a licensee may have up to three individual periods of validity for a restricted commercial driver's license, provided the cumulative period of validity for all individual periods does not exceed 180 days in any calendar year. An individual period of validity may be 60, 90, or 180 consecutive days, at the election of the licensee. A licensee may add 30 days to an individual period of validity by applying for an extension, subject to the 180-day cumulative maximum period of validity. A request for extension must be made no later than the date of expiration of the individual period of validity for which an extension is requested; a request for extension made after that date shall be treated as a request for a new individual period of validity. An extension shall be calculated from the date of expiration of the individual period of validity for which an extension is requested. Any period of validity authorized previously by another state's license shall be considered a part of the 180-day cumulative maximum period of validity.

~~*h. g.*~~ A restricted commercial driver's license must be validated for commercial motor vehicle operation for each individual period of validity. This means that the applicant/licensee must have the person's good driving record confirmed at each application for an individual period of validity. Upon confirmation, the department shall issue a replacement license with a restriction validating the license for that individual period of validity, provided the person is otherwise eligible for the license. The fee for a replacement license shall be as specified in Iowa Code section 321.195.

~~*i. h.*~~ The same process must be repeated for each individual period of validity within a calendar year.

This rule is intended to implement Iowa Code section 321.176B.

ITEM 16. Amend subrule 607.50(1) as follows:

607.50(1) *Applicants for commercial learner's permit, restricted CDL, or new, transferred, renewed or upgraded CDL.*

a. A person shall provide to the department a self-certification of type of driving if the person is applying for:

(1) to (3) No change.

(4) Renewal of a commercial driver's license, ~~or~~

(5) A license upgrade for a commercial driver's license or an endorsement authorizing the operation of a commercial motor vehicle not covered by the current commercial driver's license, ~~or~~

(6) A restricted commercial driver's license.

b. No change.

ARC 4842C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency

Rule making related to hemp

The Agriculture and Land Stewardship Department hereby amends Chapter 40, “Agricultural Seeds,” and adopts new Chapter 96, “Hemp,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 204.3(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 204.3(5).

Purpose and Summary

This rule making outlines provisions for the Department to submit a state plan for approval from the United States Department of Agriculture (USDA) for the domestic production of hemp.

New Chapter 96 includes provisions for maintaining information on the land where hemp is produced, testing the levels of delta-9 tetrahydrocannabinol, disposing of plants not meeting necessary requirements, establishing licensing requirements, and ensuring compliance with the requirements of the Agriculture Improvement Act of 2018, which amended the Agricultural Marketing Act of 1946, and with further restrictions found in 2019 Iowa Acts, Senate File 599.

*Reason for Adoption of Rule Making Without
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary or impractical because statute so provides.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a) and (b), the Department also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on December 11, 2019, because Iowa Code section 204.3 requires the Department to prepare a state plan to be submitted to the United States Secretary of Agriculture under the federal hemp law. The Department may prepare any number of amended state plans or any number of amendments to an existing state plan to be submitted for approval by the United States Secretary of Agriculture. The Department shall prepare the state plan, any amended state plan, or any amendment to an approved state plan by adopting rules pursuant to Iowa Code chapter 17A. The Department may adopt the rules on an emergency basis as provided in Iowa Code sections 17A.4(3) and 17A.5(2), and the rules shall be effective immediately upon filing unless a later date is specified.

Adoption of Rule Making

This rule making was adopted by the Department on December 11, 2019.

Concurrent Publication of Notice of Intended Action

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 4841C** to allow for public comment.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

Fiscal Impact

2019 Iowa Acts, Senate File 599, increases expenditures for the Department by an estimated \$304,000 in FY 2020 and \$209,000 in FY 2021. The fee income that will be deposited into the hemp fund cannot be estimated, as it is unknown how many persons will participate in the manufacturing of industrial hemp.

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 21—Chapter 8.

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 became effective on December 11, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 21—40.1(199) as follows:

21—40.1(199) Agricultural seeds. The term “agricultural seeds” shall mean, in addition to those defined as such in Iowa Code subsection 199.1(2), all such seeds listed in 7 C.F.R., Section 201.2(h), revised as of January 1, 1982, with the following exceptions:

- Alfilaria-Erodium cicutarium (L).
- Bluegrass, annual-Poa annua L.
- Chess, soft-Bromus mollis L.
- ~~Hemp-Cannabis sativa L.~~
- Johnson grass-Sorghum halepense (L).
- Mustard-Brassica juncea (L).
- Mustard-black-Brassica nigra.
- Rape, bird-Brassica campestris L.
- Rape, turnip-Brassica campestris vars.
- Sorghum alnum-Sorghum alnum.

ITEM 2. Adopt the following **new** 21—Chapter 96:

CHAPTER 96

HEMP

21—96.1(204) Definitions.

“Acceptable hemp THC concentration” means when an official laboratory tests a sample, the laboratory must report the delta-9 tetrahydrocannabinol (THC) content concentration on a dry weight basis and the measurement uncertainty. The acceptable hemp THC concentration is for the purpose of compliance when the application of the measurement uncertainty to the reported THC concentration on a dry weight basis produces a distribution or range that includes 0.3 percent or less. For example, if the

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

reported THC concentration on a dry weight basis is 0.35 percent and the measurement uncertainty is +/- 0.06 percent, the measured THC concentration on a dry weight basis for this sample ranges from 0.29 percent to 0.41 percent. Because 0.3 percent is within the distribution or range, the sample is within the acceptable hemp THC concentration for the purpose of compliance. This definition of "acceptable hemp THC concentration" affects neither the statutory definition of hemp, 7 U.S.C. § 1639o(1), in the 2018 Farm Bill nor the definition of "marihuana," 21 U.S.C. § 802(16), in the CSA.

"*Applicant*" means any of the following:

1. An individual with 5 percent, or more, legal or equitable interest in the hemp crop.
2. An individual applying as a member of a business entity, if that individual's legal or equitable interest in the business entity is 5 percent or more.
3. Key participants in a corporate entity at the executive levels including chief executive officer, chief operating officer and chief financial officer.
4. If an applicant is acting on behalf of an institution governed by the state board of regents, as defined in Iowa Code section 262.7, or a community college, as defined in Iowa Code section 260C.2, "applicant" means the individual, or individuals, appointed by the president or chancellor of the institution to obtain hemp permits from the department. Other institutions of higher learning may also apply by designating an appropriate authorized representative.
5. If an applicant is acting on behalf of an association, the association shall designate an authorized representative.

"*Authorized representative*" means an individual designated by an applicant to act on behalf of and represent the applicant in communicating with the department for the purposes of applying for a license, submitting reports, receiving documents and information from the department, and acting as the sole primary contact pertaining to the license. An applicant may only have one authorized representative. An authorized representative shall not be a business entity.

"*Bill of lading*" means a document of title evidencing the receipt of goods for shipment issued by an individual engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt. A bill of lading shall include the following:

1. The name and address of the owner of the hemp;
2. The point of origin;
3. The point of delivery, including name and address;
4. The kind and quantity of packages or, if in bulk, the total quantity of hemp in the shipment; and
5. The date of shipment.

"*Business entity*" means an organization created or operated by one or more individuals to carry on a trade or business.

"*Cannabis*" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

"*Certificate of analysis*" means the certificate issued by the department following the official preharvest inspection, sampling and testing for total tetrahydrocannabinol (THC) concentration if the THC concentration is less than 0.3 percent by dry weight matter. The certificate of analysis shall contain the results of the department's official laboratory test of the postdecarboxylation value concentration of the officially sampled hemp crop following the preharvest report. The certificate of analysis shall be combined with a certificate of crop inspection.

"*Controlled Substances Act*" or "*CSA*" means the Controlled Substances Act as codified in 21 U.S.C. 801, et seq.

"*Crop site*" or "*site*" means a single contiguous parcel of land suitable for the planting, growing, or harvesting of hemp, if the parcel does not exceed 40 acres. All the area within the contiguous parcel is part of the crop site. Unplanted areas, including spacing between planted rows, are part of the crop site for purposes of determining the size of a parcel. The crop site shall not be a dwelling.

"*Cultivar*" means a group of cultivated plants that are not necessarily true to type, or plants whose seed will yield the same type of plant as the original plant. A cultivar may originate as a mutation or may

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

be a hybrid of two plants. To further develop into a variety, or propagate true-to-type clones, cultivars must be propagated vegetatively through cuttings, grafting, and even tissue culture.

"Decarboxylated" means the completion of the chemical reaction that converts THC-acid (THCA) into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums up delta-9-THC and 87.7 percent of THCA.

"Decarboxylation" means the removal or elimination of a carboxyl group from a molecule or organic compound.

"Department" means the Iowa department of agriculture and land stewardship.

"Destruction" means the procedure to render unusable by burning, incorporating with other materials, or other methods approved by the department.

"Destruction report" means the report and notice that shall be submitted to the department on the required departmental form, no more than 48 hours after the crop has been destroyed, as ordered by the department.

"Drug felony conviction report" means a mandatory report submitted within 14 days of the conviction to the department on the required departmental form by any authorized representative or applicant who is convicted of a disqualifying felony offense.

"Dry weight basis" means the ratio of the amount of dry solid in a sample after drying to the total mass of the sample before drying, including the moisture in a sample. Dry weight basis is the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

"Dwelling" means a residence and all permanent or temporary structures attached to the residence.

"Entity" means a corporation, joint-stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization participating in the production of hemp, including but not limited to as a partner, joint venture, or other relationship.

"Farm Service Agency" or *"FSA"* means the Farm Service Agency of the United States Department of Agriculture.

"Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

"Hemp" means:

1. The plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis when tested using postdecarboxylation or other similarly reliable methods.

2. A plant of the genus *Cannabis* other than *Cannabis sativa* L., with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis when tested using postdecarboxylation or other similarly reliable methods, but only to the extent allowed by the department in accordance with applicable federal law, including the federal hemp law.

"High-performance liquid chromatography" or *"HPLC"* means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.

"Individual" means a single human being. An entity is not an individual.

"Indoor crop site" means:

1. A structure covered with transparent material, such as glass or polyurethane, which is specifically designed, constructed and used for the culture and propagation of hemp. Common industry terms for indoor crop sites include, but are not limited to, greenhouse, glasshouse, and hothouse; or

2. A structure, or a room within a structure, used for the culture and propagation of hemp.

"License" means a license granted by the department to grow hemp in Iowa.

"License application" means the department's form submitted to obtain a license to grow hemp in Iowa.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

“*Lot*” means a contiguous area in a field, greenhouse, or indoor crop site containing the same variety, cultivar, or strain of cannabis throughout. No plant within a lot shall be planted more than 14 days after the initial plant or seed was planted. In addition, “lot” is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. For the purpose of this chapter, “lot” is to be defined by the producer in terms of farm location, field acreage, variety, cultivar or strain and to be reported as such to the FSA.

“*Map*” means a diagram depicting all borders of the crop site including the nearest roads to aid in orientation, the cardinal direction north, and the boundaries of the legally described parcel in which the crop site is located. A map designating an outdoor crop site shall clearly indicate the names, or lot numbers, of all lots and planting locations. If multiple varieties, cultivars, or strains are planted, or the crop site shall be subdivided into separate lots for the official laboratory test, the map shall indicate the lots and sub-lots with names of the varieties, cultivars, or strains.

“*Measurement uncertainty*” or “*MU*” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could be reasonably attributed to the particular quantity subject to measurement.

“*Official laboratory test*” means a test of postdecarboxylation value concentration performed by the department. The laboratory quantitative determination of the THC concentration shall use postdecarboxylation and be measured using gas chromatography with flame ionization detector (GS-FID), high performance liquid chromatography (HPLC) or other acceptable method as determined by the department.

“*Official sample*” means the preharvest hemp sample collected by the department, in accordance with department policy, which is used to assess the THC concentration of a single lot of hemp.

“*Order of destruction*” means the order furnished to the licensee by the department, in consultation with the department of public safety, ordering the destruction of cannabis that exceeds the acceptable hemp THC concentration.

“*Outdoor crop site*” means any crop site that is not an indoor crop site.

“*Planting report*” means the report and notice submitted to the department on the required departmental planting report form. Planting reports are required for both indoor and outdoor hemp crops.

“*Postdecarboxylation value,*” in the context of testing methodologies for THC concentration in hemp, means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol (THC) content derived from the sum of the THC and delta-9-tetrahydrocannabinolic acid (THCA) content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatographic technique using heat, gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THCA intact and requires a conversion calculation of that THCA to calculate total potential THC in a given sample.

“*Preharvest inspection*” means the inspection to collect one or more official samples for official laboratory testing.

“*Preharvest report*” means the report and notice that the licensee shall deliver to the department on the required departmental preharvest form in order to request a preharvest inspection. The licensee shall submit the preharvest report no less than 30 days prior to the expected harvest date of any hemp crop.

“*Postharvest report*” means the report and notice that the licensee shall deliver to the department on the required departmental postharvest report form, no more than 30 days after the harvest of a lot is complete.

“*Reverse distributor*” means a person who is registered with Drug Enforcement Administration (DEA) in accordance with 21 CFR 1317.15 to dispose of marijuana under the Controlled Substances Act.

“*Strain*” means variations of a cultivar, generally from breeding techniques or genetic mutations.

“*Sub-lot*” means an area divided from a larger lot. A lot may be divided into multiple sub-lots.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

“Temporary harvest and transportation permit” means a temporary and limited permit issued by the department when the official sample is taken, allowing the harvest and transportation of the officially tested crop prior to the completion of official laboratory sampling.

