



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

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

STEPHANIE A. HOFF, Administrative Code Editor

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CITATION of Administrative Rules

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

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)

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 2018

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. 27 '17	Jan. 17 '18	Feb. 6 '18	Feb. 21 '18	Feb. 23 '18	Mar. 14 '18	Apr. 18 '18	July 16 '18
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sep. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sep. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	***June 13***	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	June 29	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sep. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sep. 19	Dec. 17
June 13	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 29	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sep. 12	Oct. 17	Jan. 14 '19
July 13	Aug. 1	Aug. 21	Sep. 5	Sep. 7	Sep. 26	Oct. 31	Jan. 28 '19
July 27	Aug. 15	Sep. 4	Sep. 19	Sep. 21	Oct. 10	Nov. 14	Feb. 11 '19
Aug. 10	Aug. 29	Sep. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '19
Aug. 22	Sep. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 11 '19
Sep. 7	Sep. 26	Oct. 16	Oct. 31	***Oct. 31***	Nov. 21	Dec. 26	Mar. 25 '19
Sep. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '19	Apr. 8 '19
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '19	Apr. 22 '19
Oct. 19	Nov. 7	Nov. 27	Dec. 12	***Dec. 12***	Jan. 2 '19	Feb. 6 '19	May 6 '19
Oct. 31	Nov. 21	Dec. 11	Dec. 26	***Dec. 26***	Jan. 16 '19	Feb. 20 '19	May 20 '19
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Dec. 12	Jan. 2 '19	Jan. 22 '19	Feb. 6 '19	Feb. 8 '19	Feb. 27 '19	Apr. 3 '19	July 1 '19
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
18	Friday, February 9, 2018	February 28, 2018
19	Friday, February 23, 2018	March 14, 2018
20	Friday, March 9, 2018	March 28, 2018

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator's office.

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, February 9, 2018, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurement of standard modular office systems, 100.1, 100.6(6), 117.5(3) Notice **ARC 3574C**..... 1/17/18

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Organic certification, amendments to ch 47 Filed **ARC 3611C**..... 1/31/18

WIC/FMNP/SFMNP—criteria for grandfather of farmstands, 50.8 Notice **ARC 3567C**..... 1/17/18

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]“umbrella”

Board elections; charitable donation accounts, amendments to chs 12, 17 Notice **ARC 3600C** 1/31/18

ECONOMIC DEVELOPMENT AUTHORITY[261]

Workforce housing tax incentives program, amendments to ch 48 Filed **ARC 3581C** 1/17/18

Iowa targeted small business certification program, ch 52 Filed **ARC 3582C**..... 1/17/18

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Water supply, amendments to chs 40 to 44, 81, 83 Notice **ARC 3568C**..... 1/17/18

Bacteria water quality criteria; Iowa wasteload allocation (WLA) procedure, 61.2(4), 61.3, 62.8(2) Filed **ARC 3583C** 1/17/18

Reissuance of NPDES General Permit Nos.1, 2, and 3 for discharge from storm water, 64.15 Filed **ARC 3584C**..... 1/17/18

Reissuance of NPDES General Permit No.4 for discharge from private sewage disposal systems, 64.15(4) Filed **ARC 3585C**..... 1/17/18

Annual reports of solid waste environmental management systems, 111.4, 111.6 to 111.8 Notice **ARC 3569C** 1/17/18

HUMAN SERVICES DEPARTMENT[441]

Tiered-rate reimbursement methodology for supported community living, day habilitation and adult day care services under intellectual disability waiver, 78.41, 79.1, 83.67(4)“i” Amended Notice **ARC 3602C**..... 1/31/18

State supplementary assistance—cost-of-living adjustments, 51.4(1), 51.7, 52.1 Notice **ARC 3596C**, also Filed **Emergency** **ARC 3599C**..... 1/31/18

Crisis response services, 79.1(2), 79.3(2)“d” Notice **ARC 3598C**..... 1/31/18

Nurse aides—training and competency evaluation, 81.1, 81.16 Notice **ARC 3594C**..... 1/31/18

Civil money penalties; quality improvement initiative grants, 81.1, 81.53, ch 166 Notice **ARC 3573C** 1/17/18

Child support, 95.14, 99.65(1), 99.87 Notice **ARC 3595C** 1/31/18

Child support promoting opportunities for parents program, ch 100 Notice **ARC 3597C**..... 1/31/18

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Organized delivery systems—removal of references, amendments to chs 4, 35, 37, 41, 71, 73 to 75, 78 Notice **ARC 3571C** 1/17/18

Long-term care insurance—removal of consumer filing fee, 39.45, 39.46 Notice **ARC 3570C** 1/17/18

Iowa stopgap measure, rescind ch 82 Filed **ARC 3586C**..... 1/17/18

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Federal occupational safety and health standards—adoption by reference, 10.20, 26.2 Notice **ARC 3593C** 1/31/18

Contractor registration, 150.2, 150.4(11)“a” Notice **ARC 3565C** 1/17/18

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Permanent and administrative medicine physician licensure, amendments to ch 9 Filed **ARC 3587C**..... 1/17/18

Standards of practice—experimental treatments for patients with a terminal illness, 13.13 Filed **ARC 3588C**..... 1/17/18

Standards of practice—tick-borne disease diagnosis and treatment, 13.14 Filed **ARC 3589C**..... 1/17/18

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Physical therapists and physical therapist assistants, occupational therapists and occupational therapy assistants—telehealth visits, 201.3, 208.3 Filed **ARC 3590C** 1/17/18

Speech pathologists and audiologists—licensure, continuing education, discipline, amendments to chs 300, 303, 304 Filed **ARC 3591C**..... 1/17/18

PUBLIC HEALTH DEPARTMENT[641]

Radiation, amendments to chs 37 to 41, 45 Notice **ARC 3578C** 1/17/18

Statewide obstetrical and newborn indigent patient care program, rescind ch 75 Filed **ARC 3603C** 1/31/18

Local public health services—funding, amendments to ch 80 Notice **ARC 3577C** 1/17/18

Office of minority and multicultural health, rescind ch 82 Filed **ARC 3604C**..... 1/31/18

Local substitute medical decision-making boards, rescind ch 85 Filed **ARC 3605C** 1/31/18

Stroke care reporting, ch 146 Notice **ARC 3575C**..... 1/17/18

Medical cannabidiol program, amendments to ch 154 Filed **ARC 3606C** 1/31/18

Iowa health information network, rescind ch 206 Filed **ARC 3607C** 1/31/18

PUBLIC SAFETY DEPARTMENT[661]

Consumer fireworks sales licensing and safety standards, ch 265 Filed **ARC 3592C** 1/17/18

Electricians and electrical contractors; electrical inspections, 502.1(3), 551.2, 552.1 Notice **ARC 3580C** 1/17/18

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Confidential records; gambling structures; new hires; minimum payoff on wager; horse racing; gambling games; accounting and cash control, amendments to chs 3, 5, 6, 8, 10 to 12 Filed **ARC 3608C** 1/31/18

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Trust account; property condition disclosure, 13.1, 14.1 Notice **ARC 3564C** 1/17/18

REVENUE DEPARTMENT[701]

Adoption—expense deduction, tax credit, 41.5(3), 42.52 Notice **ARC 3579C** 1/17/18

Hotel and motel tax imposed by a land use district, 103.1, 103.14, 103.15, 104.7, 105.1 Notice **ARC 3566C** 1/17/18

TRANSPORTATION DEPARTMENT[761]

Planting and harvesting period, 520.8 Filed **ARC 3609C**..... 1/31/18

Transportation network companies—insurance carriers, 540.4(3)"a" Notice **ARC 3572C**..... 1/17/18

Sanctions, amendments to ch 615 Notice **ARC 3601C**..... 1/31/18

VETERINARY MEDICINE BOARD[811]

Veterinary technician examination—frequency, fees, 8.2, 8.3 Notice **ARC 3563C** 1/17/18

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER**ADMINISTRATION DIVISION[877]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Workforce development board; regional advisory boards, amendments to chs 1, 6 Filed **ARC 3610C** 1/31/18

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Senator Jack Whitver
4019 NE Bellagio Circle
Ankeny, Iowa 50021

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Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Representative Amy Nielsen
168 Lockmoor Circle
North Liberty, Iowa 52317

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317

Representative Dawn Pettengill
P.O. Box A
Mt. Auburn, Iowa 52313

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

Colin Smith
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurement of standard modular office systems, 100.1, 100.6(6), 117.5(3) IAB 1/17/18 ARC 3574C	Conference Room 5, A Level Hoover State Office Bldg. Des Moines, Iowa	February 6, 2018 1 to 2 p.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Water supply, amendments to chs 40 to 44, 81, 83 IAB 1/17/18 ARC 3568C	Conference Room 2 North Wallace State Office Bldg. Des Moines, Iowa	February 8, 2018 10 a.m.
Annual reports of solid waste environmental management systems, 111.4, 111.6 to 111.8 IAB 1/17/18 ARC 3569C	Conference Room 5 West Wallace State Office Bldg. Des Moines, Iowa	February 13, 2018 10 to 11 a.m. (revised hearing time)

HUMAN SERVICES DEPARTMENT[441]

Tiered-rate reimbursement methodology for supported community living, day habilitation and adult day care services under intellectual disability waiver, 78.41, 79.1, 83.67(4)“i” IAB 1/31/18 ARC 3602C	Coralville Public Library E. Jean Schwab Auditorium 1401 Fifth St. Coralville, Iowa	February 21, 2018 1 to 3 p.m.
	Nesler Centre 3rd Floor Conference Room 799 Main St. Dubuque, Iowa	February 23, 2018 1:30 to 2:30 p.m.

LABOR SERVICES DIVISION[875]

Federal occupational safety and health standards—adoption by reference, 10.20, 26.2 IAB 1/31/18 ARC 3593C	150 Des Moines St. Des Moines, Iowa	February 21, 2018 10 a.m. (If requested)
Contractor registration, 150.2, 150.4(11)“a” IAB 1/17/18 ARC 3565C	150 Des Moines St. Des Moines, Iowa	February 7, 2018 9 a.m. (If requested)

PUBLIC SAFETY DEPARTMENT[661]

Electricians and electrical contractors; electrical inspections, 502.1(3), 551.2, 552.1 IAB 1/17/18 ARC 3580C	First Floor Public Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa	February 6, 2018 10 to 11 a.m.
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REAL ESTATE COMMISSION[193E]

Trust account; property condition disclosure, 13.1, 14.1 IAB 1/17/18 ARC 3564C	Commission Office, Suite 350 200 East Grand Ave. Des Moines, Iowa	February 6, 2018 12 noon
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TRANSPORTATION DEPARTMENT[761]

Transportation network companies—insurance carriers, 540.4(3)“a” IAB 1/17/18 ARC 3572C	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	February 8, 2018 10 a.m. (If requested)
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Sanctions, amendments to ch 615 IAB 1/31/18 ARC 3601C	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	February 22, 2018 10 a.m. (If requested)
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The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 3600C**CREDIT UNION DIVISION[189]****Notice of Intended Action****Proposing rule making related to board membership and investment and deposit activities and providing an opportunity for public comment**

The Credit Union Division hereby proposes to amend Chapter 12, “Votes of the Membership,” and Chapter 17, “Investment and Deposit Activities for Credit Unions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 533.107(6).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 533.203, 533.205(7), 533.301(5), and 533.301(25).

Purpose and Summary

The amendments in Chapter 12 reflect modifications to the board-of-directors nomination process allowing for nomination notification by newsletter and include a reduction in the number of days required before the close of balloting to allow for more time for ballots to be submitted prior to the annual meeting. The amendments in Chapter 17 reflect recent changes made to permissible investments for federal credit unions which Iowa is adopting for its state-chartered credit unions with respect to charitable donation accounts and bank notes.

These proposed amendments were approved by the Credit Union Review Board on December 5, 2017.

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 proposed amendments do not contain any new conditions for waiver. Waivers are subject to the show-cause procedure contained in 189—17.20(533) and to the process outlined in 189—Chapter 23.

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 February 20, 2018. Comments should be directed to:

Credit Union Division
200 East Grand Avenue, Suite 370
Des Moines, Iowa 50309-1827
Fax: 515.725.0519

CREDIT UNION DIVISION[189](cont'd)

Public Hearing

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

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. Adopt the following **new** subrule 12.2(5):

12.2(5) *Nomination notification by newsletter.* The board of directors may determine that the entire credit union membership will be notified via newsletter of the opportunity to nominate an individual for the board of directors.

a. If the membership is notified of nominations via newsletter at least 90 days before the annual meeting, the secretary shall:

- (1) Send the newsletter to the entire membership and indicate a physical location or email address where nominations can be sent;
- (2) Indicate in the notice that there will be no nominations from the floor at the annual meeting; and
- (3) Indicate in the notice that the nominating committee will vet the candidates and present a list of the eligible candidates prior to the voting period.

b. Nomination notifications made pursuant to this rule are not subject to the nomination-by-petition process in subrule 12.2(2) and nomination from the floor in subrule 12.3(7).

ITEM 2. Amend subparagraph **12.3(3)“d”(1)** as follows:

(1) The close of balloting for ballots submitted other than in person during voting at the annual meeting shall be at least ~~five~~ **two** days prior to any meeting where voting will occur.

ITEM 3. Amend paragraph **17.14(6)“e”** as follows:

e. Bank notes with ~~original~~ weighted average maturities of less than ~~5~~ **five** years.

ITEM 4. Adopt the following **new** subrule 17.14(12):

17.14(12) *Charitable donation accounts.* An Iowa-chartered credit union may apply to the superintendent for authorization to fund a charitable donation account (CDA) as approved by the National Credit Union Administration. The request to the superintendent should address the items listed in 17.19(2)“a” to “c.”

a. If the superintendent grants the request, the CDA must satisfy all of the conditions in 12 CFR 721.3(b)(2)(i) to (vii), including but not limited to the following:

- (1) The book value of investments in all CDAs in the aggregate must be limited to 5 percent of a credit union's net worth at all times as measured at every call report.
- (2) The assets must be held in a segregated custodial account and be specifically identified as a CDA.
- (3) If a trust is chosen as the vehicle for the CDA, the trustee must be regulated by the Office of the Comptroller of the Currency (OCC), the U.S. Securities and Exchange Commission (SEC), another federal regulatory agency, or a state regulatory agency. A regulated trustee or other person or entity that is authorized to make investment decisions for a CDA, other than the credit union itself, must be either a registered investment adviser or regulated by the OCC.

(4) The parties to the CDA, typically the funding credit union and trustee or other manager of the account, must document the terms and conditions controlling the account in a written agreement. The

CREDIT UNION DIVISION[189](cont'd)

terms of the agreement must be consistent with the federal rule. The credit union's board of directors must adopt written policies governing the creation, funding, and management of the CDA that are consistent with the federal rule, must review the policies annually, and may amend them from time to time. Charitable contributions and donations can only be made to organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(5) Credit unions utilizing CDAs are required to distribute 51 percent of the total return on investment to one or more qualified charities no less frequently than every five years.

b. CDAs are investments that carry risk. It is expected that any credit union that makes this type of investment will conduct the necessary due diligence and retain the due diligence documentation for examiner review. The board must also document the investment strategies and risk tolerances and must account for the CDA in accordance with generally accepted accounting principles.

ITEM 5. Adopt the following new rule 189—17.21(533):

189—17.21(533) Director, officer, or employee overdraft. A state credit union may pay an overdraft of a director, officer, or employee of the state credit union on an account at the state credit union when the payment of funds is made in accordance with any of the following:

1. A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment.
2. A written, preauthorized transfer of collected funds from another account of the account holder at the state credit union.
3. The overdraft is paid pursuant to an overdraft protection plan or courtesy pay program. Such payment is limited to one time per quarter, and the overdraft shall last no longer than ten days.

This rule is intended to implement Iowa Code section 533.205(7).

ARC 3596C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to state supplementary assistance and providing an opportunity for public comment

The Department of Human Services hereby proposes to amend Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 14.

Purpose and Summary

These amendments implement the January 1, 2018, cost-of-living adjustments (COLA) to income limits and benefit amounts for several State Supplementary Assistance (SSA) categories. These amendments also implement the changed personal needs allowance for the residential care facility (RCF) assistance and family-life home (FLH) assistance. The net change to the personal needs allowance is a decrease due to a small COLA percentage increase that is offset by a larger decrease in the average monthly Medicaid copayments used to calculate the amount of this deduction.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Fiscal Impact

The RCF and FLH personal needs allowances (PNAs) are decreasing by \$1 per month from \$100 to \$99 per month. The base personal needs allowance is increased only slightly due to the 2 percent COLA this year. This increase was more than offset by the decrease in the average Medicaid copayment per client per month for RCF recipients. (The average Medicaid copayment per client per month is added to the base PNA to determine the final monthly PNA.) The average copayment per client per month for RCF assistance recipients for August 2016 through July 2017 was \$.90. This is a decrease of \$2.89 from last year's average of \$3.79. For FLH recipients, the \$16 increase in the payment to the FLH is offset by the \$1 decrease in the personal needs deduction and a \$15 increase in the Supplemental Security Income (SSI) payment. The recipient will pay up to \$16 more due to the \$15 increase in income and a \$1 decrease in the PNA. For RCF assistance recipients, the maximum total payment to the facility will increase up to \$15.19 per month per recipient $[(30.60 - 30.11) \times 31 \text{ days}]$. RCF costs are shared by the state and the RCF assistance recipient. Any potential increased costs to the state are expected to be more than offset by declining RCF caseloads in SFY '18 and SFY '19. For dependent-person assistance recipients, the maximum monthly payment is increasing by \$8, from \$379 to \$387. Each dependent-person assistance recipient will receive up to an \$8 increase, resulting in an anticipated increase in state expenditures.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 23, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa, 50319-0114
Fax: 515.281.4980
Email: policyanalysis@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

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 3599C**) and was reviewed by the Administrative Rules Review Committee on January 5, 2018, pursuant to 2017 Iowa Acts, House File 653, section 32. 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 3602C

HUMAN SERVICES DEPARTMENT[441]

Amended Notice of Intended Action

Providing for a public hearing on rule making related to tiered-rate reimbursement methodology

The Notice of Intended Action published in the Iowa Administrative Bulletin on December 6, 2017, as **ARC 3476C**, proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code. In order to receive oral comments concerning **ARC 3476C**, the Department of Human Services hereby gives notice that public hearings will be held as follows:

February 21, 2018
1 to 3 p.m.

Coralville Public Library
E. Jean Schwab Auditorium
1401 Fifth Street
Coralville, Iowa

February 23, 2018
1:30 to 2:30 p.m.

Nesler Centre
3rd Floor Conference Room
799 Main Street
Dubuque, Iowa

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

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

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.4(1)“b” and 249A.4 and 2017 Iowa Acts, House File 653, section 93.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 93.

Purpose and Summary

The amendments in **ARC 3476C** will change the rate-setting methodology used to develop supported community living (SCL), day habilitation, and adult day care service rates in the home- and community-based services (HCBS) intellectual disability waiver. The SCL methodology will change from the current retrospectively limited prospective rate-setting process to a fee schedule using a

HUMAN SERVICES DEPARTMENT[441](cont'd)

tiered-rate methodology. Day habilitation and adult day care service rates are currently established through a fee schedule but will be changed to a fee schedule using tiered rates. The tiered-rate methodology establishes a tiered system of reimbursement based on the identified acuity level from the results of the Supports Intensity Scale® (SIS) core standardized assessment.

The Department received more than 50 comments from the public during the comment period requesting that public hearings on this rule making be held to provide written and oral comments.

Fiscal Impact, Jobs Impact, Waivers

Statements related to the fiscal impact, jobs impact, and waiver of this rule making may be found in the preamble of **ARC 3476C**.

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).

ARC 3598C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to crisis response services
and providing an opportunity for public comment**

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

These amendments further amend and clarify standards for crisis response services. Iowa Medicaid currently covers crisis response services; however, these amendments clarify that the daily upper limit for hourly crisis response and hourly crisis stabilization services is limited to the daily per diem for crisis stabilization services. These amendments also make a technical correction to the record requirements in a previously adopted rule making.

Fiscal Impact

Iowa Medicaid currently reimburses for crisis response services. These amendments are intended to provide the daily upper limit for hourly crisis response and hourly crisis stabilization services to ensure that the cost of hourly services does not exceed the cost of daily crisis stabilization services. There will be new Medicaid expenditures for crisis response services with the clarification of Medicaid participation and reimbursement. However, these services are expected to reduce the utilization of more costly inpatient services. Neither the cost of the crisis response services nor the offsetting hospital savings are known with certainty. Therefore, the fiscal impact cannot be determined. Any potential impact will

HUMAN SERVICES DEPARTMENT[441](cont'd)

be limited to the availability and capacity of accredited providers. Neither the cost of the subacute mental health services nor the offsetting hospital savings are known with certainty. Therefore, the fiscal impact cannot be determined. Any potential impact will be limited by the availability of beds. There is currently one licensed subacute facility in the state, and only one application has been sent to the department for review. If approved, that facility will provide up to nine subacute beds.

Jobs Impact

There is an opportunity for more qualified mental health care professionals and peer support specialists to be employed by these service providers as the crisis response services expand and develop and as subacute mental health care facilities become licensed and enroll with Medicaid.

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 20, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319
Fax: 515.281.4980
Email: policyanalysis@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule **79.1(2)**, provider categories “Crisis response services” and “Crisis stabilization community-based services,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Crisis response services	Fee schedule	Fee schedule in effect 2/1/18 ₂ <u>not to exceed the daily per diem for crisis stabilization services.</u>
Crisis stabilization community-based services	Fee schedule	Fee schedule in effect 2/1/18 ₂ <u>not to exceed the daily per diem for crisis stabilization services.</u>

ITEM 2. Amend subparagraph **79.3(2)“d”(44)** as follows:

(44) ~~Crisis response services, crisis stabilization community-based services and crisis stabilization residential services~~ Subacute mental health services.

1. Physician orders or court orders.
2. Independent assessment.
3. Individual treatment plan.
4. Service notes or narratives (history and physical, therapy records, discharge summary).
5. Medication administration records (residential services).

ITEM 3. Amend subparagraph **79.3(2)“d”(45)** as follows:

(45) ~~Subacute mental health services~~ Crisis response services, crisis stabilization community-based services and crisis stabilization residential services.

1. Assessment.
2. Individual stabilization plan.
3. Service notes or narratives (history and physical, therapy records, discharge summary).
4. Medication administration records (residential services).