“THC” means total tetrahydrocannabinol as determined by an official laboratory test postdecarboxylation.

“Variety” means a plant grouping within a single botanical taxon of the lowest known rank that, without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture plantlets, and other matter.

21—96.2(204) Licensing. A license to grow hemp shall be obtained from the department. In order to obtain and maintain a license, an applicant shall submit a license application, receive approval from the department, and comply with the standards contained in Iowa Code chapter 204 and these rules.

96.2(1) A license is nontransferable.

96.2(2) In 2020, the license application for an outdoor crop site shall be submitted to the department on or before May 15. Indoor crop site applications may be submitted at any time.

96.2(3) In 2021 and thereafter, the license application for an outdoor crop site shall be submitted to the department on or before April 15. Indoor crop site license applications may be submitted at any time.

96.2(4) Failure to include all applicants shall preclude the license application from consideration.

96.2(5) Applicants shall submit an application form. A complete application form shall include, at a minimum, the following:

- a. The authorized representative’s full name and mailing address.
- b. A legal description and map of each crop site where the applicant proposes to produce hemp.
- c. The geospatial location of the center of the crop site.
- d. The number of crop acres intended for hemp production. For fractions of acres, round to the next whole number.
- e. The name of the hemp varieties, cultivars or strains proposed to be grown by the applicant.
- f. The intended hemp crop to be grown by the applicant; this includes grain, seed, fiber, cannabidiol (CBD), clones, cuttings, plantlets, or other identifying information.
- g. The type of crop site (indoor or outdoor).
- h. All parties with an ownership interest in the crop site or hemp crop. If the crop site is leased, the name and contact information of all lessors and lessees with any interest in the crop site or hemp crop shall be provided.
- i. The destruction method the applicant intends to use to destroy the cannabis if the crop fails to meet the acceptable hemp THC concentration. The destruction method must be approved by the department prior to actual destruction.

96.2(6) The authorized representative and all applicants shall submit official fingerprints to the department as a part of the application process. All national criminal history record check fees shall be paid to the department.

96.2(7) All license applications shall be submitted to the department electronically via the online license application portal. An authorized representative may request a waiver from the department to submit an application through an alternative format.

96.2(8) A license expires on December 31 of the year the license is issued.

96.2(9) The department may implement additional reasonable licensing requirements at its discretion.

21—96.3(204) National criminal history record check.

96.3(1) Disqualifying offenses.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

a. An applicant shall not be convicted of, or plead guilty to, a disqualifying felony offense. All applicants shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history record check.

b. The department or the department of public safety may request additional information to complete a background investigation and national criminal history background check. An applicant or authorized representative shall respond within 30 days to any request for additional information. Failure to timely respond shall result in a denial of the license application.

c. The department may deny any application for good cause.

96.3(2) An applicant and authorized representative shall provide fingerprints to the department. The department shall provide the fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation.

96.3(3) The applicant shall pay the actual cost of conducting any national criminal history record check to the department.

96.3(4) The results of a national criminal history check may be valid for three consecutive license years unless a drug-related felony conviction occurs after the issuance of the national criminal history record check results.

21—96.4(204) Licensee reports.**96.4(1) *Planting report.***

a. Outdoor planting report. Within 14 days after planting an outdoor hemp crop, the authorized representative shall submit a planting report to the department. The planting report does not constitute the required preharvest report. The planting report shall be on a form prepared and distributed by the department that shall include, but is not limited to:

- (1) The authorized representative's full name and contact information.
- (2) The license number.
- (3) The anticipated harvest date.
- (4) An updated detailed map depicting any changes.

b. Indoor planting report. On the first day of the month following any planting activity in the immediately preceding month, the authorized representative shall submit a planting report. The planting report does not constitute the required preharvest report. The planting report shall be on a departmental form prepared and distributed by the department. The planting report form shall include, at a minimum, the following:

- (1) The authorized representative's full name and contact information.
- (2) The license number.
- (3) The anticipated harvest date.

96.4(2) *Preharvest report.* The authorized representative shall submit a preharvest report to the department no less than 30 days prior to the expected harvest date of the hemp crop produced at the licensee's crop site. The licensee shall be entirely responsible for determining the expected harvest date for the hemp crop. The preharvest report shall be on a departmental form prepared and distributed by the department. The preharvest report form shall include, at a minimum, the following:

- a.* The authorized representative's full name and contact information.
- b.* The license number.
- c.* The anticipated date range for initiating and completing harvest, recorded by lot.
- d.* A map of the outdoor crop site. If more than one harvest date is being reported for the lots within the crop site, the map shall designate the locations of the lots, and the intended harvest dates, which are to be harvested under the preharvest report.

96.4(3) *Postharvest report.* The licensee shall deliver the postharvest report to the department no less than 14 days after the harvest of a lot is complete. If any lots within a crop site are harvested at different times, each harvest date shall be independently recorded by lot. The postharvest report shall be on a departmental form prepared and distributed by the department. The postharvest report form shall include, at a minimum, the following:

- a.* The authorized representative's full name and contact information.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

- b. The license number.
- c. The harvest date(s).
- d. The independent harvest date of each lot.

96.4(4) Destruction report. The licensee shall deliver a destruction report no more than 48 hours after crop destruction, or as ordered by the department. The destruction report shall be on a form prepared and distributed by the department. The destruction report shall include, but is not limited to:

- a. The authorized representative's full name and contact information.
- b. The license number.
- c. The destruction date(s).
- d. The method of destruction.
- e. The independent destruction date of each lot.

96.4(5) Drug felony conviction report. Any authorized representative or applicant who is convicted of, or pleads guilty to, a disqualifying felony offense must report the disqualifying offense to the department and any co-licensees within 14 days of the conviction. The offender shall immediately forfeit the license. In the case of multiple licensees holding a single license, the offender's interest in the license shall be immediately terminated. Failure to report the disqualifying offense may result in an order of destruction. The drug felony conviction report shall be on a form prepared and distributed by the department that shall include, but is not limited to:

- a. The license number(s).
- b. The name and contact information for the individual reporting the individual's conviction.
- c. The date of conviction.
- d. An acknowledgement that all co-licensees have been informed of the disqualifying offense, if applicable, and the co-licensees have assumed full responsibility for the hemp crop.

96.4(6) Hemp acreage report to the FSA. Within 30 days after the completion of planting of an outdoor crop site, or within 30 days after the first planting of hemp in the calendar year in an indoor crop site, the authorized representative shall report the hemp acreage to the FSA. At a minimum, the following information shall be reported:

- a. Street address and geospatial location for each crop site.
- b. Acreage for each crop site.
- c. The license number.

96.4(7) Voluntary destruction report. If a licensee chooses to destroy a lot prior to harvest, the authorized representative must report the destruction to the department within 14 days after the destruction. The voluntary destruction report shall be on a form prepared and distributed by the department that shall include, but is not limited to:

- a. The authorized representative's full name and contact information.
- b. The license number.
- c. The dates and method of destruction for each lot.
- d. The identification number or name of the lot(s).

21—96.5(204) Fees. The department shall impose, assess, and collect fees, which shall be paid by a licensee. All fees shall be collected by the department before the department takes any action for which the fee is applicable. All fees are nonrefundable.

96.5(1) The license fee shall be paid prior to acceptance of a license application. License fees shall be based on the number of acres in a crop site, as follows:

TABLE 1
LICENSE FEES PER CROP SITE

Acres	Fee	
0 - 5	\$500 + \$5 per acre	Paid at application
5.1 - 10	\$750 + \$5 per acre	
10.1 - 40	\$1,000 + \$5 per acre	

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

96.5(2) A primary base fee shall be paid prior to acceptance of a license application. Payment of a primary base fee shall secure the preharvest inspection. The preharvest inspection shall include the collection of an official sample and an official test of that sample. Prior to, or during, the preharvest inspection, a licensee may request official sampling of additional lots and sub-lots. A primary supplemental fee shall be charged for each additional official sample and official test. All primary supplemental fees shall be paid prior to performance of any official test, as follows:

TABLE 2
PRIMARY FEES

Primary Base Fee	Primary Supplemental Fee
\$1,000 per sample	\$500 per sample
Paid at application	Paid prior to official sampling

96.5(3) A licensee may request one or more secondary preharvest inspections. Payment of a secondary base fee shall secure a secondary preharvest inspection. The secondary preharvest inspection shall include the collection of an official sample and an official test of that sample. Prior to, or during, any sampling, a licensee may request official sampling of additional lots and sub-lots. A secondary supplemental fee shall be charged for each additional official sample and official test. All secondary supplemental fees shall be paid prior to performance of any official test, as follows:

TABLE 3
SECONDARY FEES

Secondary Base Fee	Secondary Supplemental Fee
\$1,000 per sample	\$500 per sample
Paid prior to official sampling	Paid prior to official sampling

96.5(4) A licensee may request a single retest of a sample collected for a lot or sub-lot if the licensee believes the original official laboratory test result was in error. The licensee may not request the collection of a new sample. The licensee requesting the retest of the sample shall pay the retest fee prior to performance of official retest. The retest fee shall be \$500.

21—96.6(204) Annual review of licensees to ensure licensure compliance.

96.6(1) The authorized representative shall certify the licensee has operated and will continue to operate in accordance with Iowa Code chapter 204 by executing a certification of compliance as part of the harvest report, by answering the following questions:

- a. Have you operated in accordance with all license requirements?
- b. Has any of the following information changed?
 - (1) The authorized representative and all individual applicants' full names, titles, residential addresses, phone numbers, or email addresses.
 - (2) Key participant title in the business entity.
 - (3) The structure or ownership interests in the business entity.
- c. Were the hemp acres at the crop site reported to the FSA?
- d. Have any hemp plants been harvested or removed from the crop site prior to official sampling and official testing?

96.6(2) Crop sites that do not harvest hemp and solely propagate cuttings and clones shall be inspected at least annually.

21—96.7(204) Sampling procedures for official testing of hemp for THC content. Collection of a representative official sample for official testing.

96.7(1) The licensee shall submit a preharvest report to the department at least 30 days prior to the anticipated harvest date.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

96.7(2) Official samples for official testing shall be collected by the department or a third-party sampler designated by the department.

96.7(3) The authorized representative, or licensee, shall be present at any preharvest inspection and official sampling of the crop site.

96.7(4) The department inspector will verify the geospatial location coordinates submitted to the department.

96.7(5) The licensee must allow complete and unrestricted access to the crop site. If the licensee fails to provide unrestricted access, an official sample will not be collected.

a. If cannabis plants are observed outside of the crop site boundaries, the department shall notify law enforcement.

b. If the department inspector suspects that the licensee harvested hemp plants prior to official sampling, the department inspector will immediately cease official sampling and notify the Iowa hemp program administrator. The Iowa hemp program administrator shall determine how to proceed with an investigation, seeking law enforcement assistance as necessary.

96.7(6) A separate official sample shall be taken for each lot and sub-lot. In accordance with the fee schedule established by the department, a supplemental fee shall be charged for every sample after one sample.

96.7(7) If the licensee chooses to have official samples taken from sub-lots within a lot, the boundary between sub-lots shall be discernable. In an outdoor crop site, the minimum row space between lots and sub-lots shall be twice the normal row spacing, but no less than 36 inches.

96.7(8) The department inspector shall take a representative official sample of each lot and sub-lot, walking at right angles to the rows if possible. The department inspector may take more cuttings than the minimum listed in Table 4 if necessary to obtain an adequate official sample.

96.7(9) The official sample collected by the department shall consist of approximately 2-inch cuttings from the top one-third of the plant, based on the following table:

TABLE 4
NUMBER OF PLANTS SAMPLED, BASED ON LOT AND SUB-LOT ACREAGE SIZE

Number of acres	Number of plants sampled	Number of acres	Number of plants sampled	Number of acres	Number of plants sampled	Number of acres	Number of plants sampled
1	10	11	11	21	20	31	29
2	10	12	12	22	21	32	29
3	10	13	13	23	22	33	30
4	10	14	14	24	23	34	31
5	10	15	15	25	24	35	32
6	10	16	16	26	24	36	33
7	10	17	17	27	25	37	34
8	10	18	18	28	26	38	34
9	10	19	18	29	27	39	35
10	10	20	19	30	28	40	36

96.7(10) The plants and plant material selected for official sampling shall be determined solely by the department.

96.7(11) All samples shall become the property of the department and are nonreturnable.

96.7(12) The department inspector will place the official composite representative sample in a properly labeled paper bag. The labeled bag will be sealed with security tape, and the following information shall be placed on the paper bag:

- a.* License number;
- b.* Name and contact information of the sampling agent;
- c.* Name and contact information of the licensee;

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

- d.* Date sample was taken;
- e.* Sample identification number for the lot or sub-lot;
- f.* Parcel identification number from FSA; and
- g.* Any other information that may be required by the department.

96.7(13) The official sample and sampling report shall be hand-delivered or placed in a box, sealed with security tape, and overnight shipped to the department laboratory.

21—96.8(204) Approved testing methods of hemp for THC content.

96.8(1) The department laboratory shall be the only official laboratory for analyzing official samples from licensed crop sites in Iowa.

96.8(2) An appropriate chain of custody will be maintained at all times, and the information from the sampling form will be input into the department laboratory information management system.

96.8(3) The official samples will be dried, the stem and seed will be separated from floral material and discarded, and the floral material will be ground.

96.8(4) The ground floral material will be tested for THC content.

a. Any remaining floral material will be retained by the department for three months.

b. If a licensee requests a single retest of a lot or sub-lot, the department shall retest any remaining floral material.

96.8(5) The THC concentration will be determined by gas-liquid chromatography (GC) or other acceptable method as determined by the department.

96.8(6) The department will utilize MU in determining acceptable hemp THC concentration.

96.8(7) If the official laboratory test results in the acceptable hemp THC concentration the department shall issue a certificate of analysis, as provided in Iowa Code section 204.8, and immediately send the certificate of analysis to the authorized representative.

21—96.9(204) Harvesting timing.

96.9(1) A licensee shall not harvest any portion of a hemp crop unless the department has officially sampled the lot to be harvested.

96.9(2) The licensee may begin harvesting the corresponding lots and sub-lots upon receiving a temporary harvest and transportation permit. The temporary harvest and transportation permit will expire once a certificate of analysis, or destruction order, is issued.

a. Prior to receiving the temporary harvest and transportation permit, the licensee shall designate a storage site for the hemp crop. The licensee shall ensure that the department has unrestricted access to the crop at all times, including, if necessary, to fulfill an order of destruction. The harvested crop shall remain at the designated storage site until a certificate of analysis, or order of destruction, is issued.

b. The designated storage site must be within the state of Iowa.

c. All harvested lots and sub-lots shall be stored in a manner that preserves identity, regardless of the form, condition, or location of the crop. There shall be no commingling of separate harvested hemp lots.

96.9(3) Until the certificate of analysis is received, ownership of the hemp crop shall not change.

a. The licensee shall harvest an officially sampled hemp lot no later than 15 days after the lot was officially sampled. If the licensee has not completed harvest within 15 days and still desires to harvest any remaining crop, the licensee shall contact the department and request supplemental official sampling and official laboratory tests.

b. The day the crop site is officially sampled shall be considered day 0. The next day is considered day 1 after sampling, and so on, until day 15.

21—96.10(204) Order of destruction.

96.10(1) If the official laboratory test does not result in an acceptable hemp THC concentration, the department shall order the destruction of the hemp crop to occur as ordered by the department.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

96.10(2) If any official test exceeds acceptable hemp THC concentration, the department shall notify the department of public safety, local law enforcement, and the United States Department of Agriculture (USDA) hemp administrator.

96.10(3) If any official test exceeds 0.5 percent THC on a dry weight basis, the department shall notify the department of public safety, local law enforcement, the USDA hemp administrator, and the United States attorney general.

96.10(4) If any official test result exceeds 2.0 percent THC on a dry weight basis, the department shall notify the department of public safety, local law enforcement, the USDA hemp administrator, the United States attorney general, the county attorney, and the Iowa attorney general.

96.10(5) The department may require the licensee to utilize a reverse distributor for destruction.

96.10(6) The department shall notify the USDA hemp administrator when the destruction is complete.

21—96.11(204) Negligent violations.

96.11(1) Negligent violations shall include but are not limited to:

a. The production of hemp that exceeds the acceptable hemp THC concentration but is less than 2.0 percent THC on a dry weight basis.

b. Failure to submit required reports within mandated submission deadlines.

The department may determine additional negligent violations as needed.

96.11(2) All licensees associated with the license shall receive the negligent violation. A licensee that receives three negligent violations within five years shall be ineligible to participate in the negligent violation program or produce hemp for a period of five years beginning on the date of the third violation.

21—96.12(204) Negligent violation program.

96.12(1) The department shall require the completion of a corrective action plan for negligent violations. A licensee shall submit a corrective action plan to the department for consideration and approval. A corrective action plan shall consist of the following:

a. A reasonable time period, approved by the department, for correcting a negligent violation. Failure to correct a negligent violation within the reasonable time period shall be considered an additional negligent violation.

b. A proposed schedule for the licensee to submit periodic compliance reports to the department, when applicable. The duration for the ongoing compliance reports shall not be less than two calendar years following the violation.

c. Any other requirement established by the department.

96.12(2) The department may conduct any inspection, review, or other action to determine if the corrective action plan has been implemented as approved by the department.

96.12(3) The department shall issue a certificate of completion to the licensee upon the successful completion of the corrective action plan.

21—96.13(204) State plan. The department has adopted a state plan, as prescribed by the United States Department of Agriculture, in order to assume primary regulatory authority over the production of hemp in Iowa.

These rules are intended to implement Iowa Code section 204.3.

[Filed Emergency 12/11/19, effective 12/11/19]

[Published 1/1/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/1/20.

ARC 4845C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Rule making related to procurements from targeted small businesses

The Administrative Services Department hereby amends Chapter 117, "Procurement of Goods and Services of General Use," and Chapter 118, "Purchasing Standards for Service Contracts," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8A.104 and 8A.311.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 485.

Purpose and Summary

The Department of Administrative Services adopts these rule amendments as a result of 2019 Iowa Acts, House File 485, which addresses state purchasing requirements relating to Targeted Small Business procurement goals. 2019 Iowa Acts, House File 485, gives the Department authority to set a Targeted Small Business spending threshold, by rule, not to exceed \$25,000. The amendments, in part, set the spending threshold at \$25,000. The amendments also detail reporting requirements for state agencies to the Department regarding Targeted Small Business procurement.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 6, 2019, as **ARC 4735C**. A public hearing was held on November 26, 2019, at 10 a.m. in the Procurement Conference Room, A Level, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa.

The Iowa Economic Development Authority spoke in favor of the amendments and outlined how the \$25,000 spending threshold would help Targeted Small Businesses in Iowa by allowing them to capture more business. No other 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 December 11, 2019.

Fiscal Impact

The Iowa Economic Development Authority reports the fiscal impact of these amendments is indeterminable.

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.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

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 February 5, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 117.5(2) as follows:

117.5(2) *Targeted small business (TSB) procurement.*

a. Justification for TSB procurement. Agencies may purchase from a TSB without competition for a purchase up to ~~\$10,000~~ \$25,000 if the purchase would contribute to the agency complying with the targeted small business procurement goals under Iowa Code sections 73.15 through 73.21.

b. Special procedures for TSB procurements. Agencies must confirm that the vendor is certified as a TSB by the economic development authority. An agency may contact the TSB directly.

c. Reporting requirements for TSB procurement. By December 1 of each year, each agency shall provide the department with an annual report of procurements made in the previous fiscal year pursuant to paragraph 117.5(2) "a." The annual report will be in a format prescribed by the department.

ITEM 2. Amend subrule 117.15(3) as follows:

117.15(3) *Preference to targeted small businesses.* Agencies shall search the TSB directory on the Iowa economic development authority's website and may purchase a good or service directly from the TSB source if the cost is equal to or less than the spending limit set forth in ~~Iowa Code section 8A.311(10).~~ paragraph 117.5(2) "a." Agencies shall comply with the TSB notification requirements in subrule 117.8(2).

ITEM 3. Amend subrule 117.15(4) as follows:

117.15(4) *Misuse of agency authority.*

a. Purchasing authority delegated to agencies shall not be used to avoid the use of master agreements. The agency shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements in ~~subrules~~ subrule 117.5(2), 117.15(1) and or 117.15(2).

b. As a remedy, the department may recover administrative fees appropriate to the improper execution of procurement.

c. This rule is not intended to prohibit agencies from aggressively seeking competitive prices. Agencies may purchase outside of master agreements under subrule 117.4(1).

d. The department may rescind delegated authority of an agency that misuses its authority or uses the authority to procure goods or services already available on a master agreement.

e. This rule does not prohibit agencies from dividing procurements into contract award units of economically feasible production runs to facilitate offers or bids from targeted small businesses consistent with subrule 117.5(2) and Iowa Code section 73.17(1).

ITEM 4. Amend rule 11—118.5(8A), introductory paragraph, as follows:

11—118.5(8A) Use of competitive selection. State agencies may procure non-master agreement services from private entities without competition when the estimated value does not exceed \$5,000. Agencies shall use competitive selection to acquire services from private entities when the estimated annual value of the service contract is greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is greater than \$15,000 unless there is adequate justification for a sole source ~~or emergency~~ procurement pursuant to rule 11—118.7(8A) or emergency procurement pursuant to rule 11—118.8(8A) or unless awarded to a targeted small business

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

pursuant to 11—paragraph 117.5(2)“a” or procured pursuant to another exception to competitive selection under another provision of law.

[Filed 12/11/19, effective 2/5/20]

[Published 1/1/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/1/20.

ARC 4846C

DENTAL BOARD[650]

Adopted and Filed

Rule making related to mandatory child and dependent adult abuse identification and reporting training

The Dental Board hereby amends Chapter 10, “General Requirements,” and Chapter 25, “Continuing Education,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 731.

Purpose and Summary

2019 Iowa Acts, House File 731, amended the Iowa Code relating to mandatory child abuse and dependent adult abuse reporter training requirements. This rule making implements this change.

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 4661C**. 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 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 Board for a waiver of the discretionary provisions, if any, pursuant to rule 650—7.4(17A,147,153).

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

DENTAL BOARD[650](cont'd)

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 February 5, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 10.6(3) as follows:

10.6(3) Child and dependent adult abuse training. Licensees or registrants who regularly examine, attend, counsel or treat children or adults in Iowa must obtain mandatory training in child and dependent adult abuse identification and reporting ~~within six months of initial employment and subsequently every five years~~ in accordance with ~~650—subrule 25.2(9)~~ **650—subrule 25.4(2)**.

ITEM 2. Rescind subrule 25.4(2) and adopt the following **new** subrule in lieu thereof:

25.4(2) Mandatory reporter training for child abuse and dependent adult abuse.

a. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats adults in Iowa shall complete an initial two-hour dependent adult abuse mandatory reporter training course offered by the department of human services within six months of employment, or prior to the expiration of a current certificate. Completion of the initial training course results in two hours of continuing education credit. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certificate. Completion of the recertification training results in one hour of continuing education credit.

b. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats children in Iowa shall complete an initial two-hour child abuse mandatory reporter training course offered by the department of human services within six months of employment, or prior to the expiration of a current certificate. Completion of the initial training course results in two hours of continuing education credit. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certificate. Completion of the recertification training results in one hour of continuing education credit.

[Filed 12/4/19, effective 2/5/20]

[Published 1/1/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/1/20.

ARC 4847C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to medical prior authorizations under Medicaid

The Human Services Department hereby amends Chapter 73, "Managed Care," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 249A and 2019 Iowa Acts, House File 766, section 63.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 249A and 2019 Iowa Acts, House File 766, section 63.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Purpose and Summary

2019 Iowa Acts, House File 766, section 63, requires the Department to adopt rules to require that both managed care and fee-for-service payment and delivery systems utilize a uniform process, including but not limited to uniform forms, information requirements, and time frames, to request medical prior authorizations under the Medicaid program.

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 4673C**.

Two respondents, representing the Iowa Hospital Association and Optima LifeServices, provided written comments. Both respondents supported the uniform prior authorization process but felt the proposed rule making was overly broad and not specific enough. One respondent suggested that Iowa look to Texas and Vermont for examples of uniform prior authorization forms. The Department believes the legislation was purposefully broad and not specific in order to allow the project flexibility. The Department and the managed care organizations (MCOs) have been meeting regularly to create forms that will meet the needs of all Medicaid payers. The Department takes the comments under advisement but did not revise the rule making based upon the comments.

In addition, three other comments outside the scope of the rule making were received. The comments pertained to a review and standardization of management criteria across Medicaid payers and to an investigation of costs associated with expanding the state's Medicaid management information system (MMIS) for use as a single portal for prior authorization submissions and included a request that the 1915(i) Habilitation program be administered in the same way as the 1915(c) Intellectual Disability waiver, particularly in relation to authorization periods. No changes were made in relation to these comments.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on December 11, 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 rule 441—1.8(17A,217).

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 June 29, 2020.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** paragraph **73.2(4)“o”**:

o. Require managed care organizations and the fee-for-service Medicaid program to utilize a uniform prior authorization process. The process will include forms, information requirements, and time frames.

ITEM 2. Amend **441—Chapter 73**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 249A.4, ~~and~~ 2015 Iowa Acts, Senate File 505, section 12, and 2019 Iowa Acts, House File 766, section 63.

[Filed 12/11/19, effective 6/29/20]

[Published 1/1/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/1/20.

ARC 4848C

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to licensing sanctions regarding student loan debt or related service obligations

The Insurance Division hereby amends Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Chapter 55, “Licensing of Public Adjusters,” and Chapter 100, “Sales of Cemetery Merchandise, Funeral Merchandise and Funeral Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 523A 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, a change was made to the Iowa Code which resulted in the repeal of Iowa Code sections 261.121 through 261.127, effective July 1, 2019. These Iowa Code sections required the Division to take action against a person to whom it issued a license who was in default or was 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 this change by rescinding Division rules that implemented Iowa Code sections 261.121 through 261.127.

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 4713C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by Douglas Ommen, Iowa Insurance Commissioner, on December 3, 2019.

INSURANCE DIVISION[191](cont'd)

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 Division's general waiver provisions of 191—Chapter 4 apply to these rules.

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 February 5, 2020.

The following rule-making actions are adopted:

ITEM 1. Rescind and reserve rule **191—50.53(261)**.

ITEM 2. Amend paragraph **55.9(5)“c”** as follows:

c. A licensed public adjuster shall report to the division all ~~college student aid commission or child support recovery unit~~ actions taken under or in connection with Iowa Code chapter ~~261 or 252J~~ and all court orders entered in such actions.