ARC 3594C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

The Department of Human Services hereby proposes to amend Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 135C.14(2) and 2017 Iowa Acts, House File 306.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135C.14(2) and 2017 Iowa Acts, House File 306.

Purpose and Summary

These administrative rule amendments add the use of online course curricula to meet the required minimum of 30 hours of classroom instruction and add a definition of “clock hour.” Finally, these amendments add a process to allow a veteran to be deemed to satisfy the nurse aide training requirements based upon the training and experience acquired through the veteran’s service.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Fiscal Impact

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

Jobs Impact

There is an impact on private sector jobs and employment opportunities. By allowing online training and deeming veterans satisfactory based on military training and experience, this rule making will increase the direct care worker workforce. With the increase in workforce, nursing facilities will be able to hire more staff to provide care to their residents and nursing facility staff are less likely to have to work shorthanded.

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 20, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319
Fax: 515.281.4980
Email: policyanalysis@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

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. Adopt the following **new** definition of “Clock hour” in rule **441—81.1(249A)**:
“Clock hour” means 60 minutes.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Rescind subrule 81.16(1) and adopt the following **new** subrule in lieu thereof:

81.16(1) Deemed meeting of requirements. A nurse aide is deemed to satisfy the requirement of completing a nurse aide training and competency evaluation approved by the department of inspections and appeals if:

a. The nurse aide successfully completed a nurse aide training and competency evaluation program before July 1, 1989, and

(1) At least 60 clock hours were substituted for 75 clock hours, and the person has made up at least the difference in the number of clock hours in the program the person completed and 75 clock hours in supervised practical nurse aide training or in regular in-service nurse aide education, or

(2) The person was found to be competent (whether or not by the state) after completion of a nurse aide training of at least 100 clock hours' duration, or

(3) The person can demonstrate that the person served as a nurse aide at one or more facilities of the same employer in Iowa for at least 24 consecutive months before December 19, 1989, or

(4) The person completed, before July 1, 1989, a nurse aide training and competency evaluation program that the department of inspections and appeals determines would have met the requirements for approval at the time it was offered; or

b. The person is a veteran, an active duty service member, or a member of the reserve forces, who has:

(1) Successfully completed a U.S. military training program that includes a curriculum comparable to the nurse aide training program required by this rule and has documented successful completion of that program with either a diploma, certifications, or Form DD 214 showing completion of hospital corpsman or medical service specialist or equivalent training, and

(2) Provided documentation showing that the person has 75 clock hours of practical experience in a nurse aide role, which may include classroom instruction, prior equivalent experience, or a combination of the two, and

(3) Successfully completed the nurse aide training and competency examination.

ITEM 3. Amend subrule 81.16(3) as follows:

81.16(3) Requirements for approval of a nurse aide training and competency evaluation program. The department has designated the department of inspections and appeals to approve required nurse aide training and ~~testing~~ competency evaluation programs. Policies and procedures governing approval of the programs are set forth in these rules.

a. For a nurse aide training and competency evaluation program to be approved ~~by the department of inspections and appeals, it, such program~~ shall, at a minimum:

(1) Consist of no less than 75 clock hours of training, and

(2) Include at least the subjects specified in ~~81.16(3)~~: 81.16(3) "b," and

(3) Include at least 15 hours of laboratory experience, 30 hours of didactic theory instruction, which may be provided in a classroom instruction (the first 16 hours of which must occur before the nurse aide has resident contact) and 30 hours of supervised clinical training. Supervised clinical training means training in a setting in which the trainee demonstrates knowledge while performing tasks on a resident under the general supervision of a registered nurse or licensed practical nurse. setting or through online course curricula, and

(4) ~~Ensure that students do not independently perform any services for which they have not been trained and found proficient by the instructor. It shall also ensure that students who are providing services to residents are under the general supervision of a licensed nurse or a registered nurse. Include at least 15 hours of laboratory experience provided in a face-to-face environment that complements the didactic theory curricula, and~~

(5) ~~Meet the following requirements for instructors who train nurse aides: Include 30 hours of supervised clinical training in a face-to-face environment and supervised by a department of inspections and appeals-approved instructor in a manner not inconsistent with the licensing requirements of the Iowa board of nursing, and~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. ~~The training of nurse aides shall be performed by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which shall be in the provision of long-term care facility services.~~

2. ~~Instructors shall be registered nurses and shall have completed a course in teaching adults or have experience teaching adults or supervising nurse aides.~~

3. ~~In a facility-based program, when the director of nursing is a registered nurse, the training of nurse aides may be performed under the general supervision of the director of nursing for the facility. The director of nursing is prohibited from performing the actual training.~~

4. ~~Other personnel from the health professions may supplement the instructor. Supplemental personnel shall have at least one year of experience in their fields.~~

5. ~~The ratio of qualified trainers to students shall not exceed one instructor for every ten students in the clinical setting.~~

(6) ~~Contain information regarding competency evaluation through written or oral and skills testing. Ensure that students do not independently perform any services for which they have not been trained and found proficient by the department of inspections and appeals-approved instructor, and~~

(7) Meet the following requirements for department of inspections and appeals-approved instructors who train nurse aides:

1. The training of nurse aides shall be performed by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which shall be in the provision of long-term care facility services.

2. Instructors shall be registered nurses and shall have completed a course in teaching adults or have experience teaching adults or supervising nurse aides.

3. In a facility-based program, when the director of nursing is a registered nurse, the training of nurse aides may be performed by registered nurses under the general supervision of the director of nursing for the facility. The director of nursing is prohibited from performing the actual training.

4. Other personnel from the health professions may supplement the instructor. Supplemental personnel shall have at least one year of experience in their fields.

5. The ratio of department of inspections and appeals-approved instructors to students shall not exceed one registered nurse, or licensed practical nurse functioning as an assistant to a registered nurse, who is in the proximate area in the clinical setting, for every ten students in the clinical setting, and

(8) Contain information regarding competency evaluation through written or oral examination and skills demonstration.

b. No change.

c. Prohibition of charges.

(1) ~~No~~ A nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program or competency evaluation program may not be charged for any portion of the program including any fees for textbooks, ~~or other required evaluation or course materials, or nurse aide competency evaluations.~~

(2) If a person who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility ~~not~~ no later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program, the facility shall reimburse the nurse aide for costs incurred in completing the program or competency evaluation on a pro rata basis during the period in which the person is employed as a nurse aide. The formula for paying the nurse aides on a pro rata basis shall be as follows:

1. Add all costs incurred by the ~~aides~~ nurse aide for the course, books, and ~~tests~~ competency evaluations.

2. Divide the total arrived at in ~~No. 1~~ paragraph "1" above by 12 to prorate the costs over a one-year period and establish a monthly rate.

3. The nurse aide shall be reimbursed the monthly rate each month the nurse aide works at the facility until one year from the time the nurse aide completed the course.

d. and e. No change.

ARC 3595C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to child support and providing an opportunity for public comment**

The Department of Human Services hereby proposes to amend Chapter 95, “Collections,” and Chapter 99, “Support Establishment and Adjustment Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 252B and 252H.

Purpose and Summary

These proposed amendments conform rule 441—95.14(252B) to the federal regulations, effective January 19, 2017, of the Department of Health and Human Services, Administration for Children and Families. Specifically, these proposed amendments conform to 45 CFR 303.11, Case Closure Criteria. The Child Support Recovery Unit (CSRU) has implemented many of the federal regulations in administrative rules over the years. The revised federal regulations update language in some of those rules and add new permissive case closure reasons.

These proposed amendments also update Chapter 99, Divisions IV and V, by removing references to voluntary reduction of income as a factor when CSRU modifies child support obligations.

In 2013, the Iowa Supreme Court revised Chapter 9, “Child Support Guidelines,” of the Iowa Court Rules to require a written determination to impute income. Iowa Court Rule 9.11(4) allows the court to make a written finding of voluntary unemployment or underemployment and to impute income to a party if the court finds that a substantial injustice would occur to use actual earnings. When CSRU uses income based on a party’s voluntary reduction of income in administrative actions, essentially CSRU includes imputed income in the child support calculations without the required written findings by the court. Iowa Court Rule 9.11(4) does not give CSRU authority to impute income when a party is voluntarily unemployed or underemployed. Only the court has that authority.

The current CSRU practice of not using the actual income of those who are voluntarily unemployed or underemployed does not take into account that a party’s unemployment or underemployment may be for justifiable reasons that have nothing to do with an attempt to reduce the child support obligation. In addition, federal regulations released in December 2016 (specifically 45 CFR 302.56 and accompanying comments found at 81 Fed. Reg. 93492) include guidance for states on using the actual income of parties, which does not appear to align with the existing CSRU voluntary reduction in income rules.

Fiscal Impact

These amendments will not substantially change the number of actions CSRU completes. There are no system changes needed to implement the changes, and CSRU will not need to increase or decrease staff to complete the actions.

Jobs Impact

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

HUMAN SERVICES DEPARTMENT[441](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 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 20, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319
Fax: 515.281.4980
Email: policyanalysis@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

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. Rescind rule 441—95.14(252B) and adopt the following new rule in lieu thereof:

441—95.14(252B) Termination of services.

95.14(1) Case closure criteria.

a. The child support recovery unit may terminate services when the case meets at least one of the following case closure criteria and the child support recovery unit maintains supporting documentation for the case closure decision in the record:

(1) There is no ongoing support obligation, and arrearages are under \$500 or unenforceable under state law.

(2) The noncustodial parent or alleged father is deceased, and no further action, including a levy against the estate, can be taken.

(3) The noncustodial parent is living with the minor child as the primary caregiver, the custodial parent is deceased, and there is no assignment to the state of support or of arrearages that accrued under the support order.

(4) The child support recovery unit cannot establish paternity because:

1. The child is at least 18 years old and the statute of limitations bars an action to establish paternity;

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. A genetic test or a court or administrative process has excluded the alleged father and no other alleged father can be identified;

3. The child support recovery unit has determined that it would not be in the best interest of the child to establish paternity in a case that involves incest or rape or a case in which legal proceedings for adoption are pending; or

4. The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the child support recovery unit with the recipient of services.

(5) The noncustodial parent's location is unknown and the child support recovery unit has made diligent efforts to locate the noncustodial parent using multiple sources, in accordance with regulations in 45 CFR 303.3, all of which have been unsuccessful, within the applicable time frame:

1. Over a three-year period when there is sufficient information to initiate an automated locate effort.

2. Over a one-year period when there is not sufficient information to initiate an automated locate effort.

(6) The child support recovery unit has determined that, throughout the duration of the child's minority (or after the child has reached the age of majority), the noncustodial parent cannot pay support and shows no evidence of support potential because the parent has been institutionalized in a psychiatric facility, is incarcerated, or has a medically verified total and permanent disability. The child support recovery unit must also determine that the noncustodial parent has no income or assets available above the subsistence level that could be levied or attached for support.

(7) The noncustodial parent's sole income is from supplemental security income (SSI) payments.

(8) The noncustodial parent is a citizen of and lives in a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets, and there is no federal or state treaty or reciprocity with the country.

(9) In a case involving child support services to a person who is not a recipient of public assistance, the child support recovery unit has provided location-only services.

(10) The child support recovery unit has received a written or verbal request from the recipient of services to close the case, and there is no assignment to the state of support or of arrearages that accrued under the support order.

(11) In a case involving child support services to a recipient of public assistance, there has been a finding of good cause or other exception in a public assistance case as specified in 441—subrules 41.22(8) through 41.22(12) and 441—subrule 75.14(3), including a determination that support enforcement may not proceed without risk or harm to the child or caretaker relative.

(12) In a case involving child support services to a person who is not a recipient of public assistance or who is a recipient of public assistance receiving Medicaid only, the child support recovery unit has received information that the address in the unit's record is no longer current and the unit is unable to contact or otherwise locate the recipient within 60 days following receipt of this information, despite a good-faith effort to contact the recipient through at least two different methods.

(13) In a case involving child support services to a person who is not a recipient of public assistance or who is a recipient of public assistance receiving Medicaid only, the recipient of services has failed to cooperate with the child support recovery unit, which documented the circumstances of the noncooperation, and an action by the recipient of services is essential for the next step in providing services. (See rule 441—95.19(252B).)

(14) The child support recovery unit documents failure by the initiating agency, as defined under 45 CFR 301.1, to take an action that is essential for the next step in providing services.

(15) The initiating agency, as defined under 45 CFR 301.1, has notified the child support recovery unit that the initiating agency has closed its case.

(16) The initiating agency, as defined under 45 CFR 301.1, has notified the child support recovery unit that its intergovernmental services are no longer needed.

(17) Another assistance program, including IV-A, IV-E, SNAP, and Medicaid, has referred to the child support recovery unit a case for which it is inappropriate to establish, enforce, or continue to enforce a child support order and the custodial or noncustodial parent has not applied for child support services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(18) The case meets any other basis for case closure based upon federal law.

b. The child support recovery unit may terminate services when no support or arrearages that accrued under the support order are assigned to the state and the recipient of services requested the child support recovery unit to close the case to allow the tribal IV-D agency to start providing services under that program.

c. The child support recovery unit must close a case and maintain supporting documentation for the case closure decision when the following criteria have been met:

(1) The child support recovery unit is notified that the child is eligible for health care services from the Indian Health Service (IHS); and

1. The IV-D case was opened because of a Medicaid referral based solely upon health care services, including the Purchased/Referred Care program, provided through an Indian health program (as defined at 25 U.S.C. 1603(12)); and

2. The recipient of services requested the child support recovery unit to close the case.

(2) The child support recovery unit receives instructions for case closure from an initiating agency, as defined under 45 CFR 301.1. Within ten working days, the child support recovery unit must stop the income withholding order or notice and close the intergovernmental IV-D case.

95.14(2) Case closure notifications. In cases meeting one of the criteria of 95.14(1), except 95.14(1)“a”(9), (10), or (11), the child support recovery unit shall send notification of its intent to close the case to the recipient of services or the initiating agency, as defined under 45 CFR 301.1, in writing 60 calendar days before case closure. The notice shall be sent to the recipient of services or the state requesting services at the last-known address stating the reason for denying or terminating services, the effective date, and an explanation of the right to request a hearing according to 441—Chapter 7. Closure of the case following notification is subject to the following:

a. If, in response to the notice, the recipient of services or the initiating agency, as defined under 45 CFR 301.1, supplies information which could lead to the establishment of paternity or a support order or enforcement of an order, the case shall be kept open.

b. If the case is to be closed because the child support recovery unit was unable to contact the recipient of services as provided in subparagraph 95.14(1)“a”(12), the case shall be kept open if contact is reestablished with the recipient of services before the effective date of the closure.

c. The recipient of services may request to have the child support recovery unit reopen the case at a later date if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application and paying any applicable fee.

d. For notices under this subrule, if the recipient of services specifically authorizes consent for electronic notifications, the child support recovery unit may elect to notify the recipient of services electronically of the child support recovery unit’s intent to close the case. The child support recovery unit must maintain documentation of the recipient’s consent in the case record.

This rule is intended to implement Iowa Code sections 252B.4, 252B.5, and 252B.6.

ITEM 2. Amend subrule 99.65(1) as follows:

99.65(1) Conducting the review. The child support recovery unit or its attorney shall review the case for administrative adjustment of a child support obligation unless it is determined that any of the following exist:

a. The location of one or both of the parents is unknown.

b. The variation from the Iowa Supreme Court mandatory child support guidelines is based on any material misrepresentation of fact concerning any financial information submitted to the child support recovery unit.

~~e.—The variation from the Iowa Supreme Court mandatory child support guidelines is due to a voluntary reduction in net monthly income attributable to the actions of the parent. The unit may request and the parent shall supply verification that a loss of employment was not voluntary or that all facts concerning financial information are true. Verification may include, but is not limited to, a statement from the employer, a doctor, or other person with knowledge of the situation.~~

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- ~~d. c.~~ The criteria of rule 441—99.62(252B,252H) are not met.
- ~~e. d.~~ The end date of the order is less than 12 months in the future or the youngest child is 17½ years of age.

ITEM 3. Rescind rule 441—99.87(252H) and adopt the following **new** rule in lieu thereof:

441—99.87(252H) Misrepresentation of fact.

99.87(1) The unit shall not modify the support order based on a substantial change of circumstances if a change in income is due to any material misrepresentation of fact concerning any financial information submitted to the child support recovery unit.

99.87(2) The unit may request verification that all facts concerning financial information are true. Verification may include, but is not limited to, a statement from the employer, a doctor, or other person with knowledge of the situation.

ITEM 4. Amend subrule 99.91(5) as follows:

99.91(5) Change of circumstances. The request is based on a substantial change in circumstances and:

- a. to d.* No change.
- ~~*e.* The change in income is a voluntary reduction attributable to the actions of the party, as explained in rule 441—99.87(252H), or~~
- f. e.* The change in income is due to material misrepresentation of fact, as explained in rule 441—99.87(252H).

ARC 3597C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to promoting opportunities for parents program and providing an opportunity for public comment**

The Department of Human Services hereby proposes to rescind Chapter 100, “Child Support Parental Obligation Pilot Projects,” and to adopt new Chapter 100, “Child Support Promoting Opportunities for Parents Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 252B.3(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 252B.3(5).

Purpose and Summary

This rule making proposes to replace the current Child Support Parental Obligation Pilot Projects rules by renaming the program and clarifying incentives.

The new chapter describes the Promoting Opportunities for Parents Program (POPP) developed by the Department of Human Services Child Support Recovery Unit (CSRU). The purpose of this program is to assist parents in overcoming the barriers which interfere with fulfilling their obligations to their children.

CSRU wants to partner with community providers and resources to assist parents in overcoming barriers. Research shows that child support-led programs are more likely to yield results for noncustodial parents and their children. Thus, the child support program sets the expectations and manages the program by partnering with employment and fatherhood/parenting programs to provide those services.

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Fiscal Impact

This is an existing program, and the rule making will not change the level of funding needed.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 20, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319
Fax: 515.281.4980
Email: policyanalysis@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

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:

Rescind 441—Chapter 100 and adopt the following **new** chapter in lieu thereof:

CHAPTER 100
CHILD SUPPORT PROMOTING OPPORTUNITIES FOR PARENTS PROGRAM

PREAMBLE

This chapter describes the promoting opportunities for parents program developed by the department of human services child support recovery unit (CSRU). The purpose of this program is to assist parents in overcoming the barriers which interfere with fulfilling their obligations to their children. For the

HUMAN SERVICES DEPARTMENT[441](cont'd)

purpose of these rules, promoting opportunities includes emotional and personal involvement of the parents, parenting or fatherhood classes and employment resources beyond simply meeting the parents' financial obligations. In order to encourage participation by parents, CSRU may partner with community providers and resources and may offer various incentives for participation. These incentives may be offered through projects whose plans have been approved by the bureau chief or through projects in which CSRU participates and for which the bureau chief approves of CSRU's offering any or all of the incentives.

441—100.1(252B) Definitions.

"Assigned support arrearages" means support arrearages for which all rights have been and shall remain assigned to the state of Iowa.

"Bureau chief" means the chief of the bureau of collections of the department of human services or the bureau chief's designee.

"Child support recovery unit (CSRU)" means any person, unit, or other agency which is charged with responsibility for providing or assisting in the provision of child support enforcement services pursuant to Title IV-D of the Social Security Act.

"Designated provider" means any project approved in whole or in part by CSRU and approved by the bureau chief to assist parents in overcoming the barriers which interfere with their fulfilling obligations to their children. Each project shall have a project plan approved by the bureau chief.

"Incentives" means, but is not limited to, satisfaction of support obligations and bypass of select enforcement tools such as license sanction, administrative levy, and contempt.

"Participant" means a person who receives services or incentives through a project.

"Periodic support payment" means the total support payment due in each time period in accordance with the established support obligation. If no current support is due, the periodic support payment is equivalent to the last current support amount as would be ordered under 441—Chapter 98, Division II.

"Project plan" means the written policies, procedures, eligibility criteria and other components, as described at subrule 100.3(2).

441—100.2(252B) Incentives. CSRU may offer incentives to participants through designated providers to encourage participants' completion of the project. The available incentives include, but are not limited to, the following:

100.2(1) Satisfaction of the assigned support arrearages.

a. A participant shall be granted a partial satisfaction of the assigned support arrearages which are and which will remain owed by that participant to the state after that participant's successful completion of the project and payment of that participant's periodic support payments. Satisfactions granted under this subrule shall apply only to those cases for which periodic support payment is credited.

b. Each satisfaction shall be an amount equal to a percentage of that participant's support arrearages, which are and which will remain owed to the state, according to the following schedule:

(1) A one-time satisfaction after 6 consecutive months from the participant's completion of the project. The amount of satisfaction shall be a percentage based on the amount of periodic support paid on all qualifying cases as follows:

1. When 100 percent of the periodic support is paid, the satisfaction amount will equal 50 percent of the amount owed to the state.

2. When 99 to 80 percent of the periodic support is paid, the satisfaction amount will equal 40 percent of the amount owed to the state.

3. When 79 to 60 percent of the periodic support is paid, the satisfaction amount will equal 30 percent of the amount owed to the state.

4. When 59 to 40 percent of the periodic support is paid, the satisfaction amount will equal 20 percent of the amount owed to the state.

5. When 39 to 20 percent of the periodic support is paid, the satisfaction amount will equal 10 percent of the amount owed to the state.

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6. When 19 to 0 percent of the periodic support is paid, the satisfaction amount will equal 0 percent of the amount owed to the state.

(2) A one-time satisfaction after 12 consecutive months from the participant's completion of the project. The amount of satisfaction shall be a percentage based on the amount of periodic support paid on all qualifying cases as follows:

1. When 100 percent of the periodic support is paid, the satisfaction amount will equal 100 percent of the amount owed to the state.

2. When 99 to 80 percent of the periodic support is paid, the satisfaction amount will equal 80 percent of the amount owed to the state.

3. When 79 to 60 percent of the periodic support is paid, the satisfaction amount will equal 60 percent of the amount owed to the state.

4. When 59 to 40 percent of the periodic support is paid, the satisfaction amount will equal 40 percent of the amount owed to the state.

5. When 39 to 20 percent of the periodic support is paid, the satisfaction amount will equal 20 percent of the amount owed to the state.

6. When 19 to 0 percent of the periodic support is paid, the satisfaction amount will equal 0 percent of the amount owed to the state.

c. A participant subject to an income withholding order shall be eligible for the satisfaction in this subrule if the sole reason for ineligibility is a disparity between the schedules of the participant's pay date and the scheduled date the payment is due.

d. A participant shall be eligible for a satisfaction under this subrule if the participant is no longer a participant but has continued to pay the participant's periodic support payment without interruption.