ITEM 3. Amend paragraph **55.12(1)“1”** as follows:

l. Failing to comply with an administrative or court order imposing a child support ~~or student loan~~ obligation, following procedures of rules 191—10.20(522B) and 191—10.21(522B), replacing the words “producer” with “public adjuster”;

ITEM 4. Amend subparagraph **100.10(3)“a”(2)** as follows:

(2) Failure to pay state debt, or child support or student loan.

ITEM 5. Rescind and reserve subrule **100.17(6)**.

ITEM 6. Rescind and reserve paragraph **100.40(2)“k.”**

[Filed 12/3/19, effective 2/5/20]

[Published 1/1/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/1/20.

ARC 4849C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to disinterment

The Board of Mortuary Science hereby amends Chapter 100, “Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments,” Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 156 and section 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 144C, 147, 156 and 272C.

Purpose and Summary

This amendment makes rule 645—100.9(144) consistent with the rules and policies of the Iowa Department of Public Health that are related to the purpose of issuing disinterment permits in accordance with Iowa Code section 144.34.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4306C**, and a public hearing was held on March 5, 2019. No public comments were received regarding that Notice. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on September 11, 2019, as **ARC 4656C**. In the Amended Notice, the Board proposed striking the words “or cremated remains” from subrule 100.9(6). This was in response to a recent determination by the Bureau of Health Statistics, Vital Records, that cremation is a final disposition that occurs at the crematory prior to interment of cremated remains; therefore, no permit is required for disinterment of cremated remains. The Board’s opinion was that it would be unfair to set a rule requirement for funeral directors that could serve as grounds for discipline for failing to obtain a disinterment permit when, in the case of cremated remains, no permit needs to be executed.

A public hearing about the Amended Notice was held on October 1, 2019, at 9 a.m. in the Fifth Floor Conference Room 526, Lucas State Office Building, Des Moines, Iowa. Public comment was received from the Iowa Funeral Directors Association opposing the amendment and asking the Board to withdraw the proposed rule change. The Association also requested that the Board meet with other regulatory agencies about the topic of disinterment to develop a consistent message among the agencies.

No changes from the Amended Notice of Intended Action have been made.

Adoption of Rule Making

This rule making was adopted by the Board on December 5, 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

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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 February 5, 2020.

The following rule-making action is adopted:

Amend subrule 100.9(6) as follows:

100.9(6) Disinterment permits shall be required for any relocation of a human remains ~~or cremated~~ remains from the original site of interment or entombment if the purpose is for autopsy or reburial.

[Filed 12/6/19, effective 2/5/20]

[Published 1/1/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/1/20.

ARC 4850C

REGENTS BOARD[681]**Adopted and Filed****Rule making related to merit system rules**

The Regents Board hereby amends Chapter 3, "Personnel Administration," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 262.9(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8A.413 and 262.9.

Purpose and Summary

The following amendments are adopted after feedback and internal review. As a result of changes in 2017 Iowa Acts, chapter 2, to Iowa Code chapter 20 in February 2017, a review and amendments to the merit rules are necessary to account for these changes as well as to ensure that the rules are up to date to accurately reflect the needs and practices of the institutions.

Items 1, 2, 4, 5, 6, 12, 14, 23, 24, 26, 27, 31, 32, and 34 include nonsubstantive changes to verbiage and definitions to reflect current terminology commonly used in human resources.

Items 3, 25, 30, and 33 include updated references to state or federal laws, Board of Regents or institutional policies or any combination of the above.

Item 7 removes language concerning subsistence and maintenance allowances; includes the approval process for the resident director in appointments based on exceptional qualifications; removes language relating to the reporting of salary adjustments of other merit employees to the merit system director; removes merit increase language and replaces it with guidelines on the updated merit system salary increase procedures; amends pay on demotion language to allow the merit system director to provide an extension for extraordinary circumstances; adds language that allows rewards for exceptional performance not to exceed a certain percentage; sets the minimum rates, increases and decreases for the pay for trainees and apprentices; amends language to reflect that veterans' pay is set by federal law; and adds a new subrule on discretionary pay increases for permanent employees.

Items 8, 10, 11, and 35 adopt new rules to implement the Iowa Code.

Item 9 includes new language concerning recruitment announcements.

REGENTS BOARD[681](cont'd)

Item 13 reduces the number of eligibility lists from three to two and allows the resident director to determine the duration of the eligibility lists.

Items 15, 16, 19, and 20 rescind requirements related to certification of eligibility lists.

Items 17 and 18 revise language addressing appointments.

Item 21 removes language addressing layoffs and dismissal during an employee's probationary period.

Item 22 rescinds language governing transfers.

Item 28 clarifies that appeals under rule 681—3.128(8A) are not arbitrable beyond Step 3.

Item 29 extends the number of days for each step of the grievance procedure.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 28, 2019, as **ARC 4630C**.

The Board office received written comments from Morgan Miller, who identified herself as the political and legislative director of AFSCME Council 61. She submitted AFSCME's concerns about the following proposed amendments: Item 4, subrule 3.3(5); Item 7, subrules 3.39(3) and 3.39(14); and Item 20, rule 681—3.89(8A). The topics identified in Ms. Miller's submitted written comments include suspension of merit increases, pay on promotion, pay for returning veterans, and reinstatement. No changes from the Notice have been made based on these comments. The only change made was to change the word "class" to "classification" in Items 5, 6, 7, 11, 13, and 24 for consistency of terminology throughout the chapter.

Adoption of Rule Making

This rule making was adopted by the Board on November 14, 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 rule 681—19.18(17A).

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 February 5, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend **681—Chapter 3**, title, as follows:

~~PERSONNEL ADMINISTRATION~~ REGENTS HUMAN RESOURCES MANAGEMENT—MERIT
SYSTEM RULES

REGENTS BOARD[681](cont'd)

ITEM 2. Amend rule 681—3.1(8A) as follows:

681—3.1(8A) Creation and purpose. The purpose of these rules is to give effect to the provisions of Iowa Code Supplement chapter 8A, subchapter IV, related to merit staff employment to establish an efficient, effective and uniform system of ~~personnel~~ human resources administration for board of regents institutions and staff, to provide equal employment opportunity for all and career opportunities comparable to those in business and industry.

ITEM 3. Amend rule 681—3.2(8A) as follows:

681—3.2(8A) Covered employees. All merit staff employees of the board of regents, ~~except those exempted by Iowa Code section 8A.412(5),~~ will be covered under the rules of this system. In accordance with Iowa Code section 8A.412(5), the merit system includes employees not employed as president, dean, director, teacher, professional and scientific staff or student employee of the state board of regents.

ITEM 4. Amend rule 681—3.3(8A) as follows:

681—3.3(8A) Administration. Under authority of the board of regents and the supervision of its executive director, a merit system director will be appointed who will be responsible for the development, operation and evaluation of the system in compliance with the objectives and intent of certain provisions of Iowa Code Supplement chapter 8A, subchapter IV, related to merit staff employment and regent merit board of regents policies and rules. At each board of regents institution the head thereof will designate an administrator to serve as resident director of the system. The resident director will be responsible through the chief executive at the institution for ~~conducting a program of personnel~~ human resources administration in accordance with these rules. The merit system director shall review the operation of the merit system at each of the institutions and will be responsible for the direction of the merit system and have the authority to ensure the ~~uniform~~ administration of the merit system under consistent with the provision of these rules.

3.3(1) Records and reports. The resident directors will maintain ~~an individual file~~ appropriate documentation on each employee that will include a record of all personnel transactions affecting ~~that individual~~ the individual's employment. The resident directors will also maintain records on operations conducted under these rules and will periodically as requested, ~~and at least annually,~~ report a summary of such operations to the merit system director; and in addition will prepare other reports as may be required by the merit system director to indicate compliance with applicable regents and state requirements and federal standards. The resident director will establish, in cooperation with employing departments, a program that will provide for the regular evaluation, at least annually, of the qualifications and performance of all employees consistent with board and institutional policies.

3.3(2) Nondiscrimination. All programs and transactions administered under these rules will be conducted on the basis of merit and fitness without discrimination or favor because of political ~~or~~ religious opinions or affiliations ~~or national origin, race, sex, creed, color, disability or age~~ except as prescribed or permitted under state and federal law, nor any discrimination protections by law, regulation, or board of regents or institutional policies.

3.3(3) Political activity. No merit employees covered under this system will engage in any partisan political activity that is prohibited by law; employees will have the right to freely express their views as private citizens and to cast their vote; coercion of employees for political purposes and the use of employees' positions for political purposes will be prohibited.

Those employees who are by law subject to the provisions of the federal Hatch Act and successor legislation will be informed of such provisions by the resident director at their institution and will be required to adhere thereto.

3.3(4) Revisions and additions. In accordance with the provisions of Iowa Code Supplement chapter 8A, these rules may be revised at any time. In addition, supplementary rules subject to Iowa Code chapter 17A, not inconsistent with these rules may be made applicable to any department, program or service, whenever such additional merit system provisions are required as a condition of eligibility for federal funds.

REGENTS BOARD[681](cont'd)

3.3(5) Suspension of merit increases. During any period of time when merit increases provided under these rules are temporarily suspended by legislative action, the rules providing for such increases shall be suspended for the duration of that legislative mandate. The merit system director shall provide for the administration of such suspension and shall ensure the maintenance of necessary information at each board of regents institution as would be necessary for reinstatement of such increases following the temporary suspension. Reinstatement of such increases shall be authorized by the board upon the recommendation of the merit system director and may include a delay in increases to promote equity among employees. Any such delay, however, cannot exceed one year and must be applied uniformly throughout the system to all employees with like seniority performance and length of employment in the system, or in classification of position, or other specified categorization.

This rule is intended to implement Iowa Code section 262.9.

ITEM 5. Amend rule 681—3.14(8A) as follows:

681—3.14(8A) Definitions.

“Active service” is a period of paid employment performing the duties of the position.

“Advanced starting rate” is a rate ~~on~~ within the pay grade which is greater than the minimum rate of the pay grade for a specific ~~class~~ classification as provided for in the approved pay plan.

“Background check” is the process of collecting and verifying relevant information for an individual’s employment.

“Base pay” means the employee’s rate of pay exclusive of ~~extra~~ any supplemental pay such as lead worker pay, pay for shift differential, pay for special assignment, on-call pay, call back pay, or any other incentive premium pay.

“Board” means board of regents.

“Certification” means the referral of qualified applicants from an eligibility register to a department for the purpose of making a selection in accordance with these rules.

“Class Classification” means one or more positions, which are sufficiently similar in duties and responsibilities, that each position in the group can be given the same job title and require the same minimum qualifications as to education and experience, and that the same schedule of pay can be applied with equity to all positions in the ~~class~~ classification under the same or substantially the same employment conditions.

“Classification appeal” is the act of contesting the classification or reclassification of a position as determined by the merit system director after a review of the duties and responsibilities of the position.

“Classification review” is the process initiated by a permanent employee or department head requesting review of the classification of the employee’s position.

“Classify” means to ~~make the original assignment of~~ assign a position to an appropriate ~~class~~ classification on the basis of the duties and responsibilities assigned and to be performed.

“Days” means ~~working~~ calendar days unless designated otherwise.

“Demotion” means a change of an employee from a position in a given classification to a position in a classification having a lower pay grade. Demotion may be voluntary, be involuntary, or result from a reclassification of a position.

“Department” or “employing department” is a unit or division with a regents institution defined locally by each institution.

“Designee” is an individual who has been selected to act on behalf of a designated authority under these rules.

“Eligibility lists” are lists of the names of qualified applicants for a particular ~~class~~ classification.

“Eligibility register” consists of the names of the applicants ~~from the appropriate eligibility list~~ who are certified for a specific vacancy.

“Examination” is the screening of applicants.

“Grievance” is a dispute or complaint concerning the interpretation or application of merit system or institutional rules governing terms of employment and working conditions.

“Lateral transfer” means a change from a position in one ~~class~~ classification to a different position in the same ~~class~~ classification or another ~~class~~ classification in the same pay grade.

REGENTS BOARD[681](cont'd)

“*Maximum rate*” is the final value of the pay grade to which a classification is assigned. A “red-circled” rate is above the maximum.

“*Merit increase*” is the increment within the pay grade, as established by the board, by which an employee’s pay will be raised at specified times during employment.

“*Minimum rate*” is the minimum value of the pay grade to which a classification is assigned. It is less than an “advanced starting rate.”

“*Pay grade*” or “*grade*” is the numerical designation on the pay schedule to which individual classes classifications are assigned.

“*Permanent employee*” is an employee who has completed the initial probationary period and thereby acquired permanent status in accordance with the rules of the system.

“*Position*” means a group of specific duties, tasks and responsibilities assigned to be performed by one employee. A position may be 12-month or less, full-time or part-time, temporary or permanent, occupied or vacant.

“*Probationary period*” is a six-month period to determine an employee’s fitness for the position. A probationary period is required for an original appointment, reinstatement, reemployment to a class classification not previously held, promotion, voluntary demotion out of series or lateral transfer out of class classification.

“*Promotion*” means a change in status of a permanent classified employee from a position in a classification to another position in a classification having a higher pay grade.

“*Reclassify*” means to make a change in the classification of a position by raising it to a higher, reducing it to a lower, or moving it to another class classification of the same level on the basis of significant changes in the kind or difficulty of the tasks, duties, and responsibilities in such position, or because of an amendment to the classification plan, and officially assigning to that position the class classification title for such appropriate class classification.

“*Reduction in force*” is a permanent layoff or an involuntary reduction in time resulting from a shortage of funds or work, a material change in duties or organization or abolishment of one or more positions.

“*Reemployment Recall*” is the reappointment of an employee ~~from a reemployment register. An employee may be placed on a reemployment register who terminated~~ as a result of (1) layoff or voluntary demotion in lieu of layoff, or (2) medically related disability leave and exhaustion of vacation and medically related disability leave credits, or (3) failure to pass a subsequent probationary period on a promotion, lateral transfer out of class classification, or demotion out of series.

“*Reinstatement*” is the reappointment of a permanent employee who has resigned in good standing.

“*Resident director*” is the person appointed by the head of each regents institution to administer the merit system rules at that institution. The resident director may appoint one or more designees authorized to administer the merit system rules.

~~“*Step*” is the value established through the collective bargaining process or by the merit system director for the purposes of applying the rules on compensation and the setting of advanced starting rates.~~

“*Suspension*” is an enforced leave of absence with or without pay for purposes of conducting an investigation or as a disciplinary measure.

“*Trainee*” or “*apprentice*” is an employee participating in a specified training program during a fixed period of time in order to meet the minimum qualifications required for a classification.

ITEM 6. Amend rule 681—3.26(8A) as follows:

681—3.26(8A) Administration of the classification plan. The merit system director will direct the uniform administration of the classification plan. Resident directors may recommend new classifications and ~~reclassifications~~ changes to existing classifications. Employing departments and employees may appeal classification and reclassification in accordance with 681—3.127(8A) ~~of these rules.~~

The merit system director, in consultation with the resident directors and subject to the approval of the board of regents, may establish new classes classifications and change or abolish existing classes classifications which affect the merit system pay plan in order to meet the needs of the institutions and

REGENTS BOARD[681](cont'd)

to properly reflect changes in work and the organization thereof. When the changes do not affect the pay plan of the merit system, the merit system director may, in consultation with the resident directors, change existing elasses classifications and report such changes annually to the board of regents. When the classification of a position is changed, the incumbent will be entitled to continue service in the position provided the incumbent meets the minimum qualifications or provided the duties have not changed appreciably. If the incumbent is not eligible to continue, the incumbent may be transferred, promoted, demoted or laid off in accordance with the rules. Changes in classification will not be used to avoid other provisions of these rules relating to layoffs, promotions, demotions and dismissal.

A review of individual classifications, elass classification series, or group of elasses classifications may be initiated by the merit system director on a systemwide basis. The administrative review shall preempt the classification appeal procedure provided in 681—3.127(8A) ~~of these rules~~. Changes in the classification of positions resulting from a systemwide review shall be effective at the beginning of the next fiscal year unless the merit system director establishes an earlier date for implementation.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 8A.412(5) and 8A.413.

ITEM 7. Amend rule 681—3.39(8A) as follows:

681—3.39(8A) Administration of the pay plan. Within the provisions of these rules, the pay plan will be uniformly administered by the resident directors under the direction of the merit system director for all elasses classifications in the system. Except as otherwise provided in these rules and in the pay plan, all employees will be paid between the minimum and maximum of the pay grade to which the employee's elass classification is assigned and such pay will constitute the total cash remuneration the employee receives for the employee's work in that position. ~~Perquisites such as subsistence and maintenance allowances will be considered a part of pay and the value of such will be deducted from an employee's rate of pay.~~ Any employee who is approved for participation in a phased retirement program as provided for by state law and regent policy shall have the salary provided under these rules adjusted as specified by such law and regent policy.

3.39(1) Entrance salaries. The entrance salary for an employee in any position under this system will be the minimum salary of the pay grade to which that elass classification is assigned or in accordance with the approved pay plan, except as provided for the following:

a. Appointment based on a scarcity of qualified applicants. At the request of an institution and on the basis of economic or employment conditions which make it difficult or impossible to recruit at the minimum rate of the pay grade to which a elass classification of position is assigned, a resident director, subject to approval by the merit system director, may authorize for a designated period of time recruitment for that elass classification at a rate higher than the minimum. Where such a higher entrance rate is authorized all employees in the same elass classification and in the same geographical area, who are earning less than the higher entrance rate, will be increased to that higher rate.

b. Appointment based on exceptional qualifications. Employees whose qualifications substantially exceed the minimum required for the elass classification or who possess outstanding experience relative to the demands of the position may, at the request of an employing department and upon approval by the resident director, be appointed at a rate higher than the minimum, provided that the pay of all other employees in the same classification as defined in 3.104(4) "e" with similar qualifications working under the same conditions at the same institution are raised to that higher rate. ~~Such~~ These appointments along with any salary adjustments required of other employees other than the appointee must be approved by the resident director and reported to the merit system director. ~~Such appointments which necessitate the adjustment of the salaries of employees other than the appointee will, in addition, be reported to the merit system director.~~

Increases authorized and granted to other employees as the result of appointments based on the scarcity of qualified applicants, 3.39(1) "a," or appointments based on exceptional qualifications, 3.39(1) "b," will establish new merit review dates for affected employees.

c. Appointments based on prior service at the institution. Employees who were employed by an appointing institution in a nonmerit system position and who performed duties of the same character and responsibility as the merit elass classification to which they are being appointed may be paid at a rate

REGENTS BOARD[681](cont'd)

higher than the minimum reflecting prior service in a comparable position. Such appointments must be approved by the resident director and reported to the merit system director.

3.39(2) Merit increases. ~~Permanent and probationary employees will be eligible for a merit increase following one year of satisfactory performance in their assigned classification with the exception that permanent and probationary employees paid at the minimum of a pay grade will be eligible for a merit increase upon completion of 6 months of satisfactory service in their assigned classifications and every 12 months thereafter~~ Employees with satisfactory performance shall be eligible to receive a merit increase upon completion of their minimum pay increase eligibility period. The minimum pay increase eligibility period for employees shall be 12 months from their last performance review, except that it shall be 6 months for an employee who is appointed, promoted, or reclassified and paid at the minimum rate for the employee's assigned pay grade. Failure to conduct a performance review shall result in the employee being deemed to have performed satisfactorily during this period. No merit increase will be granted above the maximum of the pay grade. The period of satisfactory performance will be measured from the last merit review date if such a date has been established. Merit increases in pay will not be made retroactively, but may be denied or deferred by the employing department on the basis of work performance. Employees whose merit increases are denied or deferred will, ~~prior to the scheduled effective date of increase,~~ be informed of such action by a written statement from their employing department which specifies the ~~reason~~ reason(s) for the denial or deferral action. ~~Denials or deferrals~~ Deferrals of a merit increase for six months or less for reason of unsatisfactory work performance will not result in the establishment of a revised merit review date.

Deferrals resulting from leaves of absence without pay or layoff exceeding 30 calendar days will cause a change of the merit review date equal to the time away from work.

3.39(3) Pay on promotion. An employee who is promoted will be moved to the minimum rate of the new grade, or to ~~an equal or higher rate on in the new grade which provides an adjustment, to the employee's present base pay, that is the salary equivalent of no less than one step higher but, at the discretion of the institution,~~ that is no greater than 5 percent higher than the employee's current base pay without approval of the merit system director. In no event will the adjustment result in pay above the maximum of the new grade.

If the promotion involves movement to a new grade that is three or more grades higher than the employee's present grade, the resident director may approve, on written request from the employing department, an increase, to the employee's present base pay, ~~that is equivalent to the value of no less than two steps higher but, at the discretion of the institution,~~ of no greater than 10 percent without the approval of the merit system director.

For the purpose of calculating the promotional increase, any extra pay such as shift differential pay, pay for special assignment, pay for lead worker status, on-call pay, pay for overtime, or pay for call back shall be excluded as part of the employee's present base pay. ~~The merit review date~~ minimum pay increase eligibility period will be computed from the effective date of promotion and in accordance with 3.39(2). Pay on promotion in accordance with the provisions of 3.39(1) "b" may be authorized by a resident director and will be reported to the merit system director.

3.39(4) Pay on demotion. Upon recommendation by the department head, and with the prior approval of the resident director, the pay of an employee who is demoted will be set at any rate within the new pay grade that does not exceed the rate at which the employee was paid in the position from which the employee was demoted. ~~Merit review date~~ except as provided in 3.39(1) "b." Minimum increase eligibility period will not change.

If the salary of an employee who is demoted as the result of the reclassification of the employee's position exceeds the maximum salary of the pay range to which the new classification is assigned, at the discretion of the employing department and with the approval of the resident director, the salary may be "red-circled" for a period not to exceed one year. ~~An extension not to exceed one additional year may be approved by the merit system director~~ The resident director may request an extension be approved by the merit system director due to extraordinary circumstances for a designated period of time.

If an employee accepts voluntary demotion in lieu of layoff, the salary shall be retained providing funding is available. In no event will the salary exceed the maximum of the new pay grade.

REGENTS BOARD[681](cont'd)

3.39(5) No change.

3.39(6) *Pay for special assignment.* Provided an employee is granted special assignment in accordance with 3.102(2), ~~of these rules~~ the employee will be paid for the duration of such assignment consistent with:

- a. 3.39(3) Pay on promotion if assigned to a class classification having a higher pay grade;
- b. 3.39(7) Pay on transfer if assigned to a class classification having the same pay grade;
- c. The present base pay if assigned to a class classification having a lower pay grade.

3.39(7) *Pay on lateral transfer.*

a. Employees who are transferred from one position to another position in the same class classification shall receive no adjustment in base pay except as provided in 3.39(1) "b";

b. Employees who are transferred from one position to another position in a different class classification but in the same pay grade shall receive no adjustment in base pay except as provided in 3.39(1) "b" or as set forth in 3.39(7) "c" and "d" below;

c. Employees who are transferred from one class classification with a lower or no advanced starting rate to a class classification with a higher advanced starting rate shall receive:

(1) An adjustment to the higher advanced starting rate if the base pay prior to lateral transfer is less than the higher advanced starting rate. When the base pay adjustment is the salary equivalent of the value of a step or greater, an adjustment in merit review date will result and be computed from the effective date of lateral transfer and in accordance with 3.39(2); or

(2) There will be no adjustment in base pay if the employee's base pay prior to lateral transfer is not less than the higher advanced starting rate.

d. Employees who are transferred from one position in a class classification with a higher advanced starting rate to a position in a class classification in the same pay grade but with a lower or no advanced starting rate shall be paid in accordance with subrule 3.39(4), pay on demotion.

e. In no case may an employee be paid below the minimum or above the maximum for a classification.

3.39(8) and **3.39(9)** No change.

3.39(10) *Pay for exceptional performance.* An employee may be given pay for exceptional performance, not to exceed 5 percent of an employee's current annual salary, at the written request of the employee's department head with appropriate administrative approval and the prior approval of the resident director. The request will describe the nature of the exceptional job performance for which additional pay is requested, indicate the amount proposed, and specify the source of funds. The award may be based on sustained superior performance or an exceptional achievement or contribution during the period since the employee's last performance review. To qualify for an exceptional performance award, an employee must have a cumulative performance evaluation exceeding standards and have no individual rating below satisfactory. Payment will be made as a lump sum award and will not change the employee's established salary rate. ~~No employee will be eligible for more than one award a year~~ An employee will be eligible to receive multiple rewards per fiscal year but not to cumulatively exceed 5 percent of the employee's current annual salary.

3.39(11) No change.

3.39(12) *Pay for lead worker status.* On request of an employing department and with approval of the resident director, an employee who is assigned and performs limited supervisory duties (such as distributing work assignments, maintaining a balanced workload within a group, and keeping attendance and work records) in addition to regular duties may be designated as lead worker in the classification assigned, and paid during the period of such designation the employee's base salary plus ~~the equivalent of no less than one step~~ but, at the discretion of the institution, a percentage of the employee's base pay no greater than 5 percent without the approval of the merit system director.

3.39(13) *Pay for trainees and apprentices.* The schedule of wages for trainees and apprentices will consist of a step in the pay matrix for every year of training required be set at the minimum of the entrance rate of the journey classification and decreased by 4.5 percent for every year of the program. Each employee whose performance is satisfactory as determined by the employing department will progress ~~one-half step~~ by half of the annual increase every six months from the first step of the schedule to the

REGENTS BOARD[681](cont'd)

entrance rate established for the journey ~~class~~ classification at the completion of time established for training or apprenticeship.

3.39(14) *Pay for returning veterans.* Veterans who return from military leave will have their pay set ~~at the rate they would have attained had they continued in service at the regent institution from which they took military leave~~ by applicable federal law.

3.39(15) *Discretionary pay increases for permanent employees.* ~~Reserved~~ Permanent employees paid within the designated pay grade may be eligible for a discretionary increase to their present base pay as a result of a market analysis, equity analysis, employment offer or other employment situation. In no circumstance will the adjustment result in pay above the maximum of the pay grade. A resident director shall present the rationale for a discretionary pay increase to the merit system director for approval by the merit system director.

3.39(16) to 3.39(18) No change.

3.39(19) *Recruitment or retention payments.* A payment to a job applicant or an employee may be made for recruitment or retention reasons. The resident director shall first submit a written explanation to the merit system director prior to any payment being made.

As a condition of receiving recruitment or retention pay, the recipient must sign an agreement to continue employment with the employing department to be commensurate with the amount of the payment. If the recipient is terminated for cause or voluntarily leaves state employment, the recipient will be required to repay the employing department for the proportionate amount of the payment for the time remaining and it will be recouped from the final paycheck. When the recipient changes employment to another state agency, a repayment schedule must be approved by the employing department and the state agency. Recoupment will be coordinated between the state agency and the institution to ensure the proper reporting of taxes.