100.2(2) Enforcement processes. CSRU may bypass select enforcement tools, including but not limited to license sanction, administrative levy, and contempt, if the participant is actively in the project.

441—100.3(252B) Establishment of designated providers. CSRU may initiate a request for project plans to become designated providers.

100.3(1) Contents of a request for project plans. The request for project plans shall contain the requirements for contents of the project plan and any other parameter for the specific project being advertised. The request shall also contain a deadline by which project plans must be submitted to the bureau chief.

100.3(2) Contents of project plans. Each project shall have and maintain a project plan. At a minimum, the project plan shall contain or address the following:

a. Applicant's experience and success at integrating collaborations and services essential to the project.

b. The geographic area to be served and community need for projected services.

c. The projected number of participants to be served and the criteria to be used for the selection and termination of participants.

d. The specific parenting curriculum to be used. The curriculum must be well-established, have a track record of use and be field-tested.

e. A description of the components of the curriculum. The components of the curriculum should include personal development, responsible parenting, parenting skills, financial responsibilities, communication skills, and domestic violence prevention.

f. The schedule, location, hours of instruction and format for administering the curriculum.

g. A description of the organization and identification of staff responsible for delivering the curriculum. The staff should have experience in group facilitation and be certified trainers in the curriculum.

h. A clear explanation of how the curriculum and services will be monitored and evaluated, including how the participants will be tracked and what data will be collected.

i. Project duration.

HUMAN SERVICES DEPARTMENT[441](cont'd)

100.3(3) Amendments to project plan. Projects may submit proposed amendments to their project plan in writing to the bureau chief. The bureau chief shall have the option, after review, of approving or disapproving all proposed amendments to the project plan.

441—100.4(252B) Selection of designated providers. The bureau chief shall have sole authority to select designated providers. The bureau chief shall select which of the project plans received on or before the deadline date shall be granted the status of designated providers. The selection of designated providers shall be based upon the content of the project plan including, but not limited to, the following criteria:

1. Applicant's experience.
2. Geographic area selected and community need for the project.
3. Participants to be served and criteria to be used to select participants and terminate their participation.
4. The parenting curriculum to be used.
5. A description of the components of the curriculum.
6. The schedule, location, hours of instruction and format for administering the curriculum.
7. A description of the organization and identification of staff.
8. An explanation of monitoring and evaluation.
9. Project duration.

441—100.5(252B) Termination of designated providers. The bureau chief may immediately terminate CSRU's participation with a designated provider if the designated provider is not fulfilling the terms of its project plan or the designated provider is not fulfilling the terms for CSRU's participation in the project plan.

441—100.6(252B) Reports and records.

100.6(1) Reports. Designated providers established under these rules shall report to CSRU at least monthly, unless otherwise required by the project plan. These reports shall include, but not be limited to, the following:

- a. Attendance documentation with the names of participants served.
- b. Signed voluntary consent of participants seeking incentives.
- c. Certification of participants completing the curriculum.
- d. Other information as specified in the project plan.

100.6(2) Records retention. Designated providers shall retain all records as necessary to meet the requirements of these rules.

441—100.7(252B) Receipt of incentives. Participants receiving incentives under these rules may continue to receive the incentives after the termination of these rules or after they are no longer participants only under subrule 100.2(1). Subrule 100.2(1) shall apply to a participant or former participant for the full time period allowed in that subrule.

These rules are intended to implement Iowa Code section 252B.3(5).

ARC 3593C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

**Proposing rule making related to beryllium standards
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 10, "General Industry Safety and Health Rules," and Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

LABOR SERVICES DIVISION[875](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 88.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 88.5 and 29 CFR 1953.5.

Purpose and Summary

The U.S. Department of Labor, Occupational Safety and Health Administration, (OSHA) published amendments to the general industry and construction standards concerning exposure to beryllium and beryllium compounds in January of 2017. The new standards are based on a finding that the previous exposure limits were too high to prevent occupational lung cancer and chronic beryllium disease.

Subsequently, federal OSHA twice published notices delaying implementation of the new beryllium standards. In the summer of 2017, federal OSHA formally proposed to revoke a portion of the new beryllium standards concerning construction. Federal OSHA also provided notification that it would not enforce those portions of the beryllium standards that are subject to revocation.

The Labor Commissioner published a Notice of Intended Action to adopt the new beryllium standards on April 26, 2017, as **ARC 3029C**. No further action was taken on that Notice.

Pursuant to both federal and state law, the Iowa Labor Commissioner must adopt the federal standards by reference. This Notice of Intended Action proposes to adopt by reference the general industry standards published by federal OSHA in January of 2017 and to adopt a new permissible exposure limit and a new short-term exposure limit for beryllium in the construction industry. This Notice is intended to make Iowa's beryllium enforcement conform to federal beryllium enforcement.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, the Commissioner finds that jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

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 875—Chapter 5.

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 Commissioner no later than 4:30 p.m. on February 21, 2018. Comments should be directed to:

LABOR SERVICES DIVISION[875](cont'd)

Kathleen Uehling
 Division of Labor Services
 1000 East Grand Avenue
 Des Moines, Iowa 50319-0209
 Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

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

February 21, 2018	150 Des Moines St.
10 a.m.	Des Moines, Iowa
	(If requested)

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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should telephone 515.725.5615 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 **875—10.20(88)** by inserting the following at the end thereof:
 82 Fed. Reg. 2735 (January 9, 2017)

ITEM 2. Adopt the following **new** rule 875—26.2(88):

875—26.2(88) Beryllium exposure limits. Effective May 2, 2018, the eight-hour time-weighted average permissible exposure limit for beryllium is 0.2 micrograms per cubic liter, and the short-term exposure limit for beryllium is 2.0 micrograms per cubic meter over a 15-minute sampling period.

This rule is intended to implement Iowa Code section 88.5.

ARC 3601C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

The Department of Transportation hereby proposes to amend Chapter 615, "Sanctions," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 307A.2, 321.180B, 321.189, 321.193, 321.201, 321.208, 321.210, 321.210A, 321.210D, 321.213B, 321.513, 321.560 and 321A.2.

TRANSPORTATION DEPARTMENT[761](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.177, 321.178, 321.180B, 321.184, 321.185, 321.189, 321.191, 321.193, 321.194, 321.201, 321.205, 321.208, 321.210, 321.210A, 321.210C, 321.210D, 321.212, 321.213B, 321.216 to 321.216C, 321.218, 321.218A, 321.323A, 321.372, 321.513, 321.555, 321.556, 321.560, 321A.2, 321J.21 and 714.7D.

Purpose and Summary

The proposed amendments form a comprehensive update of the Department's rules affecting driver's license sanctions to better implement and align with existing legal authority and Department practice, including eliminating outdated or irrelevant requirements or options and standardizing and streamlining processes and procedures. The Department is changing the language throughout Chapter 615 to reflect that the Department "shall" take an action, rather than "may" take an action. There are a number of areas in which the Iowa Code gives the Department the discretion to impose a sanction for a particular class of offenses by providing that the Department "may" impose a sanction, and the Department exercises that discretion by implementing rules that impose the sanction. Changing "may" to "shall" in the rules avoids the implication that the Department is exercising its discretion on a case-by-case basis and ensures consistent application of its sanctioning structure for like offenses, thereby providing consistency and predictability for persons who are facing a license sanction. The following explains each proposed amendment:

Item 1 removes an outdated definition of "conviction free," a term which no longer appears anywhere in Chapter 615.

Item 2 removes an outdated reference to the Iowa Code Supplement within the definition of "moving violation."

Item 3 encompasses the rule that addresses the cancellation of licenses. This item strikes redundant language in subrules 615.7(1) and 615.7(2) because the language is already provided in Iowa Code sections 321.184, 321.185 and 321.189 and adds a new subrule to clarify that a license shall be canceled for the failure to pay the license fee, which aligns to the Department's existing practice of canceling a license if the Department is notified the applicant does not have sufficient funds (returned check). Item 3 also updates the rule's implementation sentence to include reference to Iowa Code section 321.191 (fees for driver's licenses).

Item 4 encompasses the rule that governs the determination that a person is a habitual offender. This item corrects outdated references to Iowa Code sections 321.560 and 707.6A.

Item 5 addresses the length of license suspensions or revocations. This item amends rule 761—615.11(321) to encompass both license suspensions and revocations, as both are included in Iowa Code sections 321.212 and 321.218. The existing rule just refers to the term "suspension," which is not entirely accurate as the underlying Iowa Code sections address both the length of suspensions and the length of revocations. Item 5 also conforms to language in Iowa Code sections 321.212 and 321.218 and existing Department practice by adding language that specifies the period of time a license sanction is extended for driving while the license is suspended or revoked shall be for a like period of time or one year, whichever is shorter, unless a statutory exception applies. Adding this language will ensure the rule accurately describes the manner in which a license sanction must be extended under Iowa law.

Item 6 updates the rule that addresses the license suspension of a habitually reckless or negligent driver. This item amends the definition of "contributive or contributed" to replace the current definition with a cross reference to the definition of "contributive accident" in rule 761—615.1(321), which promotes consistency in the rules, instead of restating the definition. This item also clarifies that violations under Iowa Code section 321.276 (use of electronic communication device while driving) do

TRANSPORTATION DEPARTMENT[761](cont'd)

not count towards a license suspension for a habitually reckless or negligent driver as these violations are not considered moving violations under Iowa law.

Item 7 encompasses the rule that governs the suspension of a habitual violator. This item makes changes to align with the Department's existing practice to suspend a person's license whenever the Department receives notice of three or more qualifying convictions in a 12-month period and to strike the provision allowing a driver's license hearing officer to reduce the period of suspension based on mitigating circumstances. Making these changes will lead to standardized treatment among cases and avoids the implication that the Department is exercising its authority on a case-by-case basis. This item also clarifies that violations under Iowa Code section 321.276 (use of electronic communication device while driving) do not count towards a habitual violator suspension as these violations are not considered moving violations under Iowa law.

Item 8 updates the rule that addresses suspension for incapability. This item makes changes to align with Department practice and legal obligation to always suspend a person's license whenever the person is deemed incapable of safely operating a motor vehicle under Iowa Code sections 321.177, 321.210 and 321.212.

Item 9 encompasses the rule that affects suspension for unlawful use of a license. This item makes changes to align with the Department's existing practice to suspend a person's license whenever the person is convicted of unlawful or fraudulent use of a driver's license and states that the rule also applies to convictions under Iowa Code section 321.216C (which pertains to the use of a driver's license by an underage person to obtain tobacco or tobacco-related products). Item 9 also updates the rule's implementation sentence to include a reference to Iowa Code section 321.216C.

Item 10 encompasses the rule that governs suspension for a serious violation. This item makes changes to align with the Department's existing practice to suspend a person's license whenever the Department receives notice of a conviction that is a serious violation under subrule 615.17(2) and amends the definition of "contributed" to reference the definition of "contributive accident" in rule 761—615.1(321), instead of restating the definition. This item amends paragraph 615.17(2)"c" to strike the provision allowing a driver's license hearing officer to reduce the period of suspension based on mitigating circumstances. Making these changes will lead to standardized treatment among cases and avoids the implication that the Department is exercising its authority on a case-by-case basis. The periods of suspension for speeding offenses of 25 mph or more above the posted speed limit are also consolidated to ensure consistent treatment amongst offenses in a similar range, rather than providing for a different length of suspension for each additional mile per hour over the speed limit. Item 10 amends paragraph 615.17(2)"d" to clarify that convictions for violations of municipal ordinances for unlawfully passing a school bus are also subject to suspension for serious violation, which aligns to the Department's existing practice of treating violations of municipal ordinances the same as violations of state law. This item adds new paragraph 615.17(2)"e" to align with the requirements in Iowa Code section 321.323A (otherwise known as the move over, slow down law) and provides for a license suspension if a person is convicted of violating Iowa Code section 321.323A or a similar municipal ordinance. Item 10 also amends the rule's implementation sentence to add a reference to Iowa Code section 321.323A and to remove an outdated reference to 2012 Iowa Acts.

Item 11 encompasses the rule that addresses suspension for a moving violation during driving probation. This item clarifies that probation refers to the probationary driving period after a person's license has been sanctioned, as sometimes there is confusion among persons between a driving probation and probation after a criminal conviction. Item 11 also makes changes to align with the Department's existing practice to suspend a person's license whenever the Department receives notice of a conviction of a moving traffic violation while a person is on driving probation, and aligns the length of suspension with the requirements in Iowa Code section 321.210C, which requires the driving probationary period to be equal to the original suspension period or for one year, whichever is shorter.

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Item 12 updates the rule that affects suspension of a minor's school license and a minor's restricted license. This item makes changes to align with the Department's existing practice to suspend a minor's school license whenever the Department receives notice of a conviction for a moving violation, accident or statement from an authorized individual that the minor has violated a restriction of the license. This item also makes changes to align with the Department's existing practice to suspend a minor's restricted license whenever the Department receives notice of a conviction for a moving violation.

Item 13 updates the rule that governs suspension for failure to pay a court fine, penalty, surcharge or court costs. This item strikes an outdated reference to a form that the Department no longer uses. In situations where the clerk of court notifies the Department that a person has met the criteria for license suspension due to the failure to pay a court fine, penalty, surcharge or court costs, it is more efficient for the Department to receive notification electronically from the clerk of court, rather than on a specific form.

Item 14 updates the rule that affects suspensions for juveniles. This item makes a change to an Iowa Code reference within the rule's implementation sentence to make the citation consistent with citations to other Iowa Code sections in the chapter, but the item does not change the content of the rule.

Item 15 encompasses the rule that addresses suspension or revocation for violation of a restricted license. This item makes changes to align with the Department's existing practice to suspend a person's license whenever the person violates a license restriction and strikes the term "revocation" from the rule, since the Department always suspends the license but does not revoke it. This item also adds new language to provide a person with the opportunity to present proof that the person's license restriction is no longer necessary prior to the effective date of the suspension, in which case the Department may rescind the suspension. This change allows the person to potentially avoid the consequences of going under suspension as well as to avoid going through the appeal process when the Department finds that the license restriction was unnecessary.

Item 16 updates the rule that affects revocation for out-of-state offenses. This item makes changes to align with Iowa Code section 321.205 and the Department's existing practice to revoke an Iowa resident's license whenever the Department receives notification by another state that the person committed an offense in the other state which, if committed in Iowa, would be grounds for revocation. This item also strikes unnecessary rescinded language.

Item 17 addresses the rule regarding extension of the revocation period. This item clarifies that if a person is convicted of operating a motor vehicle while the person's license is revoked and the person's driving record does not indicate what the original grounds for revocation were, the period of the license revocation shall not exceed six months. This is consistent with the Department's existing practice and treats a conviction under Iowa Code section 321.218 or 321J.21 the same in the situation where the underlying offense is unknown. This item also removes reference to an Iowa Code section within the rule's implementation sentence since revocations under Iowa Code section 321.218 are already addressed in subrule 615.11(2).

Item 18 encompasses the rule that governs the hearing and appeal process. This item strikes an obsolete reference to Iowa Code section 321.177 that referred to license denials for delinquent accounts owed to the state. Item 18 also removes references to Iowa Code sections 321.210B and 321.210D, which previously did not allow an administrative appeal hearing for license suspensions issued under these Iowa Code sections. Iowa Code section 321.210B relates to a suspension for a default in an installment payment agreement with the county attorney or county attorney's designee for failure to pay Iowa court fines. As the rule currently provides, this type of suspension is excluded from an administrative appeal hearing under Iowa Code chapter 17A. However, Iowa Code section 321.210B(10) provides that a license suspension after a default in any installment payment agreement shall be treated like a license suspension for failure to pay an Iowa court fine under Iowa Code section 321.210A. A licensee subject to a license suspension under Iowa Code section 321.210A is permitted

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to request an appeal hearing. By not allowing an administrative appeal for license suspensions under Iowa Code section 321.210B, these license suspensions were not being treated like license suspensions under Iowa Code section 321.210A as the Iowa Code requires. Iowa Code section 321.210D relates to a suspension when the Department receives evidence of trial information or an indictment in a vehicular homicide case. As the rule currently provides, this type of suspension is excluded from an administrative appeal hearing under Iowa Code chapter 17A. While the statute does require the Department to suspend the person's license in this situation, it does not preclude a licensee from requesting an administrative appeal. Allowing an administrative appeal will provide due process in this situation where the license is being suspended based upon a filing of trial information or an indictment for vehicular homicide to a similar degree as a suspension based on a court conviction where the licensee would have had the opportunity to request a trial and present evidence prior to being convicted.

Item 19 corrects the name of the office since the Department renamed the Office of Driver Services to Driver and Identification Services. The office name is also corrected in Items 20 and 27.

Item 20 also updates the rules related to the hearing and appeal process. This item adds new paragraph 615.38(3)"b" which provides that, if the person is contesting a license sanction for which the underlying basis is a conviction or a suspension under Iowa Code section 321.210A (failing to pay court fines) or 321.210B (default in installment agreement), the informal settlement process shall consist of a review by the Department to determine if there was a mistake of fact in the identity of the person or the driving record. Making this change will lead to standardized treatment among cases and avoids the implication that the Department is exercising its discretion on a case-by-case basis. Item 20 also adds new paragraph 615.38(3)"e" to provide that, for a person contesting a license sanction for which the underlying basis is a conviction or a suspension under Iowa Code section 321.210A (failing to pay court fines) or 321.210B (default in installment agreement), the issue at a contested case hearing or appeal shall be similarly limited to determining whether there was a mistake of fact. In certain cases, individuals who are subject to a suspension based on a conviction or a suspension due to the failure to pay a court fine will attempt to relitigate the merits of the underlying conviction or the amount owed for failing to pay court fines during the administrative appeal process, but the Department does not have jurisdiction over those issues. A person wishing to challenge a court conviction must follow the appropriate appeal process with the court, and a person who is contesting the amount owed for court fines or default in any installment agreement for failing to pay court fines must work with the clerk of court.

Item 21 addresses license reinstatement or reissue. This item eliminates an outdated requirement to appear before a driver's license examiner in order to reinstate the person's license, which aligns with Department practice of allowing any appropriate licensing employee to assist the person, rather than a specific classification of employee. The Department will notify the person that the person is eligible to reinstate the person's license, and then the person may obtain or reinstate the license by the Department's usual method, which does not require specifically a driver's license examiner to perform the transaction. Item 21 also amends subrule 615.40(2) and the rule's implementation sentence to strike an outdated reference to the Iowa Code Supplement.

Item 22 addresses investigation of convictions based on fraud. This item strikes reference to a specific form name used to submit an identity theft complaint to the Department. This amendment makes the rule consistent with other rules which only reference the form number and not the form name.

Items 23 and 24 encompass the rule that addresses remedial driver improvement for persons in the graduated driver's license program under Iowa Code section 321.180B. This item clarifies that participation in the remedial driver improvement program shall be required unless the person's driver's license has already been suspended or revoked for the same occurrence when a person receives a conviction for a moving violation, has an accident or violates a license restriction while holding a graduated driver's license. Remedial driver improvement may include license suspension, safety advisory letter, additional restriction(s), vision screening, knowledge examination, and driving

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examination, as determined by the Department. This amendment is consistent with the provisions in Iowa Code section 321.180B which state that a person in the graduated driver's license program shall be subject to remedial driver improvement and clarifies in the rule that remedial driver improvement is required in the event the person is not already facing an additional license sanction under this chapter, which ensures that a driver will face a consequence for the violation without requiring the driver to face potentially more than one consequence for the same occurrence.

Item 25 encompasses the rule that addresses the driver improvement program. This item expands the number of first offenses for which a person would be eligible to take a driver improvement program course in lieu of suspension and clarifies that the ability to take driver improvement for certain offenses applies even when the person is facing a license sanction under this chapter. The list of offenses is expanded to include: first offense violations for speeding 25 miles per hour or more over the speed limit, violations of the probationary driving period if a revocation would result, first offense violations for unlawfully passing a school bus, first offense violations of the move over, slow down law and other first offense violations under paragraph 615.17(2)“a” or “b,” which include convictions for a moving violation accompanied by a written report from law enforcement that the offense was unusually serious and convictions for a moving violation which contributed to a fatal motor vehicle accident. Allowing drivers with these first-time offenses to take a driver improvement course in lieu of suspension promotes rehabilitating driver behavior rather than simply pushing drivers out of the driver system. This allowance includes incidents resulting in a fatality since separate and potentially harsher penalties and consequences already exist for convictions deemed to be vehicular homicide or that cause personal injury or death and drivers involved in fatal crashes that do not rise to the level of vehicular homicide will likewise benefit from rehabilitative efforts. This item clarifies that while a person is not eligible to take driver improvement more than once in a two-year period, upon expiration of the two-year period, the person will again be eligible to take driver improvement in lieu of suspension. Item 25 provides that the length of probation following completion of a driver improvement course shall be the length of the original suspension and no longer allows the length of probation to be reduced by a driver's license hearing officer, which avoids inconsistent decisions and avoids the implication that the Department is exercising its authority on a case-by-case basis. This item also provides that a suspension for failure to attend a driver improvement program shall be the length of the original suspension, but not less than 90 days.

Item 26 rescinds rule 761—615.44(321) that addresses the driver improvement interview since the Department no longer conducts driver improvement interviews. The Department no longer has the capacity to conduct individual interviews and instead imposes uniform restrictions to reduce inconsistent decisions and outcomes which are already reflected in the Department's rules, and thus the rule is no longer necessary.

Item 27 encompasses the rule that governs the temporary restricted license. This item states that the Department may issue a temporary restricted license as provided in Iowa Code section 321.215 and then specifically lists which applicants are ineligible for a temporary restricted license under Iowa Code section 321.215(1). This item amends subparagraph 615.45(1)“a”(6) to clarify that a person who is convicted for driving while under suspension may obtain a temporary restricted license if the underlying suspension or revocation would otherwise qualify for a temporary restricted license. Item 27 adds new subparagraph 615.45(1)“a”(15) to align with Iowa Code section 321.215(1), which does not allow a temporary restricted license for a suspension under Iowa Code section 714.7D (theft of retail motor fuel) and which was not previously addressed in rule. This item adds paragraph 615.45(1)“b” to align with Iowa Code section 321.215(2), which provides when an applicant is eligible for a temporary restricted license in cases of hardship. This item amends subrule 615.45(2) to clarify how an individual may apply for a temporary restricted license and that an individual requesting a temporary restricted license due to hardship shall self-certify under penalty of perjury that a hardship exists, rather than by affidavit, which avoids the difficulty of finding and appearing before a notary public to complete the application. Item 27 amends subrule 615.45(3) to provide that when a person incurs a moving violation during the required probationary driving period after a suspension, the Department will suspend the person's license for the

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length of the original suspension. The rule used to state that the additional suspension period shall be at least 90 days, which sometimes led to individuals being suspended for a greater duration than the original action and resulting suspension (which may have been for 30 days, for example). Imposing a suspension for the length of the original suspension for violating probation is intended to serve as a commensurate consequence to a driver who was subject to a driver's license suspension and who has been unable to successfully complete the probationary driving period. This item amends subrule 615.45(5) to remove an outdated requirement for a person to appear before a driver's license examiner in order to obtain a temporary restricted license as the process simply allows for a person to obtain the temporary restricted license by the Department's usual method, which does not specifically require a driver's license examiner to perform the transaction as long as the person is eligible under Iowa Code section 321.215. Item 27 also updates paragraph 615.45(4)“c” to strike an outdated reference to the Iowa Code Supplement.

Item 28 amends the implementation sentence at the end of the chapter to strike outdated references to the Iowa Code Supplement, to strike a reference to Iowa Code section 321A.32A, since Iowa Code chapter 321A is already referenced, and to add a reference to Iowa Code section 714.7D.

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 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 February 20, 2018. The hearing will be canceled without further notice if no one requests the public hearing. Comments should be directed to:

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

Public Hearing

If requested, a hearing to hear oral comments will be held as follows:

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February 22, 2018
 10 a.m.
 Iowa DOT
 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.

If the public hearing is requested, any persons who intend to attend the 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.

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. Rescind the definition of "Conviction free" in rule **761—615.1(321)**.

ITEM 2. Amend rule **761—615.1(321)**, definition of "Moving violation," as follows:

"*Moving violation*," unless otherwise provided in this chapter, means any violation of motor vehicle laws except:

1. Violations of equipment standards to be maintained for motor vehicles.
2. Parking violations as defined in Iowa Code section 321.210.
3. Child restraint and safety belt and harness violations under Iowa Code sections 321.445 and 321.446.
4. Violations of registration, weight and dimension laws.
5. Operating with an expired license.
6. Failure to appear.
7. Disturbing the peace with a motor vehicle.
8. Violations of Iowa Code Supplement section 321.20B for failure to provide proof of financial liability coverage.

ITEM 3. Amend rule 761—615.7(321) as follows:

761—615.7(321) Cancellations.

~~**615.7(1)** The department shall cancel the license of an unmarried minor upon receipt of a written withdrawal of consent from the person who consented to the minor's application. The department shall also cancel a minor's license upon receipt of evidence of the death of the person who consented to the minor's application.~~

~~**615.7(2)** The department shall cancel a motorized bicycle license when the licensee is convicted of one moving violation. Reapplication may be made 30 days after the date of cancellation.~~

~~**615.7(3)** **615.7(1)** The department may shall cancel a license when the person was not entitled or is no longer entitled to a license, failed to give correct and required information, or committed fraud in applying.~~

~~**615.7(2)** The department shall cancel the license for the person's failure to pay the license fee as provided in rule 761—605.9(321).~~

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~~615.7(4)~~ **615.7(3)** A cancellation shall begin ten days after the department's notice of cancellation is served.

This rule is intended to implement Iowa Code sections 321.184, 321.185, 321.189, 321.191, 321.201 and 321.215.

ITEM 4. Amend rule 761—615.9(321) as follows:

761—615.9(321) Habitual offender.

615.9(1) The department shall declare a person to be a habitual offender under Iowa Code subsection 321.555(1) in accordance with the following point system:

a. Points shall be assigned to convictions as follows:

Conviction	Points
Perjury or the making of a false affidavit or statement under oath to the department of public safety	2 points
Driving while under suspension, revocation or denial (except Iowa Code chapter 321J)	2 points
Driving while under Iowa Code chapter 321J revocation or denial	3 points
Driving while barred	4 points
Operating a motor vehicle in violation of Iowa Code section 321J.2	4 points
An offense punishable as a felony under the motor vehicle laws of Iowa or any felony in the commission of which a motor vehicle is used	5 points
Failure to stop and leave information or to render aid as required by Iowa Code sections 321.261 and 321.263	5 points
Eluding or attempting to elude a pursuing law enforcement vehicle in violation of Iowa Code section 321.279	5 points
Serious injury by a vehicle in violation of Iowa Code subsection 707.6A(3) <u>707.6A(4)</u>	5 points
Manslaughter resulting from the operation of a motor vehicle	6 points

b. No change.

615.9(2) No change.

615.9(3) A person declared to be a habitual offender under Iowa Code Supplement section 321.560, ~~unnumbered paragraph 2~~, shall be barred from operating a motor vehicle on the highways of this state beginning on the date the previous bar expires.

This rule is intended to implement Iowa Code sections 321.555, 321.556 and 321.560.

ITEM 5. Amend rule 761—615.11(321) as follows:

761—615.11(321) Periods of suspension or revocation.

615.11(1) Length. The department shall not suspend or revoke a person's license for less than 30 days nor for more than one year unless a statute specifies or permits a different period of suspension or revocation.

615.11(2) Extension of suspension or revocation. The department shall extend the period of license suspension or revocation for an additional like period or for one year, whichever period is shorter, when the person is convicted of operating a motor vehicle while the person's license is suspended or revoked, unless a statutory exception applies. If the person's driving record does not indicate what the original grounds for suspension or revocation were, the period of license suspension or revocation shall not exceed six months.

This rule is intended to implement Iowa Code sections 321.212 and 321.218.

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ITEM 6. Amend rule 761—615.12(321) as follows:

761—615.12(321) Suspension of a habitually reckless or negligent driver.

615.12(1) The department may suspend a person's license if the person is a habitually reckless or negligent driver of a motor vehicle.

a. No change.

b. ~~“Contributive or contributed” means that there is evidence in departmental records that the driver performed an act which resulted in or contributed to an accident, or failed to perform an act which would have avoided or contributed to the avoidance of an accident~~ the same as the definition of “contributive accident” under rule 761—615.1(321).

615.12(2) In this rule, ~~the~~ speeding violations specified in Iowa Code ~~paragraph~~ section 321.210(2)“d” and violations under Iowa Code section 321.276 are not included.

615.12(3) No change.

This rule is intended to implement Iowa Code section 321.210.

ITEM 7. Amend rule 761—615.13(321) as follows:

761—615.13(321) Suspension of a habitual violator.

615.13(1) The department ~~may~~ shall suspend a person's license when the person is a habitual violator of the traffic laws. “Habitual violator” means that the person has been convicted of three or more moving violations committed within a 12-month period.

615.13(2) The minimum suspension periods shall be as follows ~~unless reduced by a driver's license hearing officer based on mitigating circumstances:~~

3 convictions in 12 months	90 days
4 convictions in 12 months	120 days
5 convictions in 12 months	150 days
6 convictions in 12 months	180 days
7 or more convictions in 12 months	1 year

615.13(3) In this rule, ~~the~~ speeding violations specified in Iowa Code ~~paragraph~~ section 321.210(2)“d” and violations under Iowa Code section 321.276 are not included.

This rule is intended to implement Iowa Code section 321.210.

ITEM 8. Amend rule 761—615.14(321) as follows:

761—615.14(321) Suspension for incapability. The department ~~may~~ shall suspend a person's license when the person is incapable of safely operating a motor vehicle.

615.14(1) Suspension for incapability may be based on one or more of the following:

a. and *b.* No change.

c. Ineligibility for licensing under Iowa Code ~~subsections~~ sections 321.177(4) to 321.177(7).

615.14(2) and **615.14(3)** No change.

This rule is intended to implement Iowa Code sections 321.177, 321.210, and 321.212.

ITEM 9. Amend rule 761—615.15(321) as follows:

761—615.15(321) Suspension for unlawful use of a license.

615.15(1) The department ~~may~~ shall suspend a person's license when the person has been convicted of unlawful or fraudulent use of the license or if the department has received other evidence that the person has violated Iowa Code section 321.216, 321.216A₂ ~~or~~ 321.216B or 321.216C.

615.15(2) and **615.15(3)** No change.

This rule is intended to implement Iowa Code sections 321.210, 321.212, 321.216, 321.216A₂ ~~and~~ 321.216B and 321.216C.

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ITEM 10. Amend rule 761—615.17(321) as follows:

761—615.17(321) Suspension for a serious violation.

615.17(1) The department ~~may~~ shall suspend a person’s license when the person has committed a serious violation of the motor vehicle laws.

615.17(2) “*Serious violation*” means that:

a. No change.

b. The person was convicted of a moving violation which contributed to a fatal motor vehicle accident. ~~“Contributed” is defined in paragraph 615.12(1)“b.”~~ means the same as the definition of “contributive accident” under rule 761—615.1(321). The suspension period shall be at least 120 days.

c. The person was convicted for speeding 25 miles per hour (mph) or more above the legal limit. The minimum suspension period shall be as follows ~~unless reduced by a driver’s license hearing officer based on mitigating circumstances:~~

25 to 29 mph over the legal limit	60 days
26 30 to 39 mph over the legal limit	65 90 days
27 40 to 49 mph over the legal limit	70 180 days
28 mph over the legal limit	75 days
29 mph over the legal limit	80 days
30 mph over the legal limit	90 days
31 mph over the legal limit	100 days
32 mph over the legal limit	110 days
33 mph over the legal limit	120 days
34 mph over the legal limit	130 days
35 mph over the legal limit	140 days
36 mph over the legal limit	150 days
37 mph over the legal limit	160 days
38 mph over the legal limit	170 days
39 mph over the legal limit	180 days
40 mph over the legal limit	190 days
41 mph over the legal limit	210 days
42 mph over the legal limit	230 days
43 mph over the legal limit	250 days
44 mph over the legal limit	270 days
45 mph over the legal limit	290 days
46 mph over the legal limit	310 days
47 mph over the legal limit	330 days
48 mph over the legal limit	350 days
49 <u>50</u> mph or more over the legal limit	one year

d. The person was convicted of violating Iowa Code ~~subsection~~ section 321.372(3) or a similar ordinance of any political subdivision. The suspension period shall be:

- (1) 30 days for a first conviction ~~under Iowa Code subsection 321.372(3).~~
- (2) 90 days for a second conviction ~~under Iowa Code subsection 321.372(3).~~
- (3) 180 days for a third or subsequent conviction ~~under Iowa Code subsection 321.372(3).~~

e. The person was convicted of violating Iowa Code section 321.323A or a similar ordinance of any political subdivision. The suspension period shall be:

- (1) 90 days for a violation causing property damage only to the property of another person.
- (2) 180 days for a violation causing bodily injury to another person.

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(3) One year for a violation causing death.

This rule is intended to implement Iowa Code sections 321.210, 321.323A, 321.372 ~~as amended by 2012 Iowa Acts, Senate File 2218, sections 2 and 5,~~ and 321.491.

ITEM 11. Amend rule 761—615.20(321) as follows:

761—615.20(321) Suspension for moving violation during driving probation. The department ~~may~~ shall suspend the license of a person convicted of a moving violation pursuant to Iowa Code section 321.210C. The suspension period shall ~~not exceed~~ be equal in duration to the original period of suspension, revocation or bar, or for one year, whichever is the shorter period.

This rule is intended to implement Iowa Code section 321.210C.

ITEM 12. Amend rule 761—615.21(321) as follows:

761—615.21(321) Suspension of a minor's school license and minor's restricted license.

615.21(1) Suspension of a minor's school license.

a. The department ~~may~~ shall suspend a minor's school license upon receiving notice of the licensee's conviction for one moving violation or evidence of one or more accidents chargeable to the licensee.

b. The department ~~may~~ shall also suspend a minor's school license when the department receives written notice from a peace officer, parent, custodian or guardian, school superintendent, or superintendent's designee that the licensee has violated the restrictions of the license.

c. No change.

615.21(2) Suspension of a minor's restricted license. The department ~~may~~ shall suspend a minor's restricted license upon receiving notice of the licensee's conviction for one moving violation. The suspension period shall be at least 30 days.

This rule is intended to implement Iowa Code sections 321.178 and 321.194.

ITEM 13. Amend subrule 615.22(1), introductory paragraph, as follows:

615.22(1) The department shall suspend a person's privilege to operate motor vehicles in Iowa when the department is notified by a clerk of the district court ~~on Form No. 431037~~ that the person has been convicted of violating a law regulating the operation of motor vehicles, that the person has failed to pay the fine, penalty, surcharge or court costs arising out of the conviction, and that 60 days have elapsed since the person was mailed a notice of nonpayment from the clerk of the district court.

ITEM 14. Amend rule **761—615.23(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~232.52(2) "a"(4)~~ 232.52(2), 299.1B, 321.213, 321.213A, 321.213B, and 321.215.

ITEM 15. Amend rule 761—615.26(321) as follows:

761—615.26(321) Suspension ~~or revocation~~ for violation of a license restriction. The department ~~may~~ shall suspend ~~or revoke~~ a person's license when the department receives satisfactory evidence of a violation of a restriction imposed on the license. The suspension ~~or revocation~~ period shall be at least 30 days. If, prior to the effective date of the suspension, the person provides satisfactory evidence that the restriction is no longer necessary, the department may rescind the license suspension.

This rule is intended to implement Iowa Code section 321.193.

ITEM 16. Amend rule 761—615.30(321) as follows:

761—615.30(321) Revocation for out-of-state offense.

615.30(1) The department ~~may~~ shall revoke an Iowa resident's license when the department is notified by another state that the person committed an offense in that state ~~which, if committed in Iowa, would be grounds for revocation as provided in Iowa Code section 321.205. The notice may indicate either a conviction or a final administrative decision.~~ The period of the revocation shall be the same as if the offense had occurred in Iowa.

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~~615.30(2)~~ Rescinded IAB 11/20/96, effective 12/25/96.

This rule is intended to implement Iowa Code section 321.205.

ITEM 17. Amend rule 761—615.32(321) as follows:

761—615.32(321) Extension of revocation period. The department shall extend the period of license revocation for an additional like period when the person is convicted of operating a motor vehicle while the person's license is revoked. If the person's driving record does not indicate what the original grounds for revocation were, the period of license revocation shall not exceed six months.

This rule is intended to implement Iowa Code ~~sections 321.218 and~~ section 321J.21.

ITEM 18. Amend paragraph **615.38(1)“a”** as follows:

a. License denials, cancellations and suspensions under Iowa Code sections 321.177 to 321.215 and 321A.4 to 321A.11 ~~except denials under Iowa Code subsection 321.177(10) and~~ suspensions under Iowa Code sections ~~321.210B, 321.210D,~~ 321.213A and 321.213B.

ITEM 19. Amend paragraph **615.38(2)“b”** as follows:

b. A request for an informal settlement, a request for a contested case hearing, or an appeal of a presiding officer's decision shall be submitted to the director of ~~the office of driver and~~ identification services at the address in 761—600.2(17A).

ITEM 20. Amend subrule 615.38(3) as follows:

615.38(3) Informal settlement or hearing.

a. No change.

b. If the person requests an informal settlement to contest a sanction listed in subrule 615.38(1) for which the basis is a conviction as defined in Iowa Code section 321.1 or a suspension under Iowa Code section 321.210A or 321.210B, the informal settlement shall consist of a review by the department to determine if there was a mistake of fact. For purposes of this rule, “mistake of fact” means a mistake in the identity of the person subject to sanction or a mistake in the driving record.

~~b. c.~~ Notwithstanding paragraph ~~“a” of this subrule,~~ 615.38(3)“a,” a request received from a person who has participated in a driver improvement interview on the same matter shall be deemed a request for a contested case hearing.

~~e. d.~~ A request for an informal settlement or a request for a contested case hearing shall be deemed timely submitted if it is delivered to the director of ~~the office of driver and~~ identification services or postmarked within the time period specified in the department's notice of the sanction.

(1) and (2) No change.

e. For a person contesting a sanction listed in subrule 615.38(1) for which the basis is a conviction as defined in Iowa Code section 321.1 or a suspension under Iowa Code section 321.210A or 321.210B, the issue at the contested case hearing and on appeal shall be limited to a mistake of fact as specified in paragraph 615.38(3)“b.”

ITEM 21. Amend rule 761—615.40(321) as follows:

761—615.40(321) License reinstatement or reissue. A person who becomes eligible for a license after a denial, cancellation, suspension, revocation, bar or disqualification shall be notified by the department ~~to appear before a driver license examiner that the person is eligible to obtain or reinstate the license.~~ The license may be issued if the person has:

615.40(1) No change.

615.40(2) Paid the civil penalty when required. The civil penalty is specified in Iowa Code Supplement section 321.218A or 321A.32A.

615.40(3) to 615.40(6) No change.

This rule is intended to implement Iowa Code sections 321.186, 321.191, 321.195, 321.208, 321.212, ~~and~~ 321.218A, 321A.17 and Iowa Code Supplement sections 321.218A and 321A.32A.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 22. Amend rule 761—615.41(321) as follows:

761—615.41(321) Investigation of convictions based on fraud. A person requesting investigation of fraudulent use of a person's name or other fraudulent identification that resulted in a record of conviction for a scheduled violation under Iowa Code chapter 321 and listed in Iowa Code section 805.8A may submit a written application to the department using Form 420049, ~~Identity Theft Complaint~~. The department shall review the application and may investigate, if appropriate, as required by Iowa Code section 321.200A. Form 420049 may be obtained by contacting the bureau of investigation and identity protection by mail at Bureau of Investigation and Identity Protection, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; or on the department's ~~Web site~~ website.

This rule is intended to implement Iowa Code section 321.200A.

ITEM 23. Amend subrule 615.42(1) as follows:

615.42(1) ~~The Notwithstanding any other provisions of this chapter to the contrary, the~~ department shall require remedial driver improvement action unless the person's driver's license has been suspended or revoked for the same occurrence when a person holding an instruction permit, an intermediate license or a full-privilege driver's license under Iowa Code section 321.180B is convicted of a moving violation, ~~or~~ has a contributive accident or violates the restrictions of the license and the violation or accident occurred during the term of the instruction permit or intermediate license.

ITEM 24. Amend subrule 615.42(2) as follows:

615.42(2) Completion of remedial driver improvement action means any or all of the following as determined by the department: suspension, remedial driver improvement program, safety advisory letter, additional restriction(s), vision screening, knowledge examination, and driving examination.

ITEM 25. Amend rule 761—615.43(321) as follows:

761—615.43(321) Driver improvement program.

615.43(1) *When required.*

a. ~~In~~ Notwithstanding any other provisions of this chapter to the contrary, in lieu of suspension, the department may require the following persons to attend and successfully complete, at the person's own expense, a driver improvement program approved by the department:

- (1) No change.
 - (2) A person who is convicted of a first offense for speeding ~~at least 25 but not more than 29~~ miles per hour or more over the legal limit.
 - (3) A person whose license is subject to suspension or revocation under Iowa Code section 321.210C.
 - (4) A person who is convicted of a first offense violation of Iowa Code section 321.372(3) or similar ordinance of any political subdivision.
 - (5) A person who is convicted of a first offense violation of Iowa Code section 321.323A or a similar ordinance of any political subdivision.
 - (6) A person who is subject to suspension for a first offense under paragraph 615.17(2) "a" or "b."
- b. ~~However, a~~ A person shall not be assigned to a driver improvement program more than once within a any two-year period. Upon expiration of the previous two-year period, a person is eligible to again be assigned to a driver improvement program.

615.43(2) No change.

615.43(3) *Probation.* When a person is required to attend and successfully complete a driver improvement program, the department shall also require the person to complete a probationary driving period not to exceed one year. One conviction for a moving violation committed during probation ~~may shall~~ result in suspension of the person's license. The suspension period shall be at least 90 days, unless reduced by a driver's license hearing officer based on mitigating circumstances the length of the original suspension.

TRANSPORTATION DEPARTMENT[761](cont'd)

615.43(4) Failure to attend. The department shall suspend the license of a person who is required to attend a driver improvement program and who does not attend, or does not successfully complete, the program. The suspension period shall be at least the length of the original suspension, but not less than 90 days.

This rule is intended to implement Iowa Code sections 321.210 and 321.210C.

ITEM 26. Rescind and reserve rule **761—615.44(321)**.

ITEM 27. Amend rule 761—615.45(321) as follows:

761—615.45(321) Temporary restricted license (work permit).

615.45(1) ~~Ineligibility~~ Eligibility. The department ~~shall not~~ may issue a temporary restricted license as provided under Iowa Code ~~subsection 321.215(1) to an applicant;~~ section 321.215. Temporary restricted licenses issued under Iowa Code chapter 321J are addressed in rule 761—620.3(321J).

a. The department shall not issue a temporary restricted license under Iowa Code section 321.215(1) to an applicant:

- (1) Whose license has been denied or canceled.
- ~~b. (2)~~ Whose license has been suspended for incapability.
- ~~c. (3)~~ Whose license has been suspended for noncompliance with the financial responsibility law.
- ~~d. (4)~~ Whose minor's school license or minor's restricted license has been suspended or revoked.
- ~~e. (5)~~ Whose license has been suspended for failure to pay a fine, penalty, surcharge or court costs.
- ~~f. (6)~~ Whose period of suspension or revocation has been extended for operating a motor vehicle while under suspension or revocation unless the underlying suspension or revocation qualifies for issuance of a temporary restricted license.
- ~~g. (7)~~ Whose license has been mandatorily revoked under Iowa Code section 321.209, subsections 1 to 5 or subsection 7, or for a second or subsequent conviction for drag racing.
- ~~h. (8)~~ Whose license has been suspended under the nonresident violator compact.
- ~~i. (9)~~ Whose license is barred under Iowa Code section 321.560.
- ~~j. (10)~~ Whose license has been suspended or revoked for a drug or drug-related offense.
- ~~k. (11)~~ Whose license has been suspended due to receipt of a certificate of noncompliance from the child support recovery unit.
- ~~l. (12)~~ Whose license has been suspended due to receipt of a certificate of noncompliance from the college student aid commission.
- ~~m. (13)~~ Whose license has been suspended for a charge of vehicular homicide.
- ~~n. (14)~~ Whose license has been suspended under Iowa Code subsection 321.180B(3).
- (15) Whose license has been suspended under Iowa Code section 714.7D.

b. Notwithstanding paragraph 615.45(1) "a," the department may issue a temporary restricted license under Iowa Code section 321.215(2) in cases of hardship to an applicant:

- (1) Whose license has been suspended for failure to pay a fine, penalty, surcharge or court costs.
- (2) Whose license has been mandatorily revoked under Iowa Code section 321.209(5).
- (3) Whose license has been suspended under the nonresident violator compact.
- (4) Whose license is barred under Iowa Code section 321.560, based solely on offenses enumerated in Iowa Code section 321.555(1) "c" or 321.555(2).
- (5) Whose license has been suspended or revoked for a drug or drug-related offense.
- (6) Whose license has been suspended under Iowa Code section 714.7D.
- (7) Whose license has been suspended under Iowa Code section 321.210(1) "a," except the department shall not issue a temporary restricted license for suspensions under Iowa Code section 321.210(1) "a" (3).