This rule is intended to implement Iowa Code ~~Supplement~~ section 8A.413.

ITEM 8. Adopt the following new rule 681—3.40(8A):

681—3.40(8A) Group insurance benefits. Pursuant to the authority of Iowa Code section 262.9(13), each board of regents institution or special school is authorized by the board of regents to administer group insurance benefit programs for all regent employees subject to any requirements set forth by the board or in the board policy manual.

ITEM 9. Amend rule 681—3.50(8A) as follows:

681—3.50(8A) Applications. Applications for employment will contain no question so formed as to elicit any information prohibited by state or federal statutes, and the truth of statements made on the application will be certified by the signature of the applicant. Public announcement of vacancies will be made for ten calendar days in classifications for which applications are not accepted on a continuous basis. Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies established by the institution. Applications will be kept on file at the institution for a period of time to be designated by the resident director. Each institution may post recruitment announcements for application by employees of that institution only.

ITEM 10. Adopt the following new rule 681—3.53(8A):

681—3.53(8A) Background checks. Background checks, including but not limited to criminal records, sex offender registry records, driving records, financial or credit records, child or dependent adult abuse record checks, reference and work history checks, may be conducted pursuant to each institution's background check policies.

ITEM 11. Adopt the following new rule 681—3.54(8A):

681—3.54(8A) Qualifications. Applicants must meet the qualifications for the classification as indicated in the board of regents classification description, as well as any special qualifications associated with a particular position. For each position posted for applications, the list of applicants will be evaluated to

REGENTS BOARD[681](cont'd)

determine whether or not an applicant meets such qualifications and requirements. Those applicants who meet the required qualifications as determined by the resident director or the resident director's designee shall be eligible for further consideration for hire, transfer or promotion in the position.

An employing department may request in writing that the resident director certify applicants who have special qualifications in addition to the minimum qualifications prescribed in the classification specifications. If, in the judgment of the resident director, such a request is validly related to job performance, the resident director may certify only the names of applicants who have such special qualifications.

This rule is intended to implement Iowa Code section 8A.413.

ITEM 12. Amend rule 681—3.55(8A) as follows:

681—3.55(8A) Rejection or disqualification of applicants. The resident director may reject any applicant or, after examination, may refuse to certify any ~~candidate~~ applicant if it is found that the person:

1. Does not meet the minimum required qualifications for the ~~class~~ classification;
2. ~~Cannot~~ Is unable to perform the essential functions of the position with or without a reasonable accommodation;
3. ~~Habitually uses narcotics or uses intoxicating beverages to excess~~ Has violated federal or state law or regulations that affect the ability to perform the job;
4. ~~Has made a false statement of material fact in the application~~ unauthorized access to examination information;
5. ~~Has information concerning the examination to which the person is not entitled~~ failed to appear for examination or participate in any aspect of the selection process;
6. ~~Has been convicted of a crime which makes the person unsuitable for employment in a particular class or position~~ failed to meet the conditions of employment such as physical requirements, background checks, or other conditions as set forth in the job announcement;
7. ~~Has made false statements or attempts to practice fraud or deception during the selection process~~;
8. ~~Entered into a written agreement between the applicant and the state or regents institutions that the applicant will not seek or accept work from the state, any regents institution, or both~~;
7. ~~9.~~ Has been dismissed from private or public service for a cause that would be detrimental to the regents institution employing the applicant.

A disqualified applicant will promptly be notified ~~in writing~~ by electronic or ordinary mail of such action at the last-known address. A disqualified applicant may request, ~~in writing~~, review of the reason for disqualification within ten days of notification. ~~Such request will be in writing and upon~~ Upon receipt, the resident director will give full consideration to the request and notify the applicant by electronic or ordinary mail of the resident director's decision in writing within ten days of receipt.

ITEM 13. Amend rule 681—3.67(8A) as follows:

681—3.67(8A) Eligibility lists. ~~Three~~ Two kinds of eligibility lists will be established: ~~reemployment, recall and employment, and promotional~~.

~~Reemployment~~ Recall lists will consist of the names of permanent employees who have been laid off or demoted in lieu of layoff or who are able and qualified to return to work following a medically related disability leave, in accordance with 3.104(4) "j" and 681—3.143(8A) or in accordance with ~~3.90(4)~~ 3.90(3). These lists will be maintained in order by retention points calculated in accordance with the rules for reduction in force, beginning with the person with the highest number of points. ~~Reemployment~~ Recall rights apply only to ~~classes~~ classifications for which the employee is eligible in accordance with these rules.

Employment lists will include the names of all applicants for the position posted who meet the qualifications for a classification. ~~Employment lists will be maintained for specific classifications designated for continuous acceptance of applications in accordance with rule 681—3.50(8A).~~

REGENTS BOARD[681](cont'd)

~~Promotional lists will consist of the names of all permanent employees who are qualified and have requested consideration for promotion unless an employing department requests that the promotional list be limited to permanent employees of that department.~~

3.67(1) Removal of names from eligibility lists. In addition to the causes for rejection or disqualification set forth under 681—3.55(8A), the resident director may permanently or temporarily remove names from eligibility lists for the following reasons:

a. Upon receipt of notification from applicants that they no longer desire consideration for a position in the class classification.

b. ~~Appointment through certification from such eligibility list to fill a permanent position.~~

c. Failure to respond within five working days to the written inquiry of the resident director relative to availability for appointment.

d. ~~Declination of appointment without good cause or under conditions~~ which the applicants previously indicated they would accept.

e. Failure to appear for a scheduled employment interview or to report for duty within a reasonable time specified by the employing department.

f. ~~Failure to maintain a record of their current address~~ contact with the resident director as evidenced by the return of a properly addressed unclaimed letter or other evidence.

g. Willful violation of any of the provisions of these rules.

h. Rescinded IAB 6/12/02, effective 7/17/02.

3.67(2) Duration of eligibility lists. ~~Eligibility lists may be continuous or closed after a vacancy is filled. Names may be added to or deleted from eligibility lists in accordance with these rules. The names of applicants who have not been appointed or otherwise removed from lists will be removed at the termination of the period of time designated by the resident director.~~

3.67(3) Precedence of eligibility lists. ~~Reemployment~~ Recall lists will supersede employment ~~and promotional~~ lists.

ITEM 14. Amend rule 681—3.68(8A) as follows:

681—3.68(8A) Personnel Job requisitions. Requests to fill vacancies in permanent positions will be initiated by the requesting department and forwarded to the resident director. The request will include the class classification of the position to be filled, the number of vacancies and the date of need.

ITEM 15. Rescind and reserve rule **681—3.69(8A)**.

ITEM 16. Amend rule 681—3.70(8A) as follows:

681—3.70(8A) Selection of employees. Final selection will be made by the employing department. Nothing in these rules will require the hiring of any applicant. ~~When a properly certified applicant is selected by a department, the department will so notify the resident director.~~

ITEM 17. Amend rule 681—3.84(8A) as follows:

681—3.84(8A) Trainee, apprentice, or career development or apprentice appointment. ~~When a position within a class cannot be filled because of the lack of qualified eligibles, or applicants meeting the minimum qualifications for the class, or the institution specifically designates a position for trainee, apprentice, or career development purposes, the institution may appoint a person who meets the minimum qualifications established in programs approved by the merit system director for this type of appointment. With the approval of the resident director, an institution may advertise a position for a classification designated for trainees or apprentices. When so designated, applicants do not need to meet the minimum qualifications for the classification for permanent appointment. The purpose of the program is to develop the trainee or apprentice to obtain the necessary knowledge, skills and abilities to perform the work and to meet the minimum qualifications for the classification. At the conclusion of the designated training period or apprenticeship program, the employee must be able to satisfactorily perform the duties and meet the minimum qualifications in order to move into the regular classification.~~

REGENTS BOARD[681](cont'd)

ITEM 18. Amend rule 681—3.85(8A) as follows:

681—3.85(8A) Project Term appointment. When it is known that a particular job, project, grant or contract will require the services of an employee for a limited duration or where funding must be renewed periodically, a project term appointment may be made. ~~Such an~~ The initial appointment will not be made for more than one year. ~~While an extension~~ Renewals beyond one year may be approved by the ~~merit system~~ resident director on the basis of a ~~limited need that could not otherwise be efficiently and effectively filled, successive project appointments will not be allowed~~ funding availability or institutional limits on term appointments.

Such appointments will not confer to the individual any right of position, transfer, demotion, or promotion, or recall, but incumbents shall be eligible for vacation and sick leave, except that a project term appointment made for less than 780 hours will be considered a temporary appointment under rule 681—3.82(8A) without conferring rights or eligibility for vacation or sick leave.

This rule is intended to implement Iowa Code ~~Supplement~~ section 8A.413(9).

ITEM 19. Amend rule 681—3.87(8A) as follows:

681—3.87(8A) Permanent appointments. An applicant who is ~~certified from an eligibility register~~ and appointed with the approval of the resident director to a permanent position, and who successfully completes a probationary period in accordance with these rules, will have permanent status.

ITEM 20. Rescind and reserve rule **681—3.89(8A)**.

ITEM 21. Amend rule 681—3.90(8A) as follows:

681—3.90(8A) Probationary period.

3.90(1) and 3.90(2) No change.

~~**3.90(3) Layoffs during probation.** Employees who are laid off during their probationary period will, upon written request to the resident director, be placed on the appropriate eligibility list.~~

~~**3.90(4) 3.90(3) Dismissal during promotional probation.** Employees on original appointment or who have been reinstated or reemployed and dismissed during their probationary period may be returned to the eligibility list from which they were appointed if, in the judgment of the resident director, they may be able to perform satisfactorily in another position. Employees who are promoted from one class classification to another or who transfer out of class classification or who demote out of class classification series and are dismissed during their probationary period may be placed on the reemployment recall list for a previously held classification if, in the judgment of the resident director, they may be able to perform satisfactorily in another position.~~

ITEM 22. Rescind subrule **3.102(3)**.

ITEM 23. Amend rule 681—3.103(8A) as follows:

681—3.103(8A) Demotion (voluntary). If, for any reason, an employee wishes to be demoted to a ~~position in~~ a lower class classification, the resident director may, upon written request from the employee and with the approval of involved departments, effect such a demotion provided the employee is certified by the resident director as meeting the qualifications required for the lower class classification. Voluntary demotion will not be subject to appeal.

ITEM 24. Amend rule 681—3.104(8A) as follows:

681—3.104(8A) Terminations.

3.104(1) Resignations.

a. To resign in good standing employees must notify the employing department of their intention to resign in writing at least ~~ten~~ 14 days prior to the effective date of resignation, except in cases where the employing department agrees to a shorter period of notice. ~~An employee who fails to give proper notice may, at the request of the employing department, be barred from future certification to that department~~

REGENTS BOARD[681](cont'd)

~~or from reinstatement as provided for in these rules.~~ Employees who resign will have no rights of appeal under these rules.

b. Abandonment of position. Employees who are absent from duty for three consecutive workdays without proper notification and authorization thereof shall be deemed to have resigned their positions.

This rule is intended to implement Iowa Code section 8A.413(15).

3.104(2) and 3.104(3) No change.

3.104(4) *Reduction in force.*

a. Nothing herein shall be construed as a guarantee of hours of work per day or per work period. An institution may lay off an employee when it deems necessary because of shortage of funds or work, a material change in duties ~~or organization~~, reorganization or abolishment of one or more positions, or other legitimate reason consistent with public employer rights (Iowa Code section 20.7).

b. Reduction in force will be accomplished in a systematic manner in accordance with these rules; however, the layoff provisions established in this subrule shall not apply to:

(1) Temporary layoffs of less than ~~20~~ 25 workdays or ~~160~~ 200 hours of work per calendar year;

(2) Interruptions in the employment of school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the resident director;

(3) The promotion or reclassification of an employee to a ~~class~~ classification in the same or a higher pay grade;

(4) The reclassification of an employee's position to a ~~class~~ classification in a lower pay grade that results from the correction of a classification error, the implementation of a ~~class~~ classification or series revision, changes in the duties of the position, or a reorganization that does not result in fewer total positions in the unit that is reorganized;

(5) A change in the classification of an employee's position or the appointment of an employee to ~~a vacant position in a class~~ classification in a lower pay grade resulting from a ~~disciplinary or voluntary~~ demotion; and

(6) The transfer or reassignment of an employee to another position in the same ~~class~~ classification or to a ~~class~~ classification in the same pay grade.

c. The individual whose position is eliminated or reduced in hours ~~will~~ may be reassigned to a vacant position in the same ~~classification and institution~~ classification and institution provided the individual ~~can perform the essential functions of the position and~~ possesses any required special qualifications for the position. If there is no vacant position to which the individual can be reassigned, the individual(s) may ~~request and~~ request accept layoff with ~~reemployment rights~~ recall priority as provided in 3.104(4) "o." If an individual(s) directly affected does not ~~request~~ accept layoff ~~with reemployment rights~~, the reduction in force procedures in this subrule shall be implemented.

d. Reduction in force will be made by ~~class~~ classification.

e. Reduction in force may be made by organizational unit within an institution or institutionwide, as designated by the institution, provided such designation is reported to the merit system director before the effective date of the reduction.

f. The order of reduction in force will be by type of appointment as follows: temporary, trainee, initial probationary, permanent.

g. Each permanent employee affected by a reduction in force will be notified in writing of the layoff and the reasons for it at least ~~20 working~~ 28 days prior to the effective date of the layoff unless budgetary limitations require a lesser period of notice.

h. There will be competition among all employees in the ~~class~~ classification affected by the layoff based on a retention points system ~~that will consist of points for length of service and performance evaluation~~ of all employees in the ~~class~~ classification within the organizational unit or units affected. Retention points will be calculated as follows:

(1) Length of service credit will be allowed at the rate of one point for each month of service in a permanent position, whether full or part time. Any period of 15 calendar days of service (including any legally protected leave, paid or unpaid) in a month will be considered a full month. For the purpose of computing length of service credits, the institution will include all periods of regular merit employment

REGENTS BOARD[681](cont'd)

during periods of continuous regular appointments with the institution between the date of the original appointment and the date of the layoff or as provided otherwise by law. Periods of leave without pay exceeding 30 days will not be counted unless protected by federal or state law.