615.45(2) Application.

a. To obtain a temporary restricted license, an applicant shall complete and submit a written request for an interview with a driver's license hearing officer. ~~The request shall be submitted~~ Form

TRANSPORTATION DEPARTMENT[761](cont'd)

430100 and any supporting documentation to the office of driver and identification services at the address in 761—600.2(17A).

b. If the driver’s license hearing officer approves the issuance of a temporary restricted license, the officer shall furnish to the applicant application Form 430100, which is to be completed and submitted to the office of driver services.

e. b. A temporary restricted license issued for employment may include permission for the licensee to transport dependent children to and from a location for child care when that activity is essential to continuation of the licensee’s employment.

c. An applicant for a temporary restricted license under paragraph 615.45(1)“b” shall certify under penalty of perjury that the license is requested due to hardship. Hardship includes, but is not limited to, circumstances where alternative means of transportation do not exist.

615.45(3) Statements. A person applying for a temporary restricted license shall submit all of the following statements that apply to the person’s situation. Each statement shall explain the need for the license and shall list specific places and times for the activity which can be verified by the department.

a. A statement from the applicant, including whether the temporary restricted license is requested due to hardship, if applicable.

b. to g. No change.

615.45(4) Additional requirements. An applicant for a temporary restricted license shall also:

a. and b. No change.

c. Pay the required civil penalty specified in Iowa Code Supplement section 321.218A or 321A.32A.

615.45(5) Issuance and restrictions.

a. When the application is approved and all requirements are met, the applicant shall be notified by the department to appear before a driver’s license examiner. The applicant shall pass the appropriate examination for the type of vehicle to be operated under the temporary restricted license. An Iowa resident shall also pay the reinstatement and license fees.

b. No change.

615.45(6) No change.

ITEM 28. Amend 761—Chapter 615, implementation sentence, as follows:

~~These rules are~~ This rule is intended to implement Iowa Code chapter 321A and sections 252J.8, 321.177, 321.178, 321.184, 321.185, 321.186, 321.189, 321.191, 321.193, 321.194, 321.201, 321.205, 321.209, 321.210, 321.210A, 321.212, 321.213A, 321.213B, 321.215, 321.218, 321.218A, 321.513, and 321.560 and Iowa Code Supplement sections 321.218A and ~~321A.32A~~ 714.7D.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman has established today the following rates of interest for public obligations and special assessments. The usury rate for January is 4.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of

TREASURER OF STATE(cont'd)

comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective January 11, 2018, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS		
7-31 days	.....	Minimum .05%
32-89 days	.....	Minimum .05%
90-179 days	.....	Minimum .10%
180-364 days	.....	Minimum .15%
One year to 397 days	.....	Minimum .30%
More than 397 days	.....	Minimum .55%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

February 1, 2017 — February 28, 2017	4.50%
March 1, 2017 — March 31, 2017	4.50%
April 1, 2017 — April 30, 2017	4.50%
May 1, 2017 — May 31, 2017	4.50%
June 1, 2017 — June 30, 2017	4.25%
July 1, 2017 — July 31, 2017	4.25%
August 1, 2017 — August 31, 2017	4.25%
September 1, 2017 — September 30, 2017	4.25%
October 1, 2017 — October 31, 2017	4.25%
November 1, 2017—November 30, 2017	4.25%
December 1, 2017—December 31, 2017	4.25%
January 1, 2018 — January 31, 2018	4.25%
February 1, 2018 — February 28, 2018	4.50%

ARC 3599C

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed Emergency****Rule making related to state supplementary assistance**

The Human Services Department hereby amends Chapter 51, “Eligibility,” and Chapter 52, “Payment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 14.

Purpose and Summary

These amendments implement the January 1, 2018, cost-of-living adjustments (COLA) to income limits and benefit amounts for several State Supplementary Assistance (SSA) categories. These amendments also implement the changed personal needs allowance for the residential care facility (RCF) assistance and family-life home (FLH) assistance. The net change to the personal needs allowance is a decrease due to a small COLA percentage increase that is offset by a larger decrease in the average monthly Medicaid copayments used to calculate the amount of this deduction.

*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 the statute so provides. The Administrative Rules Review Committee reviewed this rule making on January 5, 2018, pursuant to 2017 Iowa Acts, House File 653, section 32. These amendments increase payment amounts and income limits under the SSA program in accordance with cost-of-living increases in Supplemental Security Income (SSI) benefits, as required by the Iowa General Assembly in order to meet federal pass-along requirements.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a) and (b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on January 5, 2018, because the rule making is in compliance with 2017 Iowa Acts, House File 653, section 14, and because it confers a benefit on the public by increasing payment amounts and income limits under the SSA program.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on December 13, 2017.

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 3596C** to allow for public comment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Fiscal Impact

The RCF and FLH personal needs allowances (PNAs) are decreasing by \$1 per month from \$100 to \$99 per month. The base personal needs allowance is increased only slightly due to the 2 percent COLA this year. This increase was more than offset by the decrease in the average Medicaid copayment per client per month for RCF assistance recipients. (The average Medicaid copayment per client per month is added to the base PNA to determine the final monthly PNA.) The average copayment per client per month for RCF assistance recipients for August 2016 through July 2017 was \$.90. This is a decrease of \$2.89 from last year's average of \$3.79. For FLH recipients, the \$16 increase in the payment to the FLH is offset by the \$1 decrease in the personal needs deduction and a \$15 increase in the SSI payment. The recipient will pay up to \$16 more due to the \$15 increase in income and a \$1 decrease in the PNA. For RCF assistance recipients, the maximum total payment to the facility will increase up to \$15.19 per month per recipient $[(30.60 - 30.11) \times 31 \text{ days}]$. RCF costs are shared by the state and the RCF assistance recipient. Any potential increased costs to the state are expected to be more than offset by declining RCF caseloads in SFY '18 and SFY '19. For dependent-person assistance recipients, the maximum monthly payment is increasing by \$8, from \$379 to \$387. Each dependent-person assistance recipient will receive up to an \$8 increase, resulting in an anticipated increase in state expenditures.

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 became effective on January 5, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 51.4(1) as follows:

51.4(1) Income. Income of a dependent relative shall be less than ~~\$379~~ \$387 per month. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249), introductory paragraph, as follows:

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, ~~\$379~~ \$387 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

ITEM 3. Amend subrule 52.1(1) as follows:

52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a family-life home certified under rules in 441—Chapter 111.

HUMAN SERVICES DEPARTMENT[441](cont'd)

\$797	\$813	Care allowance
<u>\$100</u>	<u>\$ 99</u>	Personal allowance
\$897	\$912	Total

ITEM 4. Amend subrule 52.1(2) as follows:

52.1(2) *Dependent relative.* The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient’s home.

a. Aged or disabled client and a dependent relative	\$1,114	<u>\$1,137</u>
b. Aged or disabled client, eligible spouse, and a dependent relative	\$1,482	<u>\$1,512</u>
c. Blind client and a dependent relative	\$1,136	<u>\$1,159</u>
d. Blind client, aged or disabled spouse, and a dependent relative	\$1,504	<u>\$1,534</u>
e. Blind client, blind spouse, and a dependent relative	\$1,526	<u>\$1,556</u>

ITEM 5. Amend subrule 52.1(3) as follows:

52.1(3) *Residential care.* For periods of eligibility before July 1, 2017, the department will reimburse a recipient in either a privately operated or non-privately operated residential care facility on a flat per diem rate of \$17.86 or on a cost-related reimbursement system with a maximum per diem rate of \$30.11. The department shall establish a cost-related per diem rate for each licensed residential care facility choosing the cost-related reimbursement method of payment according to rule 441—54.3(249).

For periods of eligibility beginning July 1, 2017, ~~and thereafter,~~ payment to a recipient in a privately operated licensed residential care facility shall be based on the maximum per diem rate of \$30.11, ~~but reimbursement.~~ Reimbursement for recipients in non-privately operated residential care facilities will ~~continue to~~ be based on the flat per diem rate of \$17.86 or be based on the cost-related reimbursement system with a maximum per diem rate of \$30.11.

For periods of eligibility beginning January 1, 2018, and thereafter, payment to a recipient in a privately operated licensed residential care facility shall be based on the maximum per diem rate of \$30.60. Reimbursement for recipients in non-privately operated residential care facilities will be based on the flat per diem rate of \$17.86 or be based on the cost-related reimbursement system with a maximum per diem rate of \$30.60.

The facility shall accept the per diem rate established by the department for state supplementary assistance recipients as payment in full from the recipient and make no additional charges to the recipient.

a. All income of a recipient as described in this subrule after the disregards described in this subrule shall be applied to meet the cost of care before payment is made through the state supplementary assistance program.

Income applied to meet the cost of care shall be the income considered available to the resident pursuant to supplemental security income (SSI) policy plus the SSI benefit less the following monthly disregards applied in the order specified:

- (1) No change.
 - (2) An allowance of ~~\$100~~ \$99 to meet personal expenses and Medicaid copayment expenses.
 - (3) to (6) No change.
- b. to g. No change.

[Filed Emergency 1/5/18, effective 1/5/18]
 [Published 1/31/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.

ARC 3611C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Rule making related to Iowa organic program

The Department of Agriculture and Land Stewardship hereby amends Chapter 47, "Iowa Organic Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 190C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 190C.

Purpose and Summary

These amendments update provisions related to organic certification and remove provisions made redundant by national requirements already adopted by reference. The amendments also rescind a number of items that were only recommendations.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3403C**. A public hearing was held on November 14, 2017, at 2 p.m. at the Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on January 10, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

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 will become effective on March 7, 2018.

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

The following rule-making actions are adopted:

ITEM 1. Rescind and reserve rule **21—47.2(190C)**.

ITEM 2. Amend rule 21—47.3(190C) as follows:

21—47.3(190C) Crops Drift.

~~47.3(1) *Split operations.* Split operations shall be allowed. Segregation plans shall be developed and followed, and applicable logs shall be maintained for organic and nonorganic crops. The operation shall maintain, but not be limited to, the documents and logs addressing the following procedures: equipment cleaning, spraying, purging, separate storage and separate transportation. Appropriate physical facilities, machinery and management practices shall be established to prevent commingling of nonorganic and organic products or contamination by prohibited substances.~~

~~47.3(2) *Buffer zone.*~~

~~a. *Requirements.*~~

~~(1) If crops are grown in a buffer zone, such crops shall not be labeled, sold or in any way represented as organic.~~

~~(2) Crops harvested from buffer zones shall be kept separate from organic crops, and appropriately designated storage areas shall be clearly identified and records maintained to sufficiently identify the disposition of nonorganic product.~~

~~b. *Recommendations.*~~

~~(1) A minimum of 25 feet is recommended as a buffer zone between certified organic crops and areas treated with prohibited substances.~~

~~(2) Planting windbreaks and hedgerows is encouraged to help reduce spray drift from neighboring farms and wind damage to crops.~~

~~(3) It is recommended that the producer notify neighbors, county roadside management officials, railroads, utility companies and other potential sources of contaminants. It is recommended that the producer provide such individuals with maps of organic production areas, request individuals not to spray adjacent areas, and request to be informed if prohibited materials are applied to land adjacent to organic production areas.~~

~~(4) Place “no-spray” or “organic farm” signs where appropriate, e.g., roadways and access areas.~~

~~47.3(3) *Drift.*~~

~~a. The party in control of the site shall notify the department’s organic program of suspected pesticide drift incidences onto certified organic land or land which is under consideration for organic certification. The department may require residue testing to make a determination regarding certification.~~

~~b. In the case of drift, the affected party may file a complaint under Iowa Code section 206.14 with the department’s pesticide bureau.~~

~~47.3(4) *Runoff and flooding.*~~

~~a. Records shall be kept regarding land that is subject to runoff or flooding.~~

~~b. The department may require testing to make a determination regarding certification.~~

~~47.3(5) *Rotations.* For the production of annual crops, rotations are required for soil improvement and disruption of weed, insect, disease and nematode cycles. A crop rotation including, but not limited to, sod, legumes or other nitrogen-fixing plants, and green manure crops shall be established.~~

~~a. *Annual agronomic crops (row crops and small grain crops).*~~

~~(1) Crops of the same species or family shall not be grown repeatedly without interruption on the same field or plot.~~

~~(2) Soil building period. It is recommended that each field or plot be planted in and achieve a viable stand of a solid-seeded (non-row), soil building legume crop or crop mixture that includes at least one legume species and that the field or plot be maintained a minimum of one year out of a five-year period. During this soil building period, the producer may maintain the soil building crop through the crop’s growing period to maturity or until the crop achieves its optimal soil building characteristics. Soil building crops may be used as winter cover or plow-down in fall. Some examples of soil building practices include the following:~~

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

1. ~~Plant and harvest a small grain crop with the solid-seeded crop mixture identified above; e.g., plant oats and alfalfa in the spring and harvest oats in the summer;~~

2. ~~Maintain the solid-seeded crop mixture identified above for more than one season; e.g., alfalfa established in one season may be maintained and harvested for successive years if desired; or~~

3. ~~Harvest the solid-seeded crop mixture identified above prior to its incorporation into the soil; e.g., harvest oats and alfalfa mixture in the summer prior to incorporation into the soil at a later time.~~

~~b. Annual horticultural crops (fruit, vegetable, and herb crops).~~

(1) ~~Crops of the same species or family shall not be grown repeatedly without interruption on the same field or plot.~~

(2) ~~Soil building period. It is recommended that each field or plot be planted in and achieve a viable stand of a solid-seeded (non-row), soil-building legume crop or crop mixture that includes at least one legume species and that the field or plot be maintained a minimum of one year out of a five-year period. During this soil building period, the producer may maintain the soil building crop through the crop's growing period to maturity or until the crop achieves its optimal soil building characteristics. Soil building crops may be used as winter cover or plow-down in fall. Some examples of soil building practices include the following:~~

1. ~~Plant and harvest a small grain crop with the solid-seeded crop mixture identified above; e.g., plant oats and alfalfa in the spring and harvest oats in the summer;~~

2. ~~Maintain the solid-seeded crop mixture identified above for more than one season; e.g., alfalfa established in one season may be maintained and harvested for successive years if desired; or~~

3. ~~Harvest the solid-seeded crop mixture identified above prior to its incorporation into the soil; e.g., harvest oats and alfalfa mixture in the summer prior to incorporation into the soil at a later time.~~

(3) ~~It is recommended that the producer make an effort to establish a rotation sequence where crops of the same species or family, e.g., Solanaceae family: tomatoes, peppers, potatoes, and eggplant, are not planted in the same field or plot in consecutive years.~~

~~c. Perennials. Perennial systems shall include a plan for biodiversity in the system and a soil building program, including the use of cover crops, mulches, grass cover and a soil building legume crop mixture.~~

(1) ~~It is strongly recommended that, at the end of a perennial crop life cycle that exceeds four years, the field or plot be planted in a solid-seeded (non-row) soil building legume crop or crop mixture which includes at least one legume species, achieves a viable stand, and is maintained for a minimum of one year prior to planting another perennial crop.~~

(2) ~~Replacement of individual plants within a perennial crop stand is permissible.~~

(3) ~~Rescinded IAB 10/29/03, effective 12/3/03.~~

~~d. Crop rotation variance. Rescinded IAB 10/29/03, effective 12/3/03.~~

ITEM 3. Rescind and reserve rule 21—47.4(190C).

ITEM 4. Amend rule 21—47.5(190C) as follows:

21—47.5(190C) Use of state seal Recognition. For the promotion or sale of organic products, only those producers, handlers and processors certified as organic by the department are entitled to utilize the state Iowa Organic Program seal attesting to state of Iowa organic certification.

ITEM 5. Amend rule 21—47.6(190C) as follows:

21—47.6(190C) General requirements. In order to receive and maintain organic certification from the department, producers, processors and handlers of organic agricultural products shall apply for organic certification with the department and submit all required materials; comply with Iowa Code chapter 190C and this chapter; permit the department to access the operation and all applicable records as deemed necessary; comply with all local, state and federal regulations applicable to the conduct of such business; and submit all applicable fees to the department pursuant to Iowa Code section 190C.5(1) as amended by 2003 Iowa Acts, House File 600, and this chapter.

47.6(1) Application for state organic certification.

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

a. Application for ~~state~~ certification shall be completed and submitted with required application materials and fees to the department on forms furnished by the department. Applications submitted to the department after the published deadline date may be charged late fees for application and inspection, and the processing of such applications may be subject to delays or the applications may not be processed at all.

b. The applicant shall inform the department of changes to the organic plan which may affect the conformity of the operation to the certification standards at any time during the certification process and after such certification is granted.

c. The ~~state-certified~~ certified party shall inform the department of any changes in the organic plan, such as production changes or intended modification to the product(s) or manufacturing process which may affect the conformity of the operation to the certification standards. ~~If such is the case, the certified party may not be allowed to release such products as certified organic products bearing the state seal until the department has given approval to do so.~~

d. The certified party shall keep a record of all complaints made known to that party relating to a product's compliance with requirements to the relevant standard and shall make these records available to the department upon request. The certified party shall take appropriate action with respect to such complaints and any deficiencies found in products or services that affect compliance with the requirements for certification, and all such actions shall be documented and available upon request by the department.

e. ~~Records of inputs applied to nonorganic fields or livestock split or parallel operations shall be maintained and made available during inspections. This applies to all fields in the operation whether leased or owned.~~

47.6(2) Reserved.

ITEM 6. Amend rule 21—47.8(190C) as follows:

21—47.8(190C) Certification agent.

47.8(1) The department shall serve as certification agent on behalf of and as authorized by the secretary of agriculture pursuant to Iowa Code section 190C.3 ~~as amended by 2003 Iowa Acts, House File 600.~~

47.8(2) Scope of certification. Contingent upon USDA accreditation, the department may inspect and certify organic production and handling operations located outside of the state. The intent of the department is to facilitate continuity of certification services to Iowa-based farms or businesses, or when the county in which the applicant resides is contiguous to the state. Consideration may be given to other out-of-state applicants. ~~The department may seek accreditation from USDA to provide certification services in Iowa and other states where necessary.~~

ITEM 7. Amend rule 21—47.9(190C), introductory paragraph, as follows:

21—47.9(190C) Fees. Fees are established for application, inspection, and certification to support costs associated with activities necessary to administer this program pursuant to Iowa Code sections 190C.5(1) to 190C.5(3) ~~as amended by 2003 Iowa Acts, House File 600.~~ The applicant shall submit all fees to the department for the specific amount and at the appropriate time as specified in this rule. A schedule of application, inspection and certification fees shall be published by the department and disseminated with the application packet.

ITEM 8. Amend subrule 47.9(3) as follows:

47.9(3) Certification fees. Certification fees may be adjusted annually pursuant to Iowa Code section 190C.5(2) ~~as amended by 2003 Iowa Acts, House File 600.~~ The certification fee is assessed annually.

ITEM 9. Amend subrules 47.10(1) to 47.10(3) as follows:

47.10(1) Enforcement and investigations. The department and the attorney general shall enforce Iowa Code chapter 190C and this chapter pursuant to Iowa Code ~~section 190C.21 as amended by 2003 Iowa Acts, House File 600~~ chapter 190C.

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

47.10(2) Complaints. Any person may submit a written complaint to the department regarding a suspected violation of Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.22(2) ~~as amended by 2003 Iowa Acts, House File 600~~. Such signed complaints shall be submitted on the required form provided by the department upon request.

47.10(3) Inspection and testing, reporting and exclusion from sale—unscheduled inspection. All parties making an organic claim may be subject to an unscheduled on-site inspection, review of records and sampling if deemed necessary by the department pursuant to Iowa Code sections 190C.22(3), 190C.22(4), and 190C.24(1) ~~as amended by 2003 Iowa Acts, House File 600~~, to verify compliance.

ITEM 10. Rescind and reserve rule ~~21—47.11(190C)~~.

ITEM 11. Amend ~~21—Chapter 47~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 190C ~~as amended by 2003 Iowa Acts, House File 600~~.

[Filed 1/11/18, effective 3/7/18]

[Published 1/31/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.

ARC 3603C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to statewide obstetrical and newborn indigent patient care program

The Department of Public Health hereby rescinds Chapter 75, “Statewide Obstetrical and Newborn Indigent Patient Care Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 135.152 and 2017 Iowa Acts, House File 393, division IV.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.152 and 2017 Iowa Acts, House File 393, division IV.

Purpose and Summary

2017 Iowa Acts, House File 393, division IV, section 24, repealed Iowa Code section 135.152 that directed the Department to establish the obstetrical and newborn indigent patient care program. The rules for administration of the program are located in Chapter 75. This amendment rescinds Chapter 75.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 11, 2017, as **ARC 3350C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 10, 2018.

Fiscal Impact

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

PUBLIC HEALTH DEPARTMENT[641](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 State Board of Health for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 7, 2018.

The following rule-making action is adopted:

Rescind and reserve **641—Chapter 75**.

[Filed 1/11/18, effective 3/7/18]

[Published 1/31/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.

ARC 3604C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to office of minority and multicultural health

The Department of Public Health hereby rescinds Chapter 82, "Office of Minority and Multicultural Health," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 135.12 and 2017 Iowa Acts, House File 653.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.12 and 2017 Iowa Acts, House File 653.

Purpose and Summary

2017 Iowa Acts, House File 653, division XXIII, removed all references to the Office of Minority and Multicultural Health from the Iowa Code. House File 653 removed the underlying statutory authority for Chapter 82. This amendment rescinds Chapter 82.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 11, 2017, as **ARC 3351C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 10, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

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 State Board of Health for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 7, 2018.

The following rule-making action is adopted:

Rescind and reserve **641—Chapter 82**.

[Filed 1/11/18, effective 3/7/18]

[Published 1/31/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.

ARC 3605C

PUBLIC HEALTH DEPARTMENT[641]**Adopted and Filed****Rule making related to local substitute medical decision-making boards**

The Department of Public Health hereby rescinds Chapter 85, "Local Substitute Medical Decision-Making Boards," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 135 and 2017 Iowa Acts, House File 393, section 24.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.11 and 2017 Iowa Acts, House File 393, section 24.

Purpose and Summary

2017 Iowa Acts, House File 393, section 24, repealed Iowa Code section 135.29, which established the statutory authority for local substitute medical decision-making boards. This amendment rescinds Chapter 85, which established the requirements and procedures for local substitute medical decision-making boards.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 22, 2017, as **ARC 3460C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 10, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

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 State Board of Health for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 7, 2018.

The following rule-making action is adopted:

Rescind and reserve **641—Chapter 85**.

[Filed 1/11/18, effective 3/7/18]

[Published 1/31/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.

ARC 3606C**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed****Rule making related to medical cannabidiol**

The Department of Public Health hereby amends Chapter 154, “Medical Cannabidiol Act Registration Card Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3(1)“b” and 136.3(9) and 2017 Iowa Acts, House File 524, section 14(2).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 124E and 2017 Iowa Acts, House File 524.

Purpose and Summary

On May 12, 2017, Governor Branstad signed 2017 Iowa Acts, House File 524, which repealed existing Iowa Code chapter 124D and enacted new Iowa Code chapter 124E, the Medical Cannabidiol Act. The legislation was effective upon enactment. House File 524 expanded the state’s existing Medical Cannabidiol Act in a number of ways, including expanding the list of conditions for which a patient is eligible to receive a medical cannabidiol patient or primary caregiver registration card, establishing a Medical Cannabidiol Board, providing for licensure of medical cannabidiol manufacturers and dispensaries, establishing a fee structure for registration cards and licensure applications, and adding a new requirement for a real-time, 24/7 statewide medical cannabidiol registry management and seed-to-sale tracking system.

These amendments establish operational requirements for medical cannabidiol manufacturers and dispensaries as well as operating procedures for the newly created Medical Cannabidiol Board. The amendments implement the duties of the Department as related to manufacturing and dispensing and establish annual licensing procedures, manufacturer and dispensary operational requirements and prohibited activities, facility security requirements, advertising and marketing restrictions, and requirements for packaging and labeling, medical cannabidiol transportation and disposal, record keeping, medical cannabidiol production, quality assurance and control, supply and inventory tracking, inspections, penalty assessment, license suspension or revocation proceedings and closure of operations.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3420C**. A public hearing was held on December 8, 2017, from 10 a.m. to 12 noon at the Lucas State Office Building, Des Moines, Iowa. An opportunity for public comment during the hearing was provided in person as well as through an operator-assisted conference call. There were two attendees at the public hearing, both of whom expressed support for the rule making and had no suggestions for edits to the proposed amendments.

Public comments were received from the Department’s licensed manufacturer, and a meeting was held with representatives of the licensed manufacturer on December 8, 2017, to review the comments received. The Department requested that suggested revisions to the proposed language be provided. The licensed manufacturer provided those suggested revisions on December 15, 2017. The Department analyzed the proposed revisions and accepted a number of them, including suggestions to make the security requirements less onerous for the regulated community while still preserving the ability

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to identify diversion of medical cannabidiol products or cannabis plant material. Recommended revisions to the product-labeling rules, as well as to the marketing and advertising rules, have not been incorporated at this time, as additional research into the practices in other states is ongoing. The Department understands the regulated community's interest in labeling, marketing and advertising activities. The rules as adopted will still allow for labeling, marketing and advertising activities but will require the Department's approval and oversight prior to commencement of these activities. Iowa Code references were updated to reflect codification of 2017 Iowa Acts, House File 524, at Iowa Code chapter 124E.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 10, 2018.

Fiscal Impact

The Department anticipates that implementation of 2017 Iowa Acts, House File 524, will cause the expenditure of state funds in excess of \$100,000 per year. Anticipated costs include personnel to oversee the startup and administration of the program, technology solutions that are required by the statute, and administrative costs for equipment and office supplies.

Jobs Impact

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

Waivers

Waiver provisions for these rules are located at 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 7, 2018.

The following rule-making actions are adopted:

- ITEM 1. Amend **641—Chapter 154**, title, as follows:
MEDICAL CANNABIDIOL ACT REGISTRATION CARD PROGRAM
- ITEM 2. Amend rule 641—154.1(87GA, HF524) as follows:

641—154.1(87GA, HF524) Definitions. For the purposes of these rules, the following definitions shall apply:

“Accredited nonpublic school” means any nonpublic school accredited by the Iowa state board of education, excluding home schools.

“Audit” means a financial review by an independent certified public accountant that includes select scope engagement or other methods of review that analyze operational or compliance issues.

“Background investigation” means a thorough review of an entity, owner, investors, and employees conducted by the department of public safety, including but not limited to state and national criminal history records, credit records, and internal revenue service records.

“Batch” means a set of cannabis plants that are grown, harvested, and processed together, such that they are exposed to substantially similar conditions throughout cultivation and processing.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“Batch number” means a unique numeric or alphanumeric identifier assigned to a batch of cannabis plants by a manufacturer when the batch is first planted. The batch number shall contain the manufacturer’s number and a sequence to allow for inventory and traceability.

“Biosecurity” means a set of preventative measures designed to reduce the risk of transmission of:

1. Infectious diseases in crops;
2. Quarantined pests;
3. Invasive alien species;
4. Living modified organisms.

“Bordering state” means the same as defined in Iowa Code section 331.910.

“Cannabis” means seeds, plants, cuttings, or plant waste material from *Cannabis sativa* L. or *Cannabis indica* used in the manufacture of medical cannabidiol.

“Crop input” means any substance applied to or used in the cultivation and growth of a cannabis plant. “Crop input” includes, but is not limited to, pesticides, fungicides, fertilizers, and other soil or medium amendments.

“Date of expiration” means one year from the date of issuance of the medical cannabidiol registration card by the department of transportation.

“Date of issuance” means the date of issuance of the medical cannabidiol registration card by the department of transportation.

“Debilitating medical condition” means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn’s disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
8. Parkinson’s disease.
9. Untreatable pain.

“Department” means the Iowa department of public health.

“Department of transportation” means the Iowa department of transportation.

“Director” means the director of the Iowa department of public health.

“Dispensary” means an individual or entity licensed by the department to dispense medical cannabidiol to patients and primary caregivers pursuant to Iowa Code chapter 124E and these rules.

“Dispensary” includes the employees and agents of the dispensary.

“Dispensary facility” means any secured building, space, grounds, and physical structure of a dispensary licensed by the department to dispense medical cannabidiol and where the dispensing of medical cannabidiol is authorized.

“Dispense” or “dispensing” means to supply medical cannabidiol to patients pursuant to Iowa Code chapter 124E and these rules.

“Disqualifying felony offense” means a violation under federal or state law of a felony under federal or state law, which has as an element the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. §802(6).

“Edible medical cannabidiol products” means food items containing medical cannabidiol. “Edible medical cannabidiol products” does not include pills, tinctures, oils, or other forms of medical cannabidiol that may be consumed orally or through the nasal cavity that do not contain food or food

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additives; provided that food or food additives used as carriers, excipients, or processing aids shall not be considered food or food additives.

“Form and quantity” means the types and amounts of medical cannabidiol allowed to be dispensed to a patient or primary caregiver as approved by the department subject to recommendation by the medical cannabidiol board and approval by the board of medicine.

“Health care practitioner” means an individual licensed under Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery who is a patient’s primary care provider. “Health care practitioner” shall not include a physician assistant licensed under Iowa Code chapter 148C or an advanced registered nurse practitioner licensed pursuant to Iowa Code chapter 152 or 152E.

“Inspection” means an on-site evaluation by the department, the department of public safety, or a department-approved independent consultant of facilities, records, personnel, equipment, methodology, and quality assurance practices for compliance with these rules.

“International Electrotechnical Commission” or “IEC” means an independent, nongovernmental membership organization that prepares and publishes international standards for all electrical, electronic, and related technologies.

“International Organization for Standardization” or “ISO” means an independent, nongovernmental membership organization and the largest developer of voluntary international standards.

“Laboratory” means the state hygienic laboratory at the University of Iowa or other independent medical cannabidiol testing facility accredited to Standard ISO/IEC 17025 by an ISO-approved accrediting body, with a controlled substance registration certificate from the Drug Enforcement Administration of the U.S. Department of Justice and a certificate of registration from the Iowa board of pharmacy, and approved by the department to examine, analyze, or test samples of medical cannabidiol or any substance used in the manufacture of medical cannabidiol.

“Lot” means a specific quantity of medical cannabidiol that is uniform and intended to meet specifications for identity, strength, purity, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling record.

“Lot number” means a unique numeric or alphanumeric identifier assigned to a lot by a manufacturer when medical cannabidiol is produced. The lot number shall contain the manufacturer’s number and a sequence to allow for inventory, traceability, and identification of the plant batches used in the production of a lot of medical cannabidiol.

“Manufacture” or “manufacturing” means the process of converting harvested cannabis plant material into medical cannabidiol.

“Manufacturer” means an individual or entity licensed by the department to produce medical cannabidiol and distribute it to dispensaries pursuant to Iowa Code chapter 124E and these rules. “Manufacturer” includes the employees and agents of the manufacturer.

“Manufacturing facility” means any secured building, space, grounds, and physical structure of a manufacturer for the cultivation, harvesting, packaging, processing, storage, and distribution of cannabis or medical cannabidiol and where access is restricted to designated employees of a manufacturer and escorted visitors.

“Market withdrawal” means the voluntary removal of medical cannabidiol from dispensaries and patients by a manufacturer for minor issues that do not pose a serious health threat.

“Director” means the director of the Iowa department of public health.

“Dispensary” means an individual or entity licensed by the department to dispense medical cannabidiol to patients and primary caregivers pursuant to Iowa Code chapter 124E and these rules. “Dispensary” includes the employees and agents of the dispensary.

“Dispensary facility” means any secured building, space, grounds, and physical structure of a dispensary licensed by the department to dispense medical cannabidiol and where the dispensing of medical cannabidiol is authorized.

“Dispense” or “dispensing” means to supply medical cannabidiol to patients pursuant to Iowa Code chapter 124E and these rules.

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“Disqualifying felony offense” means a violation under federal or state law of a felony under federal or state law, which has as an element the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. §802(6).

“Edible medical cannabidiol products” means food items containing medical cannabidiol. “Edible medical cannabidiol products” does not include pills, tinctures, oils, or other forms of medical cannabidiol that may be consumed orally or through the nasal cavity that do not contain food or food additives; provided that food or food additives used as carriers, excipients, or processing aids shall not be considered food or food additives.

“Form and quantity” means the types and amounts of medical cannabidiol allowed to be dispensed to a patient or primary caregiver as approved by the department subject to recommendation by the medical cannabidiol board and approval by the board of medicine.

“Health care practitioner” means an individual licensed under Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery who is a patient’s primary care provider. “Health care practitioner” shall not include a physician assistant licensed under Iowa Code chapter 148C or an advanced registered nurse practitioner licensed pursuant to Iowa Code chapter 152 or 152E.

“Inspection” means an on-site evaluation by the department, the department of public safety, or a department-approved independent consultant of facilities, records, personnel, equipment, methodology, and quality assurance practices for compliance with these rules.

“International Electrotechnical Commission” or “IEC” means an independent, nongovernmental membership organization that prepares and publishes international standards for all electrical, electronic, and related technologies.

“International Organization for Standardization” or “ISO” means an independent, nongovernmental membership organization and the largest developer of voluntary international standards.

“Laboratory” means the state hygienic laboratory at the University of Iowa or other independent medical cannabidiol testing facility accredited to Standard ISO/IEC 17025 by an ISO-approved accrediting body, with a controlled substance registration certificate from the Drug Enforcement Administration of the U.S. Department of Justice and a certificate of registration from the Iowa board of pharmacy, and approved by the department to examine, analyze, or test samples of medical cannabidiol or any substance used in the manufacture of medical cannabidiol.

“Lot” means a specific quantity of medical cannabidiol that is uniform and intended to meet specifications for identity, strength, purity, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling record.

“Lot number” means a unique numeric or alphanumeric identifier assigned to a lot by a manufacturer when medical cannabidiol is produced. The lot number shall contain the manufacturer’s number and a sequence to allow for inventory, traceability, and identification of the plant batches used in the production of a lot of medical cannabidiol.

“Manufacture” or “manufacturing” means the process of converting harvested cannabis plant material into medical cannabidiol.

“Manufacturer” means an individual or entity licensed by the department to produce medical cannabidiol and distribute it to dispensaries pursuant to Iowa Code chapter 124E and these rules. “Manufacturer” includes the employees and agents of the manufacturer.

“Manufacturing facility” means any secured building, space, grounds, and physical structure of a manufacturer for the cultivation, harvesting, packaging, processing, storage, and distribution of cannabis or medical cannabidiol and where access is restricted to designated employees of a manufacturer and escorted visitors.

“Market withdrawal” means the voluntary removal of medical cannabidiol from dispensaries and patients by a manufacturer for minor issues that do not pose a serious health threat.

“Medical assistance program” means IA Health Link, Medicaid Fee-for-Service, or HAWK-I, as administered by the Iowa Medicaid enterprise of the Iowa department of human services.

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“Medical cannabidiol” means any pharmaceutical grade cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that has a tetrahydrocannabinol level of no more than 3 percent and that is delivered in a form recommended by the medical cannabidiol board, approved by the board of medicine, and designated in this chapter.

“Medical cannabidiol waste” means medical cannabidiol that is returned, damaged, defective, expired, or contaminated.

“National criminal history background check” means fingerprint processing through the department of public safety and the Federal Bureau of Investigation (FBI) and review of records on file with national organizations, courts, and law enforcement agencies to the extent allowed by law.

“Patient” means a person who is a permanent resident of the state of Iowa who suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol pursuant to ~~2017 Iowa Acts, House File 524~~ Iowa Code chapter 124E and these rules.

“Permanent resident” means a natural person who physically resides in Iowa as the person’s principal and primary residence and who establishes evidence of such residency by providing the department with one of the following:

1. A valid Iowa driver’s license,
2. A valid Iowa nonoperator’s identification card,
3. A valid Iowa voter registration card,
4. A current Iowa vehicle registration certificate,
5. A utility bill,
6. A statement from a financial institution,
7. A residential lease agreement,
8. A check or pay stub from an employer,
9. A child’s school or child care enrollment documents,
10. Valid documentation establishing a filing for homestead or military tax exemption on property located in Iowa, or
11. Other valid documentation as deemed acceptable by the department to establish residency.

“Plant material” means any cannabis plant, cutting, trimming, or clone that has roots or that is cultivated with the intention of growing roots.

“Plant material waste” means plant material that is not used in the production of medical cannabidiol in a form allowable under these rules.

“Primary caregiver” means a person who is a resident of this state or a bordering state, including but not limited to a parent or legal guardian, at least 18 years of age, who has been designated by a patient’s health care practitioner as a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol pursuant to the provisions of ~~2017 Iowa Acts, House File 524~~ Iowa Code chapter 124E and these rules.

“Primary care provider” means any health care practitioner involved in the diagnosis and treatment of a patient’s debilitating medical condition.

“Production” or “produce” means:

1. Cultivating or harvesting plant material;
2. Processing or manufacturing; or
3. Packaging of medical cannabidiol.

“Public or private school” means any property operated by a school district, charter school, or accredited nonpublic school for purposes related to elementary, middle, or secondary schools or secondary vocation centers.

“Recall” means the return of medical cannabidiol from patients and dispensaries to a manufacturer because of the potential for serious health consequences from the use of the medical cannabidiol.

“Restricted access area” means a building, room, or other contiguous area on the premises where plant material is grown, cultivated, harvested, stored, packaged, or processed for sale under control of the manufacturer, and where no person under the age of 18 is permitted.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Untreatable pain*” means any pain whose cause cannot be removed and, according to generally accepted medical practice, the full range of pain management modalities appropriate for the patient has been used without adequate result or with intolerable side effects.

“*Written certification*” means a document signed by a health care practitioner, with whom the patient has established a patient-provider relationship, which states that the patient has a debilitating medical condition and identifies that condition and provides any other relevant information.

ITEM 3. Add the following new heading to precede rule **641—154.2(87GA, HF524)**:

REGISTRATION CARDS

ITEM 4. Reserve rule **641—154.15**.

ITEM 5. Adopt the following new rules 641—154.16(124E) to 641—154.65(124E):

641—154.16(124E) Duties of the department.

154.16(1) *Interagency agreements.* The department may enter into any interagency agreements with other state agencies for technical services or other assistance related to the regulation or inspection of manufacturers.

154.16(2) *Notice to law enforcement.* The department shall notify local law enforcement agencies and the department of public safety of the locations of manufacturers. If the department determines there is a threat to public safety, the department shall notify local law enforcement agencies and the department of public safety of any conditions that pose a threat to public safety, including but not limited to:

- a. Loss or theft of medical cannabidiol or plant material;
- b. Diversion or potential diversion of medical cannabidiol or plant material;
- c. Unauthorized access to the secure sales and inventory tracking system or other patient and caregiver information system or file; or
- d. Other violations of law.

154.16(3) *Inspection of manufacturers.* The department or its agents shall conduct regular inspections of manufacturers and manufacturing facilities as described in rule 641—154.28(124E).

154.16(4) *Establishment and maintenance of a secure sales and inventory tracking system.* The department shall establish and maintain a secure, electronic system that is available 24 hours a day, seven days a week to track:

- a. Inventory of plant material, medical cannabidiol, and waste material;
- b. Transport of plant material, waste material, and laboratory samples;
- c. Application and use of crop inputs and other solvents and chemicals;
- d. Sales of medical cannabidiol to dispensaries;
- e. Sales of medical cannabidiol from dispensaries to patients and primary caregivers.

154.16(5) *Licensure and licensure renewal of manufacturers.* The department shall issue a request for proposals to select and license by December 1, 2017, up to two manufacturers to manufacture and to possess, cultivate, harvest, transport, package, process, and supply medical cannabidiol within the state consistent with the provisions of Iowa Code chapter 124E and these rules.

a. To be eligible for licensure, an applicant manufacturer shall provide information on forms and in a manner required by the department of public safety for the completion of a background investigation. In addition, the applicant manufacturer shall submit to the department of public safety necessary funds to satisfy the full reimbursement of costs associated with completing the background investigations. If an applicant manufacturer is not found suitable for licensure as a result of the background investigation, a license shall not be issued by the department.

b. As a condition for licensure, an applicant manufacturer shall agree to begin supplying medical cannabidiol to licensed medical cannabidiol dispensaries in Iowa no later than December 1, 2018.

c. The initial license to manufacture medical cannabidiol shall be valid from December 1, 2017, through November 30, 2018. The license shall be renewed annually unless a manufacturer relinquishes the license, there is a change in state law prohibiting the department from renewing the license, or the license is revoked pursuant to Iowa Code chapter 124E or these rules.

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d. A license to manufacture issued by the department pursuant to these rules is not assignable or transferable.

e. The department shall consider the following factors in determining whether to select and license a medical cannabidiol manufacturer:

- (1) The technical expertise of an applicant manufacturer regarding medical cannabidiol;
- (2) The qualifications of an applicant manufacturer's employees;
- (3) The long-term financial stability of an applicant manufacturer;
- (4) The ability to provide appropriate security measures on the premises of an applicant manufacturer;

(5) Whether an applicant manufacturer has demonstrated an ability to meet certain medical cannabidiol production needs for medical use regarding the range of recommended dosages for each debilitating medical condition, the range of chemical compositions of any plant of the genus cannabis that will likely be medically beneficial for each of the debilitating medical conditions, and the form or forms of medical cannabidiol that may be appropriate for the approved debilitating medical conditions;

(6) An applicant manufacturer's projection of and ongoing assessment of wholesale product costs.

f. Pursuant to Iowa Code section 124E.6(1) "b," information submitted during the application process shall be confidential until the licensure process is completed unless otherwise protected from disclosure under state or federal law.

g. A licensed manufacturer shall submit an application to renew its license with the department at least six months before the license expires. The application shall be submitted on a form created by the department.

h. The department shall notify a manufacturer of the decision to approve or deny the manufacturer's license by August 1 of the year in which the renewal application is submitted.

154.16(6) Collection of fees from manufacturers. Except as provided in this rule, all fees are nonrefundable, shall be retained by the department, and shall be considered repayment receipts as defined in Iowa Code section 8.2.

a. *Fees to the department.*

(1) Each application for licensure as a manufacturer shall include a nonrefundable application fee of \$7,500.

(2) Licensed manufacturers shall pay an annual fee to the department to cover costs associated with regulating and inspecting manufacturers and for other expenses necessary for the administration of the medical cannabidiol program. The department shall assess the fee with the notice of approval of license renewal each year by August 1, payable by the manufacturer to the department no later than December 1.

b. *Fees to the department of public safety.*

(1) An applicant manufacturer shall be responsible to reimburse the department of public safety the full cost of conducting background investigations related to an application for licensure and operation as a licensed manufacturer. The department of public safety shall retain the right to bill a manufacturer for additional background investigations, as needed.

(2) Each manufacturer submitting an application for licensure shall, at the time of application, submit to the department of public safety a deposit of \$10,000 for each business owner subject to a background investigation and a national criminal history background check. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the applicant shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the manufacturer.

(3) A licensed manufacturer shall pay a deposit of \$200 per employee to the department of public safety for a background investigation and a national criminal history background check on any person being considered for hire as an employee of the manufacturer. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the manufacturer shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may

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refund or retain the fees as mutually agreed with the manufacturer. The department shall retain the right to preclude a potential employee from hire based upon the results of the background investigation and national criminal history background check.

641—154.17(124E) Manufacturer operations.