(2) Performance evaluation ~~credit~~ deduction will be allowed at the rate of one point for each month of ~~satisfactory~~ unsatisfactory service. No length of service credit will be allowed for service rated less than satisfactory. If there is no record of performance evaluation for a specific time period, it shall be presumed that the employee's performance is satisfactory.

(3) Reduction in force retention points will be the total of length of service ~~and, less any deduction for unsatisfactory performance evaluation.~~

i. Employees will be placed on the layoff list beginning with the employee with the greatest number of retention points at top. Layoffs will be made from the list in reverse order unless the employee with the least retention points has special skills and abilities required to perform in the position currently occupied. Employees with greater retention points who must vacate their positions must possess the special skills and abilities required for that position and meet any job-related selective certification required for that position. Copies of the computation of retention points will be made available to affected employees. One copy will be retained by the resident director and one copy will be forwarded to the merit system director at least ten days prior to the effective date of the layoff.

j. When two or more employees have the same total of retention points, the order of termination will be determined by giving preference for retention to the employee with the longest time in the class classification.

k. The reduction in force plan approved by the merit system director will be made available by the resident director so that all employees directly impacted will have access to it.

l. An affected employee may appeal a reduction in force by filing, within ~~five~~ seven days after notification as provided in 3.104(4) "g," a written grievance with the resident director (at Step 3 of the grievance procedure provided in 681—3.129(8A) or at a comparable step of a procedure approved under 3.129(1)). If not satisfied with the decision rendered at that step, the employee may pursue an appeal in accordance with the grievance procedure.

m. A supervisory employee, defined as a public employee who is not a member of a collective bargaining unit and who has authority, in the interest of a public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, to direct such public employees, or to adjust the grievances of such public employees, or to effectively recommend such action, may not replace or bump a junior employee not being laid off. For purposes of this subrule, "junior employee" means an employee with ~~less seniority or~~ fewer retention points than a supervisory employee.

n. A permanent employee in a nonsupervisory class classification in which layoffs are to be effected may, in lieu of layoff, elect voluntary demotion to a position in the next lower nonsupervisory class classification in the same series utilized at the institution or, in the absence of a lower nonsupervisory class classification in the same series, to a nonsupervisory class classification which the employee has formerly occupied while in the continuous employment of the institution. The employee must possess any special qualifications required and have the ability to perform the essential functions of the position. Such demotion or the occupying of a formerly held nonsupervisory class classification will not be permitted if the result thereof would be to cause the layoff of a permanent employee with a greater total of retention points. To exercise the right of voluntary demotion or to occupy a formerly held nonsupervisory classification in lieu of layoff, the employee must notify the resident director in writing of such election not later than five calendar days after receiving notice of layoff. Any permanent employee displaced under these provisions will have the right of election as provided herein.

o. Employees who are laid off or who accept voluntary demotion in a series or assignment to a previously held class classification in lieu of layoff ~~will may,~~ at their request, ~~have their names placed on the reemployment eligibility list~~ initiate recall priority for the class classification from which they were laid off, a lower class(es) classification(s) in the same series from which they were laid off, and a class(es) classification(s) formerly occupied in accordance with 681—3.67(8A) ~~to,~~ 681—3.68(8A), and 681—3.70(8A) for a period of up to ~~two years~~ one year from the date of layoff. If ~~reemployment~~

REGENTS BOARD[681](cont'd)

recall occurs within ~~two years~~ one year of separation due to reduction in force, prior service credit shall be restored. Acceptance of ~~reemployment~~ recall in a lower ~~class~~ classification in the same series from which the employee was laid off or in a previously held ~~class~~ classification will not affect the employee's ~~standing on the reemployment list~~ recall priority for the ~~class~~ classification from which the employee was laid off. ~~After two years on the reemployment eligibility list, the employee's name shall be removed.~~

p. Recall priority will utilize the retention points calculated in accordance with the rules for reduction in force, beginning with the person with the highest number of points as applied in the following order:

(1) If the vacancy occurs in a layoff unit in which the employees eligible for recall in a classification were last employed, the resident director will refer the employee with the greatest number of retention points who was laid off, was demoted or took a medically related disability leave from that layoff unit; or

(2) If the vacancy occurs in the layoff unit other than the one in which employees eligible for recall priority in a classification were last employed, the resident director will refer the employee with the greatest number of retention points on the list from a different layoff unit. Employees referred with recall priority must meet the qualifications for the position, including any special qualification requirements. Employing departments must evaluate any eligible employees with recall priority before considering other applicants.

q. Recall priority will end upon:

(1) Appointment to fill a permanent position in the classification.

(2) Receipt of notification from the individual that the individual no longer desires consideration for a position in the classification.

(3) Failure to respond within five days to the written inquiry of the resident director or the resident director's designee relative to availability for appointment.

(4) Failure to appear for a scheduled interview or to report for duty within a reasonable time specified by the employing department.

(5) Rejection of a specific offer to return to a classification.

(6) Failure to maintain contact information with the resident director.

(7) Expiration of priority after one year following reduction in force or notice of intent to return from leave.

~~3.104(5) Abandonment of position~~ Termination for failure to meet job requirements. Employees who are absent from duty for three consecutive work days without proper notification and authorization thereof shall be deemed to have resigned their positions. When an employee occupies a position where the current appointment is based upon satisfaction of a criminal background check; requirements for licensure; job qualifications, including special qualifications; or any combination of the above, and no longer qualifies for the position, the employee may be terminated for failure to meet or maintain essential job requirements.

~~This rule is intended to implement Iowa Code Supplement section 8A.413(14).~~

ITEM 25. Amend rule 681—3.115(8A) as follows:

681—3.115(8A) Causes for disciplinary action. All employees may be subject to disciplinary action for any of the reasons specified in Iowa Code Supplement section 8A.413(16), or as established by board of regents or institutional policies.

ITEM 26. Amend rule 681—3.116(8A) as follows:

681—3.116(8A) Disciplinary actions. Disciplinary action will be reasonable, timely and related in severity to the seriousness of the offense; however, this will not preclude reasonable penalties of varying severity for an accumulation of offenses.

3.116(1) Suspension. ~~A department head~~ The employing department may, for cause in accordance with 681—3.115(8A), suspend any employee for such length of time as the department head considers appropriate, ~~but not to exceed 40~~ 30 days ~~at any one time or 20 days in any 12-month period.~~ The

REGENTS BOARD[681](cont'd)

employing department head will inform the affected employee of the suspension and the reasons therefor in writing within 24 hours of the time the action is taken. A copy of the suspension will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or to a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, employees may pursue their appeal in accordance with the grievance procedure.

3.116(2) *Reduction of pay within grade.* A An employing department head may, for cause in accordance with 681—3.115(8A), reduce the pay of an employee to a lower rate of pay within the pay grade assigned to the class classification. The department head will notify the affected employee of the reduction, the reasons therefor and the duration thereof, in writing within 24 hours of the time the action is taken. A copy of the reduction notice will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, employees may pursue their appeal in accordance with the grievance procedure.

3.116(3) *Demotion.* A An employing department head may, for cause in accordance with 681—3.115(8A), demote an employee to a vacant position in a lower class classification provided the employee meets the qualifications for that lower class classification. The department head will notify the affected employee of the demotion and the reasons therefor in writing within 24 hours of the time the action is taken. A copy of the notice of demotion will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, the employees may pursue their appeal in accordance with the grievance procedure.

3.116(4) No change.

3.116(5) *Eligibility for rehire.* An employee discharged for misconduct or unsatisfactory performance may be determined to be ineligible for reemployment with the same institution. The former employee will be promptly notified and may request review of the reason for disqualification. Such request shall be in writing, and upon receipt, the resident director will give full consideration to the request for review and notify the applicant of the resident director's decision in writing.

ITEM 27. Amend rule 681—3.127(8A) as follows:

681—3.127(8A) *Reviews of position classification.* Permanent employees and department heads may request a position classification review₂ and such requests shall be in written form. The employee's request will be forwarded to the resident director with a recommendation from the department head within ~~10 working~~ 14 days of the date of the request. The resident director or designee shall review the employee's and department head's request and with a recommendation forward the request to the merit system director within 20 working days. The merit system director or designee shall review and respond within 20 working days to the resident director who will inform the employee and department head. If the employee or department head is not satisfied with the merit system director's decision, that person may appeal the decision in writing within ~~15 working~~ seven days of the merit system director's decision to a qualified classification appeal committee appointed in accordance with the procedures approved by the board of regents.

The classification appeal committee will conduct such investigation as it deems necessary to determine the proper allocation of the position, and will notify the involved parties of its decision within 45 calendar days after the committee receives the appeal. Any further requests for review of the same position must be presented to the resident director in compliance with this rule and will be considered a new classification review. A new classification review will not be allowed for one year following the final decision on a request for review unless there have been substantial changes in the duties and responsibilities of the position. An appeal will be considered on the basis of duties and responsibilities assigned at the time of the original classification review, and in no case will the assignment of additional

REGENTS BOARD[681](cont'd)

duties and responsibilities following the resident director's investigation of the original request for review be considered during the process of appeal as outlined above.

This rule is intended to implement Iowa Code Supplement section 8A.413.

ITEM 28. Amend rule 681—3.128(8A) as follows:

681—3.128(8A) Appeals on application, examination and certification procedures. Applicants may appeal an action which they allege to be in violation of these rules concerning applications, examinations or certifications concerning the form or content of the application or an examination. The aggrieved applicant will first discuss the matter with the resident director and, if not satisfied with the explanation and decision given, may within ~~20~~ 14 days after the occurrence of the alleged violation file a written appeal with the resident director at Step 3 of the grievance procedure provided in 681—3.129(8A), or at a comparable step of a procedure approved under 3.129(1). If the applicant is not satisfied with the decision rendered at that step the applicant may pursue the appeal in accordance with the grievance procedure. If the grievance concerns the form or content of the application or an examination as approved by the merit system director, the director will act jointly with the resident director and at subsequent steps in response to an appeal. An appeal under this rule is not arbitrable beyond Step 3, or at a comparable step.

Appeals by applicants alleging improper discrimination on the basis of political or religious opinions or affiliations, or national origin, race, sex, disability or age in selection, will be filed at Step 3 in the grievance procedure provided in 681—3.129(8A) or at a comparable step of a procedure approved under 3.129(1).

This rule is intended to implement Iowa Code Supplement sections 8A.402, 8A.413, and 8A.416.

ITEM 29. Amend rule 681—3.129(8A) as follows:

681—3.129(8A) Grievances. Disputes or complaints by permanent employees regarding the interpretation or application of institutional rules governing terms of employment or working conditions (other than general wage levels) or the provisions of these merit system rules (other than disputes whose resolution is provided for in 681—3.127(8A) and 681—3.128(8A)) will be resolved in accordance with the following procedure, except at institutions where a varied procedure has been approved by the merit system director in accordance with 3.129(1). Employees in an initial probationary period will be allowed access to the grievance procedure as outlined below, with the ~~right to appeal in writing at steps within the institution~~ exception of dismissal during probation which cannot be appealed. The institutional representative may permit an oral presentation at any step if the institutional representative deems one necessary. At each step of the grievance procedure, the employee may be represented by one or two coworkers of the employee's choosing. The name of such representatives will be noted on the written grievance and on each subsequent appeal. Presentations, reviews, investigations, and hearings held under this procedure may be conducted during working hours, and employees who participate in such meetings will not suffer loss of pay as a result thereof.

If an employee does not appeal a decision rendered at any step of this procedure within the time prescribed by these rules, the decision will become final. If an institutional representative does not reply to an employee's grievance or appeal within the prescribed time, the employee may proceed to the next step. With the consent of both parties, any of the time limits prescribed in these rules may be extended.

Step 1. A dissatisfied employee will first discuss the employee's problem with the employee's immediate supervisor. It is presumed that the majority of disputes, complaints, or misunderstandings will be resolved at this point. If the employee is still dissatisfied after such discussion, the employee may within ~~ten~~ 14 days after the occurrence of the matter leading to the grievance or within ~~ten~~ 14 days after such time that the employee has, or could reasonably be expected to have, knowledge of such occurrence, file a written grievance with the employee's department head or designee. A written grievance will contain a brief description of the complaint or dispute and the pertinent circumstances and dates of occurrence. It will specify the institutional or merit system rule which has allegedly been violated and will state the corrective action desired by the employee. The grievance will be signed and dated by the employee. The department head or designee will investigate the grievance and will, if

REGENTS BOARD[681](cont'd)

deemed necessary, give the employee or a coworker of the employee's choosing the right to present the employee's case orally. The department head or designee will notify the employee of the decision in writing within ~~ten~~ 14 days after receiving the grievance.