154.17(1) *Operating documents.* The operating documents of a manufacturer shall include all of the following:

a. Procedures for the oversight of the manufacturer, including descriptions of operational and management practices regarding:

(1) The forms and quantities of medical cannabidiol products that are produced at the manufacturing facility;

(2) The methods of planting, harvesting, drying, and storing cannabis;

(3) The estimated types and amounts of all crop inputs used in the production of medical cannabidiol;

(4) The estimated types and amounts of medical cannabidiol waste and plant material waste to be generated;

(5) The disposal methods for all waste materials;

(6) Employee training methods for the specific phases of production;

(7) Biosecurity measures used in the production and manufacturing of medical cannabidiol;

(8) Strategies for identifying and reconciling discrepancies in inventory of plant material or medical cannabidiol;

(9) Sampling strategy and quality testing for labeling purposes;

(10) Medical cannabidiol packaging and labeling procedures;

(11) Procedures for recall and market withdrawal of medical cannabidiol;

(12) Plans for responding to a security breach at a manufacturing facility or while medical cannabidiol is in transit to a dispensary;

(13) A business continuity plan;

(14) Records relating to all transport activities; and

(15) Other information requested by the department.

b. Procedures to ensure accurate record keeping.

c. Procedures for the implementation of appropriate security measures to deter and prevent the theft of medical cannabidiol and unauthorized entrance into areas containing medical cannabidiol.

154.17(2) *Prohibited activities.* A manufacturer shall not:

a. Own or operate a medical cannabidiol manufacturing facility unless the manufacturer is licensed by the department pursuant to Iowa Code chapter 124E and these rules;

b. Produce or manufacture medical cannabidiol in any location except in those areas approved by the department;

c. Sell, deliver, transport, or distribute medical cannabidiol from any location except its manufacturing facility or a dispensary facility;

d. Produce or manufacture medical cannabidiol in Iowa for sales or distribution outside of Iowa;

e. Sell or distribute medical cannabidiol to any person or business other than a dispensary;

f. Refuse to sell, deliver, transport, or distribute medical cannabidiol in any form or quantity produced by the manufacturer to a dispensary, unless deemed appropriate in the manufacturer's reasonable business judgment and approved by the department in writing;

g. Transport or deliver medical cannabidiol to any location except as allowed in subrule 154.22(1);

h. Sell medical cannabidiol that is not packaged and labeled in accordance with rule 645—154.21(124E);

i. Sell medical cannabidiol in any form or quantity other than a form or quantity approved by the department, subject to recommendation by the medical cannabidiol board and approval by the board of medicine;

j. Permit any person to consume medical cannabidiol on the property of the manufacturer;

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k. Employ a person who is under 18 years of age or who has been convicted of a disqualifying felony offense;

l. Manufacture edible medical cannabidiol products.

154.17(3) Criminal background investigations.

a. A manufacturer shall not have been convicted of a disqualifying felony offense and 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. An employee of a manufacturer shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

154.17(4) Relationship to health care practitioners. A manufacturer shall not share office space with, refer patients to, or have any financial relationship with a health care practitioner.

641—154.18(124E) Security requirements. The department may request assistance from the department of public safety in ensuring manufacturers meet the security requirements in this rule.

154.18(1) Visitor logs. Visitors to the manufacturing facility shall sign visitor manifests with name, date, and times of entry and exit, and shall wear badges that are visible at all times and that identify them as visitors.

154.18(2) Restricted access. A manufacturer shall use a controlled access system and written manifests to limit entrance to all restricted access areas of its manufacturing facility and shall retain a record of all persons who entered the restricted access areas.

a. The controlled access system shall do all of the following:

(1) Limit access to authorized individuals;

(2) Maintain a log of individuals with approved access, including dates of approvals and revocations;

(3) Track times of personnel entry to and exit from the facility;

(4) Store data for retrieval for a minimum of one year; and

(5) Limit access to authorized individuals in the event of a power failure.

b. Separate written manifests of visitors to restricted access areas shall be kept and stored for a minimum of one year if the controlled access system does not include electronic records of visitors to the restricted access areas.

c. A manufacturer shall promptly, but no later than five business days after receipt of request, submit stored controlled access system data to the department.

d. Restricted access areas shall be identified with signs that state: “Do Not Enter – Restricted Access Area – Access Limited to Authorized Personnel Only.”

154.18(3) Perimeter intrusion detection system.

a. Computer-controlled video surveillance system. A manufacturer shall operate and maintain in good working order a computer-controlled, closed-circuit television surveillance system on its premises that operates 24 hours per day, seven days a week, and visually records:

(1) All phases of medical cannabidiol production;

(2) All areas that might contain plant material and medical cannabidiol, including all safes and vaults;

(3) All points of entry and exit;

(4) The entrance to the video surveillance control room; and

(5) Parking areas, which shall have appropriate lighting for the normal conditions of the area under surveillance.

b. Camera specifications. Cameras shall:

(1) Capture clear and certain identification of any person entering or exiting a manufacturing facility or its parking areas to the extent identification is technologically feasible with generally accepted commercial security cameras;

(2) Have the ability to produce a clear, color still photograph live or from a recording;

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(3) Have on all recordings an embedded date-and-time stamp that is synchronized to the recording and does not obscure the picture; and

(4) Continue to operate during a power outage.

c. Video recording specifications.

(1) A video recording shall export still images in an industry standard image format, such as .jpg, .bmp, or .gif.

(2) Exported video shall be archived in a format that ensures authentication and guarantees that the recorded image has not been altered.

(3) Exported video shall also be saved in an industry standard file format that can be played on a standard computer operating system.

(4) All recordings shall be erased or destroyed at the end of the retention period and prior to disposal of any storage medium.

d. Additional requirements. A manufacturer shall maintain all security system equipment and recordings in a secure location to prevent theft, loss, destruction, corruption, and alterations.

e. Retention. A manufacturer shall ensure that recordings from all video cameras are:

(1) Available for viewing by the department upon request;

(2) Retained for at least 60 days;

(3) Maintained free of alteration or corruption; and

(4) Retained longer, as needed, if a manufacturer is given actual notice of a pending criminal, civil, or administrative investigation, or other legal proceeding for which the recording may contain relevant information.

f. Required signage. A manufacturer shall post a sign in capital letters in a conspicuous location at every entrance to the manufacturing facility that reads, "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE."

154.18(4) Security alarm system requirements.

a. A manufacturer shall install and maintain a professionally monitored security alarm system that provides intrusion and fire detection of all:

(1) Facility entrances and exits;

(2) Rooms with exterior windows;

(3) Rooms with exterior walls;

(4) Roof hatches;

(5) Skylights; and

(6) Storage rooms.

b. For the purposes of this subrule, a security alarm system means a device or series of devices that summons law enforcement personnel during, or as a result of, an alarm condition. Devices may include:

(1) Hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audio, visual, or electronic signal;

(2) Motion detectors;

(3) Pressure switches;

(4) A duress alarm;

(5) A panic alarm;

(6) A holdup alarm;

(7) An automatic voice dialer; and

(8) A failure notification system that provides an audio, text, or visual notification of any failure in the surveillance system.

c. A manufacturer's security alarm system and all devices shall continue to operate during a power outage.

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d. A manufacturer's security alarm system shall be inspected and all devices tested annually by a qualified alarm vendor. A manufacturer shall provide documentation of the annual inspection and device testing to the department upon request.

154.18(5) Personnel identification system. A manufacturer shall use a personnel identification system that controls and monitors individual employee access to restricted access areas within the manufacturing facility and that meets the requirements of this subrule and subrule 154.18(1).

a. Requirement for employee identification card. An employee identification card shall contain:

- (1) The name of the employee;
- (2) The date of issuance and expiration;
- (3) An alphanumeric identification number that is unique to the employee; and
- (4) A photographic image of the employee.

b. A manufacturer's employee shall keep the identification card visible at all times when the employee is in a manufacturing facility, a dispensary, or a vehicle transporting medical cannabidiol.

c. Upon termination or resignation of an employee, a manufacturer shall immediately:

- (1) Revoke the employee's access to the manufacturing facility; and
- (2) Obtain and destroy the employee's identification card, if possible.

641—154.19(124E) Location. All of a manufacturer's manufacturing, cultivating, harvesting, packaging, processing, and storage of medical cannabidiol shall take place in one secured manufacturing facility location at a physical address provided to the department during the licensure and application processes.

154.19(1) Proximity to dispensary. A manufacturer shall not operate a manufacturing facility at the same physical location as a medical cannabidiol dispensary.

154.19(2) Proximity to school. A manufacturer shall not operate a manufacturing facility in any location, whether for manufacturing, possessing, cultivating, harvesting, transporting, packaging, processing, storing, or supplying, within 1,000 feet of a public or private school existing before the date of the manufacturer's licensure by the department.

641—154.20(124E) Advertising and marketing.

154.20(1) Permitted marketing and advertising activities.

a. A manufacturer may:

(1) Display the manufacturer's business name and logo on medical cannabidiol labels, signs, website, and informational material provided to patients. The name or logo shall not include:

1. Images of cannabis or cannabis-use paraphernalia;
2. Colloquial references to cannabis;
3. Names of cannabis plant strains or varieties;
4. Unsubstantiated medical claims; or
5. Medical symbols that bear a reasonable resemblance to established medical associations.

Examples of established medical organizations include the American Medical Association or American Academy of Pediatrics. The use of medical symbols is subject to approval by the department;

- (2) Display signs on the manufacturing facility; and
- (3) Maintain a business website that contains the following information:
 1. The manufacturer's name and contact information;
 2. The medical cannabidiol forms and quantities manufactured in Iowa; and
 3. Other information as approved by the department.

b. The business website shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

c. The department reserves the right to review a manufacturer's marketing and advertising materials and to require a manufacturer to make changes to the content. The department has 30 calendar days following submission to approve or deny marketing and advertising materials of a manufacturer.

154.20(2) Other marketing and advertising activities. A manufacturer shall request and receive the department's written approval before beginning marketing or advertising activities that are not specified

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in subrule 154.20(1). The department has 30 calendar days to approve, deny, or request additional information regarding marketing and advertising activity requests from a manufacturer. In the event the department fails to respond to a manufacturer within 30 days with an approval, denial, or request for additional information, the manufacturer's marketing and advertising activity requests shall be deemed approved.

154.20(3) *Inconspicuous display.* A manufacturer shall arrange displays of medical cannabidiol, interior signs, and other exhibits to reasonably prevent public viewing from outside the manufacturing facility.

641—154.21(124E) Packaging and labeling.

154.21(1) *Medical cannabidiol packaging.* A manufacturer shall package all medical cannabidiol intended for distribution according to the following standards:

a. The manufacturer shall properly package medical cannabidiol in compliance with the United States Poison Prevention Packing Act regarding child-resistant packaging and exemptions for packaging for elderly patients.

b. The manufacturer shall label packaged medical cannabidiol as described in subrule 154.21(3).

c. The manufacturer shall use medical containers that are:

(1) Of sufficient size to accommodate a separate dispensary label containing the information described in rule 645—154.46(124E);

(2) Designed to maximize the shelf life of the contained medical cannabidiol;

(3) Tamper-evident; and

(4) Child-resistant.

d. Medical cannabidiol packaging shall not bear a reasonable resemblance to commonly available nonmedical commercial products.

e. The manufacturer shall package medical cannabidiol in a manner that minimizes the package's appeal to children.

f. The manufacturer shall not depict images other than the manufacturer's business name or logo on the packaging.

154.21(2) *Trade names.* A manufacturer's medical cannabidiol trade names shall comply with the following:

a. Names shall be limited to those that clearly reflect the form's medical cannabidiol nature;

b. Any name that is identical to, or similar to, the name of an existing nonmedical cannabidiol product is prohibited;

c. Any name that is identical to, or similar to, the name of an unlawful product or substance is prohibited; and

d. Any name that contains language that suggests using medical cannabidiol for recreational purposes or for a condition other than a qualifying debilitating medical condition is prohibited.

154.21(3) *Package labeling.*

a. A manufacturer shall ensure that all medical cannabidiol packaging is labeled with the following information:

(1) The name and address of the manufacturer where the medical cannabidiol was manufactured;

(2) The medical cannabidiol's primary active ingredients, including levels of tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid;

(3) Directions for use of the product, including recommended and maximum amount by age and weight, if applicable;

(4) All ingredients of the product shown with common or usual names, including any colors, artificial flavors, and preservatives, listed in descending order by predominance of weight;

(5) Instructions for storage, including light and temperature requirements, if any;

(6) Date of expiration;

(7) The date of manufacture and lot number;

(8) A notice with the statement, including capitalization: "This product has not been analyzed or approved by the United States Food and Drug Administration. There is limited information on the side

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effects of using this product, and there may be associated health risks and medication interactions. This product is not recommended for use by pregnant or breastfeeding women. KEEP THIS PRODUCT OUT OF REACH OF CHILDREN.”;

(9) The universal warning symbol provided by the department; and

(10) A notice with the statement: “This medical cannabidiol is for therapeutic use only. Use of this product by a person other than the patient listed on the label is unlawful and may result in the cancellation of the patient’s medical cannabidiol registration card. Return unused medical cannabidiol to a dispensary for disposal.”

b. Labeling text shall not include any false or misleading statements.

c. A package may contain multiple labels if the information required by this rule is not obstructed.

d. Labeling text font size shall be no smaller than 6 point.

641—154.22(124E) Transportation of medical cannabidiol and plant material.

154.22(1) *Transport of medical cannabidiol.* A manufacturer is authorized to transport medical cannabidiol to and from:

a. Dispensaries;

b. A laboratory for testing;

c. A waste facility for disposal;

d. Other sites only with departmental approval.

154.22(2) *Transport of plant material.* A manufacturer is authorized to transport cannabis plant material from its manufacturing facility to:

a. A waste disposal site;

b. Other sites only with departmental approval.

154.22(3) *Chain-of-custody tracking system.*

a. A manufacturer shall use the secure sales and inventory tracking system, if available, or a department-approved manifest system to track shipping of medical cannabidiol. The system shall include a chain of custody that records:

(1) The name and address of the destination;

(2) The weight and description of each individual package that is part of the shipment, and the total number of individual packages;

(3) The date and time the medical cannabidiol shipment is placed into the transport vehicle;

(4) The date and time the shipment is accepted at the delivery destination;

(5) The person’s identity, and the circumstances, duration, and disposition of any other person who had custody or control of the shipment; and

(6) Any handling or storage instructions.

b. Before transporting medical cannabidiol, a manufacturer shall:

(1) Record in the secure sales and inventory tracking system or on the manifest information about the material to be transported; and

(2) Notify the dispensary, laboratory, or waste facility, as applicable, of the expected arrival time and transmit a copy of the manifest to the dispensary, laboratory, or waste facility, if applicable.

c. Each transport shall be approved electronically or in writing by:

(1) An authorized manufacturer employee when the transport vehicle is departing the manufacturing facility; and

(2) An authorized employee of the receiving dispensary, laboratory, or waste facility.

d. An authorized employee at the dispensary, laboratory, or waste facility receiving medical cannabidiol shall:

(1) Verify and document the type and quantity of the transported medical cannabidiol against the information in the secure sales and inventory tracking system or written manifest;

(2) Approve the transport electronically or return a signed copy of the manifest to the manufacturing facility; and

(3) Record the medical cannabidiol that is received as inventory in the secure sales and inventory tracking system, if available. If a manifest system is being used, the dispensary, laboratory, or waste

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facility shall also maintain a signed copy of manifest, and shall maintain records of the inventory received consistent with these rules.

e. A manufacturer shall maintain all manifests for at least five years and make them available upon request of the department.

154.22(4) *Vehicle requirements for transport.*

a. A manufacturer shall ensure that all medical cannabidiol transported on public roadways is:

- (1) Packaged in tamper-evident, bulk containers;
- (2) Transported so it is not visible or recognizable from outside the vehicle; and
- (3) Transported in a vehicle that does not bear any markings to indicate that the vehicle contains medical cannabidiol or bears the name or logo of the manufacturer.

b. When the motor vehicle contains medical cannabidiol, manufacturer employees who are transporting the medical cannabidiol on public roadways shall:

- (1) Travel directly to a dispensary or other department-approved locations; and
- (2) Document refueling and all other stops in transit, including:
 1. The reason for the stop;
 2. The duration of the stop; and
 3. The location of the stop.

c. If the vehicle must be stopped due to an emergency situation, the employee shall notify 911 and complete an incident report on a form approved by the department.

d. Under no circumstance shall any person other than a designated manufacturer employee have actual physical control of the motor vehicle that is transporting the medical cannabidiol.

e. A manufacturer shall staff all motor vehicles with a minimum of two employees when transporting medical cannabidiol between a manufacturing facility and a dispensary. At least one employee shall remain with the motor vehicle at all times that the motor vehicle contains medical cannabidiol. A single employee may transport medical cannabidiol to the laboratory.

f. Each employee in a transport motor vehicle shall have telephone or other communication access with the manufacturer's personnel and have the ability to contact law enforcement via telephone or other method at all times that the motor vehicle contains medical cannabidiol.

g. An employee shall carry the employee's identification card at all times when transporting or delivering medical cannabidiol and, upon request, produce the identification card to the department or to a law enforcement officer acting in the course of official duties.

h. A manufacturer shall not leave a vehicle that is transporting medical cannabidiol unattended overnight.

641—154.23(124E) Disposal of medical cannabidiol and plant material.

154.23(1) *Return of medical cannabidiol from dispensaries and laboratory.* A manufacturer shall collect at no charge unused, excess, or expired medical cannabidiol from dispensaries, including medical cannabidiol that was returned to a dispensary from a patient or primary caregiver, and from the laboratory that has tested samples submitted by the manufacturer. A manufacturer shall:

a. Collect waste medical cannabidiol from each dispensary on a schedule mutually agreed upon by the manufacturer and dispensary;

b. Collect waste medical cannabidiol from a laboratory on a schedule mutually agreed upon by the manufacturer and laboratory;

c. Dispose of the returned medical cannabidiol as provided in subrule 154.23(2); and

d. Maintain a written record of disposal that includes:

(1) The tracking number assigned at the time of the dispensing, if available, or the name of the patient, if the tracking number is unavailable, when the medical cannabidiol was returned to the dispensary from a patient or primary caregiver;

(2) The date the medical cannabidiol was returned;

(3) The quantity of medical cannabidiol returned; and

(4) The type and lot number of medical cannabidiol returned.

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154.23(2) *Medical cannabidiol and plant material waste.* A manufacturer shall store, secure, and manage medical cannabidiol waste and plant material waste in accordance with all applicable federal, state, and local regulations.

a. The manufacturer shall dispose of medical cannabidiol waste at a waste facility according to federal and state law and in a manner which renders it unusable.

b. The manufacturer shall dispose of plant material waste at an approved solid waste disposal facility, according to federal and state law.

c. Before transport of plant material waste, the manufacturer shall render the plant material waste unusable and unrecognizable by grinding and incorporating the waste with a greater quantity of nonconsumable, solid wastes including:

- (1) Paper waste;
- (2) Cardboard waste;
- (3) Food waste;
- (4) Yard waste;
- (5) Vegetative wastes generated from industrial or manufacturing processes that prepare food for human consumption;
- (6) Soil; or
- (7) Other waste approved by the department.

154.23(3) *Liquid and chemical waste disposal.* A manufacturer shall dispose of all liquid and chemical product waste generated in the process of cultivating, manufacturing, and distributing medical cannabidiol in accordance with all applicable federal, state, and local regulations.

154.23(4) *Waste-tracking requirements.* A manufacturer shall use forms approved by the department to maintain accurate and comprehensive records regarding waste material. The records shall account for, reconcile, and evidence all waste activity related to the disposal of medical cannabidiol waste and plant material waste.

641—154.24(124E) Record-keeping requirements.

154.24(1) *Sales and distribution.* A manufacturer shall maintain complete and accurate electronic sales transaction records in the department's secure sales and inventory tracking system, including:

- a.* The date of each sale or distribution;
- b.* The item number, product name and description, and quantity of medical cannabidiol sold or otherwise distributed; and
- c.* The sale price.

154.24(2) *Financial transactions.* A manufacturer shall maintain records that reflect all financial transactions and the financial condition of the business. The following records shall be maintained for at least five years and made available for review, upon request of the department:

- a.* Purchase invoices, bills of lading, sales records, copies of bills of sale, and any supporting documents, to include the items or services purchased, from whom the items were purchased, and the date of purchase;
- b.* Bank statements and canceled checks for all business accounts;
- c.* Accounting and tax records;
- d.* Records of all financial transactions, including contracts and agreements for services performed or services received;

154.24(3) *Other records.*

a. A manufacturer shall maintain the following for at least five years, unless otherwise noted, and provide to the department upon request:

- (1) All personnel records;
- (2) Records of any theft, loss, or other unaccountability of any medical cannabidiol or plant material;
- (3) Transport manifests and incident reports; and
- (4) Records of all samples sent to a testing laboratory and the quality assurance test results.

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b. A manufacturer shall maintain for at least one year and provide to the department upon request its controlled access system data and visitor manifests.

c. A manufacturer shall use the department's secure sales and inventory tracking system to maintain the following:

- (1) Crop input records;
- (2) Production records;
- (3) Transportation records; and
- (4) Inventory records, including disposal of waste.

641—154.25(124E) Production requirements.**154.25(1) Cultivation and processing.**

a. Only a licensed manufacturer is authorized to produce and manufacture medical cannabidiol.

b. All phases of production shall take place in designated, restricted access areas that are monitored by a surveillance camera system in accordance with rule 641—154.18(124E).

c. The production process shall be designed to limit contamination. Examples of contamination include mold, fungus, bacterial diseases, rot, pests, nonorganic pesticides, and mildew.

d. Each production area shall allow for access, observation, and inventory of each plant group.

e. Biosecurity measures shall be in effect as described in the operating documents pursuant to subrule 154.17(1).

154.25(2) Record-keeping and tracking requirements.

a. The manufacturer shall use the department's secure sales and inventory tracking system to maintain an electronic record of all crop inputs for at least five years. The record shall include the following:

- (1) The date of input application;
- (2) The name of the employee applying the crop input;
- (3) The crop input that was applied;
- (4) The plants that received the application;
- (5) The amount of crop input that was applied; and
- (6) A copy of or electronic link to the safety data sheet for the crop input applied.

b. At the time of planting, all plants shall be tracked in a batch process with a unique batch number that shall remain with the batch through final processing into medical cannabidiol.

c. A manufacturer shall record any removal of plants from the batch, including the reason for removal, on a record maintained at the manufacturing facility for at least five years.

d. Each batch or part of a batch of cannabis plants that contributes to a lot of medical cannabidiol shall be recorded in the department's secure sales and inventory tracking system or other manifest system.