Step 2. If the employee is not satisfied with the decision of the department head or designee, the employee may within ~~five~~ seven days after receiving that decision, appeal it to the dean of the college or the head of the major operating division or designee(s) in which the employee is employed. The dean or the division head and the resident director or designee(s) will jointly represent the institution at this step of the appeal procedure. The appeal will be in writing and will include all of the information included in the initial grievance and subsequent appeals, all the decisions related thereto, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee.

The dean of the college or head of the division and the resident director or designee(s) will investigate the grievance and will, if deemed necessary, give the employee or a coworker of the employee's choosing the right to present the employee's case orally. The institutional representatives may affirm, reverse, or modify the decision of the department head and will notify the employee of their decision in writing within ~~ten~~ 14 days after receiving the appeal.

Step 3. If the employee is not satisfied with the decision rendered at Step 2 of the grievance procedure, the employee may within ~~five~~ seven days after receiving that decision appeal it to the chief administrator of the institution. The appeal will be in writing and will include all of the information included in the initial grievance and subsequent appeals, all decisions related thereto, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee.

The chief administrator or the chief administrator's designee will investigate the grievance and will, if deemed necessary, give the employee or a coworker of the employee's choosing the right to present the employee's case orally. The chief administrator may affirm, reverse, or modify the decision rendered at Step 2 and will notify the employee of the administrator's decision in writing within ~~ten~~ 14 days after receiving the appeal.

Step 4. Employees not satisfied with the decision rendered under Step 3 may within ~~five~~ seven days after receiving that decision request a hearing before an arbitrator. Such a request will be in writing, will include all of the information included in the initial grievance and subsequent appeals, all of the decisions related thereto, and any other pertinent information the employee may wish to submit.

The appeal will be signed and dated by the employee and will be directed to the merit system director who will arrange for a hearing before an arbitrator as prescribed under 3.129(2). The arbitrator will be expected to render a decision within 30 calendar days following the conclusion of the hearing.

The merit system director shall have the right to rule whether a case is grievable and arbitrable under the merit system. The merit system director shall have the right to refuse to refer to arbitration any grievance not found to be in full compliance with these rules involving the grievance procedure. The board of regents shall retain jurisdiction to review decisions of the merit director as to whether a matter is grievable or arbitrable upon appeal by an employee.

3.129(1) and 3.129(2) No change.

ITEM 30. Amend rule 681—3.142(8A) as follows:

681—3.142(8A) Holidays. Permanent and probationary employees will be granted holidays approved by the board of regents, consistent with institutional policies and procedures.

ITEM 31. Amend rule 681—3.143(8A) as follows:

681—3.143(8A) Sick leave. Permanent and probationary employees will accrue sick leave as provided by law and will be entitled to such leave on presentation of satisfactory evidence, when requested. Permanent part-time employees will accrue sick leave in an amount equivalent to their fractional employment, and no employees will be granted sick leave in excess of their accumulation.

An employee who is transferred, promoted or demoted from one position to another position under this system will not lose any accumulated sick leave as a result thereof.

REGENTS BOARD[681](cont'd)

A permanent employee who has recovered after exhausting all accumulated sick leave and vacation time and has a medical release to return to work will, at the employee's request, be ~~placed on the reemployment list for the class the employee previously occupied and on reemployment lists for lower level classes for which the employee is qualified in accordance with 681—3.67(8A) to 681—3.70(8A) for a period of up to two years from given recall priority consistent with 3.104(4), effective with the date the employee was released to return to work. Such employee acceptance of reemployment in a lower class will not affect the employee's standing on the reemployment list for the class that the employee formerly occupied. If reemployment occurs within two years of an employee's release to return to work following a medically related disability, prior service credit shall be restored. After two years on the reemployment eligibility list, the employee's name shall be removed.~~

ITEM 32. Amend rule 681—3.144(8A) as follows:

681—3.144(8A) Military leave. Permanent and probationary employees will be granted military leave as provided by law, with pay not to exceed 30 ~~calendar days~~ workdays in a calendar year.

ITEM 33. Amend rule 681—3.145(8A) as follows:

681—3.145(8A) Family leave. Eligible employees will be granted unpaid family leave in accordance with federal law (Family and Medical Leave Act) and board of regents and institutional policies and procedures.

ITEM 34. Amend rule 681—3.151(8A) as follows:

681—3.151(8A) Disaster American Red Cross disaster service volunteer leave. Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall not be for more than 15 workdays in a fiscal year. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

This rule is intended to implement Iowa Code ~~Supplement~~ section 8A.413 and Iowa Code section 262.9(2).

ITEM 35. Adopt the following new rule 681—3.152(8A):

681—3.152(8A) Bone marrow and organ donation leave. Employees shall be granted leave pursuant to Iowa Code section 70A.39. An employee who is granted a leave of absence under Iowa Code section 70A.39 shall receive leave without loss of service, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The employee shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under Iowa Code section 70A.39 shall not be deemed to be an employee of the state for the purpose of workers' compensation for purposes of the Iowa tort claims Act.

[Filed 12/2/19, effective 2/5/20]

[Published 1/1/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/1/20.

ARC 4851C**TRANSPORTATION DEPARTMENT[761]****Adopted and Filed****Rule making related to electronic replacement of driver's license
or nonoperator's identification card**

The Transportation Department hereby amends Chapter 602, "Classes of Driver's Licenses," Chapter 605, "License Issuance," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321.189 as amended by 2019 Iowa Acts, Senate File 303, section 1, and Iowa Code section 321.190.

Purpose and Summary

This rule making corrects a cross reference in Chapter 602 and updates Chapters 605 and 630 to conform the rules with 2019 Iowa Acts, Senate File 303, which amended Iowa Code section 321.189 to allow a person attaining the age of 21 to apply electronically for a replacement driver's license or nonoperator's identification card for the unexpired months of the credential. The cost of a replacement driver's license or identification card is the same \$10 charge regardless of whether the person obtains the replacement electronically, uses a self-serve kiosk, or comes in person to a driver's license service center. Prior to the law change, the Department did not offer electronic replacement of a license or identification card, but a person could obtain a replacement credential in person or by using a self-serve kiosk. A person has been able to obtain an electronic renewal of a license or identification card for several years, and where applicable, the amendment mirrors the existing criteria for eligibility to renew the license or identification card electronically. The reason the law targets electronic replacement of a credential for a person upon attaining the age of 21 is because that is the age when the license or identification card can be issued with a horizontal rather than a vertical orientation and that is the age when the credential is no longer required to contain the phrase "Under 21."

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 4715C**. 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 December 10, 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.

TRANSPORTATION DEPARTMENT[761](cont'd)

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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 February 5, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 602.2(4) as follows:

602.2(4) *Passenger restriction for intermediate licensee.* The passenger restriction required by Iowa Code ~~subsection~~ section 321.180B(2) will be added to an intermediate license unless waived by the licensee's parent or guardian at the time the license is issued. If the restriction is not waived at the time the license is issued, the intermediate license will be designated with a "9" restriction with the following notation: "Only 1 unrelated minor passenger allowed until [six months from the date the license is issued]." The licensee must obey the restriction for the first six months after the intermediate license is issued. If a parent or guardian wishes to waive the passenger restriction after the license has already been issued, the licensee and the parent or guardian must apply for a duplicate license and pay the replacement fee pursuant to ~~761—subrule 605.11(3)~~ 761—subrule 605.11(4).

ITEM 2. Amend rule 761—605.11(321) as follows:

761—605.11(321) Duplicate license.

605.11(1) and 605.11(2) No change.

605.11(3) *Replacement upon attaining the age of 21.* A licensee, upon attaining the age of 21, who is otherwise eligible for a driver's license is eligible to electronically apply for a replacement driver's license under this rule for the unexpired months of the license, regardless of whether the most recent issuance occurred electronically.

a. Except for the requirements in subparagraphs 605.25(7)"a"(1) and 605.25(7)"a"(2), the licensee must meet the eligibility requirements listed in paragraph 605.25(7)"a" to replace the license electronically and must also meet the following criteria:

(1) The licensee must be at least 21 years old.

(2) The licensee must currently hold a driver's license marked "Under 21" as provided in Iowa Code section 321.189.

b. Notwithstanding any other provision of this chapter to the contrary, the department may accept an electronic replacement application if the licensee seeks replacement of a special instruction permit or a license with a single "J" restriction accompanied by a "9" restriction.

~~**605.11(3)**~~ **605.11(4) *Fee.*** The fee to replace a license is \$10.

This rule is intended to implement Iowa Code sections 321.13, 321.189, 321.195 and 321.208, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 3. Amend paragraph **605.12(1)"a"** as follows:

a. Submitting the address change in writing to the Driver and Identification Services Bureau, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; or

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 4. Amend rule 761—630.3(321) as follows:

761—630.3(321) Duplicate card.

630.3(1) and **630.3(2)** No change.

630.3(3) *Replacement upon attaining the age of 21.* A cardholder, upon attaining the age of 21, who is otherwise eligible for a nonoperator's identification card, is eligible to electronically apply for a replacement card under this rule for the unexpired months of the card, regardless of whether the most recent issuance occurred electronically.

a. Except for the requirements in 761—subparagraphs 605.25(7)“a”(1) and 605.25(7)“a”(2), the cardholder must meet the eligibility requirements listed in 761—paragraph 605.25(7)“a” to replace the card electronically and must also meet the following criteria:

(1) The cardholder must be at least 21 years old.

(2) The cardholder must currently hold a nonoperator's identification card marked “Under 21” as provided in Iowa Code section 321.190.

b. Reserved.

~~630.3(3)~~ **630.3(4)** *Fee.* The fee to replace a nonoperator's identification card is the same amount as the fee required to replace a driver's license. See ~~761—subrule 605.11(3)~~ 761—subrule 605.11(4).

[Filed 12/10/19, effective 2/5/20]

[Published 1/1/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/1/20.

AGENCY	RULE	DELAY
Agricultural and Land Stewardship Department[21]	67.8(4)“b” [IAB 12/4/19, ARC 4789C]	Effective date of January 8, 2020, delayed until the adjournment of the 2020 session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 10, 2019. [Pursuant to §17A.8(9)]



State
of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER FIVE

WHEREAS, biodiesel production is a growing, vital industry in the State of Iowa, essential to the health of the agricultural economy, sustainable environmental commitments and local jobs; and

WHEREAS, Iowa's biodiesel industry supports the equivalent of 4,700 full-time jobs and accounts for \$568 million of Iowa's gross domestic product; and

WHEREAS, Iowa's eleven biodiesel plants, which produced 365 million gallons in 2018, proved a commitment to growth by increasing their biodiesel production capacity by 20% to nearly 400 million gallons by the end of 2018; and

WHEREAS, state revenue is directly tied to the success of the agricultural economy, which biodiesel positively impacts by adding value to waste fats and oils; and

WHEREAS, the number of biodiesel retailers in Iowa has increased 231% to 792 since 2010, and the total on-road biodiesel gallons sold has increased 708% to 55.8 million gallons; and

WHEREAS, biodiesel reduces life cycle carbon emissions by more than 70% compared to petroleum diesel; and

WHEREAS, biodiesel is an alternative fuel option that allows a seamless transition of a diesel fleet to a cleaner-burning fuel; and

WHEREAS, engine manufacturers support for biodiesel blends will positively impact and increase biodiesel consumption, which will benefit the agricultural economy and the entire State of Iowa; and

WHEREAS, the vast majority of engine manufacturers support B20 (a blend of 20% biodiesel and 80% petroleum-based diesel) in equipment sold in the United States; and

WHEREAS, Iowa is the nation's leading producer of biodiesel and should also be a leader in ensuring diesel engine manufacturers support biodiesel blends, thereby furthering Iowa's economy, environmental sustainability and value-added to agriculture;

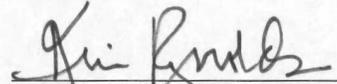
NOW, THEREFORE, I, Kim Reynolds, Governor of the State of Iowa, do hereby order that:

- I. All State of Iowa executive branch agencies shall ensure that any procurement solicitations, including but not limited to requests for proposals or requests for bids, for vehicles containing diesel engines shall require the responses to certify that the engine manufacturer has provided explicit written support for the use of B20 biodiesel.
- II. When purchasing a vehicle containing a diesel engine under a contract already awarded under a procurement solicitation issued prior to the effective date of this Executive Order, to the extent feasible, all executive branch agencies shall purchase a vehicle for which the engine manufacturer has provided explicit written support for the use of B20 biodiesel.

- III. As used in this Executive Order, B20 biodiesel means biodiesel blended fuel, as defined by section 214A.1(6) of the Iowa Code, containing at least 20% biodiesel, as defined by section 214A.1(5) of the Iowa Code.
- IV. This Executive Order shall be interpreted in accordance with all applicable laws and regulations and shall not supersede any laws or regulations in place as of its effective date.
- V. This Executive Order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the State of Iowa, its departments, agencies, or political subdivisions, or its officers, employees, agents, or any other persons.
- VI. The directive in this Executive Order shall apply prospectively only as of its effective date.

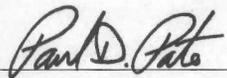


IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SUBSCRIBED MY NAME AND
CAUSED THE GREAT SEAL OF IOWA TO BE
AFFIXED TO THIS EXECUTIVE ORDER.
DONE IN DES MOINES, IOWA THIS 3RD DAY
OF DECEMBER IN THE YEAR OF OUR LORD
TWO THOUSAND AND NINETEEN.



KIM REYNOLDS
GOVERNOR OF IOWA

ATTEST:



PAUL D. PATE
SECRETARY OF STATE