154.25(3) Production of medical cannabidiol.

a. A manufacturer shall comply with all state and local building and fire code requirements.

b. A manufacturer shall obtain approval from the department for use of any hydrocarbon-based extraction process. Examples of a hydrocarbon-based extraction process include the use of butane, ethanol, hexane, and isopropyl alcohol.

c. Medical cannabidiol shall be prepared, handled, and stored in compliance with the sanitation requirements in this rule.

d. A manufacturer shall produce shelf-stable, nonperishable forms of medical cannabidiol.

e. A manufacturer shall ensure that the cannabinoid content of the medical cannabidiol it produces is homogenous.

f. Each lot of medical cannabidiol shall be assigned a unique lot number and recorded in the department's secure sales and inventory tracking system or other manifest system.

154.25(4) General sanitation requirements. A manufacturer shall take all reasonable measures and precautions to ensure that:

a. Any employee who has a communicable disease does not perform any tasks that might contaminate plant material or medical cannabidiol;

b. Hand-washing facilities are:

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- (1) Convenient and furnished with running water at a suitable temperature;
 - (2) Located in all production areas; and
 - (3) Equipped with effective hand-cleaning and -sanitizing preparations and sanitary towel service or electronic drying devices;
- c.* All employees working in direct contact with plant material and medical cannabidiol use hygienic practices while on duty, including:
- (1) Maintaining personal cleanliness; and
 - (2) Washing hands thoroughly in a hand-washing area before starting work and at any other time when the hands may have become soiled or contaminated;
- d.* Litter and waste are routinely removed and the operating systems for waste disposal are routinely inspected;
- e.* Floors, walls, and ceilings are constructed with a surface that can be easily cleaned and maintained in good repair to inhibit microbial growth;
- f.* Lighting is adequate in all areas where plant material and medical cannabidiol are processed, stored, or sold;
- g.* Screening or other protection against the entry of pests is provided, including that rubbish is disposed of to minimize the development of odor and the potential for the waste becoming an attractant, harborage, or breeding place for pests;
- h.* Any buildings, fixtures, and other facilities are maintained in a sanitary condition;
- i.* Toxic cleaning compounds, sanitizing agents, and other potentially harmful chemicals are identified and stored in a separate location away from plant material and medical cannabidiol and in accordance with applicable local, state, or federal law;
- j.* All contact surfaces, utensils, and equipment used in the production of plant material and medical cannabidiol are maintained in a clean and sanitary condition;
- k.* The manufacturing facility water supply is sufficient for necessary operations;
- l.* Plumbing size and design meets operational needs and all applicable state and local laws;
- m.* Employees have accessible toilet facilities that are sanitary and in good repair; and
- n.* Plant material and medical cannabidiol that could support the rapid growth of undesirable microorganisms are isolated to prevent the growth of those microorganisms.

154.25(5) Storage.

- a.* A manufacturer shall store plant material and medical cannabidiol during production, transport, and testing to prevent diversion, theft, or loss, including ensuring that:
- (1) Plant material and medical cannabidiol are returned to a secure location immediately after completion of the process or at the end of the scheduled business day; and
 - (2) The tanks, vessels, bins, or bulk containers containing plant material or medical cannabidiol are locked inside a secure area if a process is not completed at the end of a business day.
- b.* A manufacturer shall store all plant material and medical cannabidiol during production, transport, and testing, and all saleable medical cannabidiol:
- (1) In areas that are maintained in a clean, orderly, and well-ventilated condition; and
 - (2) In storage areas that are free from infestation by insects, rodents, birds, and other pests of any kind.
- c.* To prevent degradation, a manufacturer shall store all plant material and medical cannabidiol in production, transport, and testing, and all saleable medical cannabidiol under conditions that will protect the product and its container against physical, chemical, and microbial contamination and deterioration.
- d.* A manufacturer shall maintain a separate secure storage area for medical cannabidiol that is returned from a dispensary, including medical cannabidiol that is outdated, damaged, deteriorated, mislabeled, or contaminated, or whose containers or packaging has been opened or breached, until the

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returned medical cannabidiol is destroyed. For purposes of this rule, a separate secure storage area includes a container, closet, or room that can be locked or secured.

641—154.26(124E) Quality assurance and control.

154.26(1) *Quality control program.* A manufacturer shall develop and implement a written quality assurance program that assesses the chemical and microbiological composition of medical cannabidiol. Assessment includes a profile of the active ingredients, including shelf life, and the presence of inactive ingredients and contaminants. A manufacturer shall use these testing results to determine appropriate storage conditions and expiration dates.

154.26(2) *Sampling protocols.* A manufacturer shall develop and follow written procedures for sampling medical cannabidiol that require the manufacturer to:

- a. Conduct sample collection in a manner that provides analytically sound and representative samples;
- b. Document every sampling event and provide this documentation to the department upon request;
- c. Describe all sampling and testing plans in written procedures that include the sampling method and the number of units per lot to be tested;
- d. Ensure that random samples from each lot are:
 - (1) Taken in an amount necessary to conduct the applicable test;
 - (2) Labeled with the lot number; and
 - (3) Submitted for testing; and
- e. Retain the results from the random samples for at least five years.

154.26(3) *Sampling and testing.* A manufacturer shall:

- a. Work with the department and laboratory personnel to develop acceptance criteria for all potential contaminants based on the levels of metals, microbes, or other contaminants that the manufacturer uses in cultivating and producing medical cannabidiol;
- b. Conduct sampling and testing using acceptance criteria that are protective of patient health. The sampling and testing results shall be approved by the department and laboratory personnel and shall ensure that lots of medical cannabidiol meet allowable health risk limits for contaminants;
- c. Refrain from packing or selling a medical cannabidiol lot that fails to meet established standards, specifications, and any other relevant quality control criteria. Lots that fail quality assurance testing for potency or for residual solvents and chemicals may be remixed and retested;
- d. Develop and follow a written procedure for responding to results failing to meet established standards, specifications, and any other relevant quality control criteria, including:
 - (1) Criteria for when remixing and retesting are warranted;
 - (2) Instructions for destroying contaminated or substandard medical cannabidiol as provided in subrule 154.23(2) when remixing and retesting are not warranted; and
 - (3) Instructions for determining the source of contamination;
- e. Retain documentation of test results, assessment, and destruction of medical cannabidiol for at least five years.

154.26(4) *Stability testing.*

- a. The quality assurance program shall include procedures for performing stability testing of each product type produced to determine product shelf life. The procedures shall describe:
 - (1) Sample size and test intervals based on statistical criteria for each attribute examined to ensure valid stability estimates;
 - (2) Storage conditions for samples retained for testing; and
 - (3) Reliable and specific test methods.
- b. Stability studies shall include:
 - (1) Medical cannabidiol testing at appropriate intervals; and
 - (2) Medical cannabidiol testing in the same container-closure system in which the medical cannabidiol is marketed and dispensed.

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c. If shelf-life studies have not been completed before December 1, 2018, a manufacturer shall assign a tentative expiration date, based on any available stability information. A manufacturer shall concurrently conduct stability studies to determine the actual product expiration date.

d. After a manufacturer verifies the tentative expiration date, or determines the appropriate expiration date, a manufacturer shall include that expiration date on each lot of medical cannabidiol.

e. Stability testing shall be repeated if the manufacturing process or the product's chemical composition is changed.

154.26(5) Reserve samples.

a. A manufacturer shall retain a uniquely labeled reserve sample that represents each lot of medical cannabidiol and store the reserve sample under conditions consistent with product labeling. The reserve sample shall be stored in the same immediate container-closure system in which the medical cannabidiol is marketed or in one that has similar characteristics. The reserve sample shall consist of at least twice the quantity necessary to perform all the required tests.

b. A manufacturer shall retain the reserve for at least two years from the date of manufacture.

c. After two years from the date of manufacture, reserve samples shall be destroyed as provided in subrule 154.23(2).

154.26(6) Retesting. If the department deems that public health may be at risk, the department may require the manufacturer to retest any sample of plant material or medical cannabidiol.

154.26(7) Disposal of substandard product. A manufacturer shall dispose of all medical cannabidiol as provided in subrule 154.23(2) when samples fail to meet established standards, specifications, and other relevant quality control criteria and when an adequate remedy for remixing and retesting as provided in paragraph 154.26(3) "c" is unavailable.

154.26(8) Recall and market withdrawal procedures. Each manufacturer shall establish a procedure for recalling or withdrawing from the market, as applicable, medical cannabidiol that has a reasonable probability of causing an unexpected or harmful response in a patient population, despite appropriate use, that outweighs the potential benefit of the medical cannabidiol. This procedure shall include:

a. Factors that make a recall or market withdrawal necessary;

b. Manufacturer's personnel who are responsible for overseeing the recall or market withdrawal; and

c. How to notify affected parties of a recall or market withdrawal.

641—154.27(124E) Supply and inventory.

154.27(1) Reliable and ongoing supply. A manufacturer shall provide a reliable and ongoing supply of medical cannabidiol to medical cannabidiol dispensaries.

154.27(2) Inventory controls and procedures. A manufacturer shall establish inventory controls and procedures for conducting inventory reviews to prevent and detect any diversion, theft, or loss in a timely manner.

154.27(3) Real-time inventory required. A manufacturer shall use the department-approved secure sales and inventory tracking system to track medical cannabidiol production from seed or plant cutting through distribution of medical cannabidiol to a dispensary. The manufacturer shall use the system to maintain a real-time record of the manufacturer's inventory of plant material and medical cannabidiol to include:

a. The quantity and form of medical cannabidiol maintained by the manufacturer at the manufacturing facility on a daily basis;

b. The amount of plants being grown at the manufacturing facility on a daily basis;

c. The names of the employees or employee conducting the inventory; and

d. Other information deemed necessary and requested by the department.

154.27(4) Waste inventory. A manufacturer shall maintain a record of its inventory of all medical cannabidiol waste and plant material waste for disposal.

154.27(5) Reconciliation. No less often than every two calendar weeks, a manufacturer shall reconcile its physical inventory with the secure sales and inventory tracking system. Inconsistencies

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shall be reported to the department and law enforcement within 72 hours of discovery. Reconciliation shall include:

- a. Plant material at the manufacturing facility and in transit; and
- b. Medical cannabidiol at the manufacturing facility, at distribution and storage facilities, and in transit.

154.27(6) Scales. All scales used to weigh usable plant material for purposes of these rules shall be certified in accordance with ISO/IEC Standard 17025, which is incorporated herein by reference.

641—154.28(124E) Inspection by department or independent consultant. A manufacturer is subject to reasonable inspection by the department, a department-approved consultant, or other agency pursuant to Iowa Code chapter 124E and these rules and as authorized by laws and regulations.

154.28(1) Types of inspections. Inspections may include:

- a. Aspects of the business operations;
- b. The manufacturing facility;
- c. Vehicles used for transport or delivery of medical cannabidiol or plant material;
- d. Financial information and inventory documentation;
- e. Physical and electronic security alarm systems; and
- f. Other inspections as determined by the department.

154.28(2) Local safety inspections. A manufacturer may be subject to inspection of its manufacturing facility and grounds by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local licensing authority restrictions related to medical cannabidiol manufacturing or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.

154.28(3) Health and sanitary inspection. The department has discretion to determine when an inspection by an independent consultant is necessary. The following is a nonexhaustive list of examples that may justify an independent inspection:

- a. The department has reasonable grounds to believe that the manufacturer is in violation of one or more of the requirements set forth in these rules or other applicable public health or sanitary laws, rules or regulations; or
- b. The department has reasonable grounds to believe that the manufacturer was the cause or source of contamination of medical cannabidiol.

154.28(4) Compliance required. A manufacturer shall pay for and cooperate in a timely manner with the department's requirement that it undergo an independent health and sanitary inspection in accordance with this rule.

641—154.29(124E) Assessment of penalties. The department shall assess to a manufacturer a civil penalty of up to \$1,000 per violation of Iowa Code chapter 124E or these rules in addition to other applicable penalties.

641—154.30(124E) Suspension or revocation of a manufacturer license.

154.30(1) The department may suspend or revoke a manufacturer license upon any of the following grounds:

- a. Submission of false, inaccurate, misleading, or fraudulent information to the department in the application or inspection processes.
- b. Failure to submit required reports and documents.
- c. Violation of Iowa Code chapter 124E or these rules, or violation of state or local law related to operation of the licensee.
- d. Conduct or practices detrimental to the safety, health, or welfare of a patient, primary caregiver, or the public.
- e. Criminal, civil, or administration action taken against a license or registration in this or another state or country related to manufacturing or dispensing medical cannabidiol.

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f. False, misleading, or deceptive representations to the department, another state or federal agency, or a law enforcement agency.

g. Discontinuance of operation for more than 30 days, unless the department approves an extension of such period for good cause shown.

h. Failure to maintain effective controls against diversion, theft, or loss of medical cannabidiol.

i. Failure to correct a deficiency within the time frame required by the department.

j. Failure of a manufacturer's business owner to have a satisfactory result in a background investigation or national criminal history background check conducted by the department of public safety and as determined by the department.

154.30(2) The department shall notify the licensee of the proposed action pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of issuance of a suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

154.30(3) A request for appeal concerning the suspension or revocation of a license shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Office of Medical Cannabidiol, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the suspension or revocation has been or will be removed. After the hearing or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the suspension or revocation. If no request for appeal is received within the 20-day time period, the department's notice of suspension or revocation shall become the department's final agency action.

154.30(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

154.30(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

154.30(6) When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

154.30(7) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

154.30(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections, and rulings thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

154.30(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

154.30(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

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154.30(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

154.30(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

154.30(13) Emergency adjudicative proceedings.

a. Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

b. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

(1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

(2) Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

(3) Whether the licensee required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

(4) Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

(5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

c. Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the licensee that is required to comply with the order. The order shall be delivered by one or more of the following methods:

1. Personal delivery.

2. Certified mail, return receipt requested, to the last address on file with the department.

3. Fax. Fax may be used as the sole method of delivery if the licensee required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the licensee that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the licensee that is required to comply with the order is the party requesting the continuance.

641—154.31(124E) Closure of operations.

154.31(1) *Notice.* A manufacturer shall notify the department at least six months before the closure of the manufacturing facility.

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154.31(2) Procedures. If a manufacturer ceases operation, the manufacturer shall work with the department to verify the remaining inventory of the manufacturer and ensure that any plant material, plant material waste, and medical cannabidiol are destroyed at a waste facility as provided in subrule 154.23(2).

641—154.32 to 154.39 Reserved.

641—154.40(124E) Duties of the department.

154.40(1) Interagency agreements. The department may enter into any interagency agreements with other state agencies for technical services or other assistance related to the regulation or inspection of dispensaries.

154.40(2) Notice to law enforcement. The department shall notify local law enforcement agencies and the department of public safety of the locations of dispensaries. If the department has sufficient cause to believe that there is a threat to public safety, the department shall notify local law enforcement agencies and the department of public safety of any conditions that pose a threat to public safety including but not limited to:

- a. Loss or theft of medical cannabidiol;
- b. Diversion or potential diversion of medical cannabidiol;
- c. Unauthorized access to the secure sales and inventory tracking system or other patient and caregiver information system or file; or
- d. Other violations of law.

154.40(3) Inspection of dispensaries. The department or its agents shall conduct regular inspections of dispensaries and their facilities as described in rule 641—154.52(124E).

154.40(4) Establishment and maintenance of a secure sales and inventory tracking system. The department shall establish and maintain a secure, electronic system that is available 24 hours a day, seven days a week to track:

- a. Inventory of medical cannabidiol and waste material;
- b. Sales of medical cannabidiol from dispensaries to patients and primary caregivers.

154.40(5) Licensure and licensure renewal of dispensaries. The department shall issue a request for proposals to select and license by April 1, 2018, up to five dispensaries to dispense medical cannabidiol within the state consistent with the provisions of Iowa Code chapter 124E and these rules.

a. To be eligible for licensure, an applicant dispensary shall provide information on forms and in a manner required by the department of public safety for the completion of a background investigation. In addition, the applicant dispensary shall submit to the department of public safety necessary funds to satisfy the full reimbursement of costs associated with completing the background investigations. If the applicant dispensary is not found suitable for licensure as a result of the background investigation, a license shall not be issued by the department.

b. As a condition for licensure, an applicant dispensary shall agree to begin dispensing medical cannabidiol to patients and primary caregivers in Iowa no later than December 1, 2018.

c. The initial license to dispense medical cannabidiol shall be valid from April 1, 2018, through November 30, 2018. The license shall be renewed annually unless a dispensary relinquishes the license, there is a change in state law prohibiting the department from renewing the license, or the license is revoked pursuant to Iowa Code chapter 124E or these rules.

d. A license to dispense medical cannabidiol issued by the department pursuant to these rules is not assignable or transferable.

e. The department shall consider the following factors in determining whether to select and license a medical cannabidiol dispensary:

- (1) Geographical location of the proposed dispensary facility;
- (2) The technical expertise of an applicant dispensary's staff regarding medical cannabidiol;
- (3) The qualifications of an applicant dispensary's employees;
- (4) The long-term financial stability of an applicant dispensary;

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(5) The ability of an applicant dispensary to provide appropriate security measures on the premises of the dispensary;

(6) An applicant dispensary's projection of and ongoing assessment of retail product costs, including any dispensing fees.

f. Pursuant to Iowa Code section 124E.8(1) "b," information submitted during the application process shall be confidential until an applicant dispensary is licensed by the department unless otherwise protected from disclosure under state or federal law.

g. A licensed dispensary shall submit an application to renew its license with the department at least six months before the license expires. The application shall be submitted on a form created by the department.

h. The department shall notify a dispensary of the decision to approve or deny the dispensary's license by August 1 of the year in which the renewal application is submitted.

154.40(6) *Collection of fees from dispensaries.* Except as provided in this rule, all fees are nonrefundable, shall be retained by the department, and shall be considered repayment receipts as defined in Iowa Code section 8.2.

a. Fees to the department.

(1) One application is required for each dispensary location.

(2) Each application for licensure as a dispensary shall include a nonrefundable application fee of \$5,000.

(3) Licensed dispensaries shall pay an annual fee to the department to cover costs associated with regulating and inspecting dispensaries and for other expenses necessary for the administration of the medical cannabidiol program. The department shall assess the fee with the notice of approval of license renewal each year on August 1, payable by the dispensary to the department no later than December 1.

b. Fees to the department of public safety.

(1) An applicant dispensary shall be responsible to reimburse the department of public safety the full cost of conducting background investigations related to an application for licensure and operation as a licensed dispensary. The department of public safety shall retain the right to bill a dispensary for additional background investigations, as needed.

(2) Each dispensary submitting an application for licensure shall, at time of application, submit to the department of public safety a deposit of \$10,000 for each business owner subject to a background investigation and a national criminal history background check. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the applicant shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the dispensary.

(3) A licensed dispensary shall pay a deposit of \$200 per employee to the department of public safety for a background investigation and a national criminal history background check on any person being considered for hire as an employee of the dispensary. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the dispensary shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the dispensary. The department shall retain the right to preclude a potential employee from hire based upon the results of the background investigation and national criminal history background check.

641—154.41(124E) Dispensary operations.

154.41(1) *Operating documents.* The operating documents of a dispensary shall include all of the following:

a. Procedures for the oversight of the dispensary, including descriptions of operational and management practices regarding:

(1) The forms and quantities of medical cannabidiol products that will be stored and dispensed at the dispensary;

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- (2) The estimated forms and quantities of medical cannabidiol waste to be generated or collected;
- (3) The disposal methods for all waste materials;
- (4) Employee training methods for the dispensary employees;
- (5) Strategies for identifying and reconciling discrepancies in inventory of medical cannabidiol;
- (6) Medical cannabidiol labeling procedures;
- (7) Procedures for recall or market withdrawal of medical cannabidiol;
- (8) Plans for responding to a security breach at the dispensary facility;
- (9) A business continuity plan; and
- (10) Other information requested by the department.

b. Procedures to ensure accurate record keeping.

c. Procedures for the implementation of appropriate security measures to deter and prevent the theft of medical cannabidiol and unauthorized entrance into areas of the dispensary facility containing medical cannabidiol.

154.41(2) Prohibited activities.

a. A person or entity shall not own or operate a dispensary unless the person or entity is licensed by the department pursuant to Iowa Code chapter 124E and these rules.

b. A dispensary shall not:

- (1) Dispense medical cannabidiol in any location except in those areas approved by the department;
- (2) Sell, receive, transport, or distribute medical cannabidiol from any location except its dispensary;
- (3) Sell, receive, or distribute medical cannabidiol from any entity other than a manufacturer licensed by the department;
- (4) Sell or distribute medical cannabidiol to any person other than an approved patient or primary caregiver;
- (5) Transport or deliver medical cannabidiol to any location, unless approved by the department;
- (6) Sell medical cannabidiol that is not packaged and labeled in accordance with rules 641—154.21(124E) and 641—154.46(124E);
- (7) Repackage medical cannabidiol or remove the manufacturer's label;
- (8) Sell medical cannabidiol in any form or quantity other than a form or quantity approved by the department and adopted by rule;
- (9) Permit any person to consume medical cannabidiol on the property of the dispensary;
- (10) Employ a person who is under 18 years of age or who has been convicted of a disqualifying felony offense.

154.41(3) Criminal background checks.

a. An owner of a dispensary shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

b. An employee of a dispensary shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

154.41(4) Relationship to health care practitioners. A dispensary shall not share office space with, refer patients to, or have any financial relationship with a health care practitioner.

641—154.42(124E) Security requirements. The department may request assistance from the department of public safety in ensuring dispensaries meet the security requirements in this rule.

154.42(1) Restricted access. A dispensary shall have a controlled access system to limit entrance to all restricted access areas of the dispensary facility. Visitors to restricted access areas shall sign manifests with name, date, and times of entry and exit, if the controlled access system cannot electronically record visitors. Visitors shall wear badges that are visible at all times and identify them as visitors.

a. The controlled access system shall do all of the following:

- (1) Limit access to authorized individuals;

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(2) Maintain a log of individuals with approved access, including dates of approvals and revocations;

(3) Track times of personnel entry to and exit from restricted access areas;

(4) Store data for retrieval for a minimum of one year; and

(5) Limit access to authorized individuals in the event of a power failure.

b. A dispensary shall promptly, but no later than five business days after receipt of request, submit stored controlled access system data to the department.

c. Separate written manifests of visitors to restricted access areas shall be kept and stored for a minimum of one year if the controlled access system does not include electronic records of visitors to the restricted access areas.

d. Restricted access areas shall be identified with signs that state: "Do Not Enter – Restricted Access Area – Access Limited to Authorized Personnel Only."

154.42(2) Perimeter intrusion detection system.

a. *Computer-controlled video surveillance system.* A dispensary shall operate and maintain in good working order a computer-controlled, closed-circuit television surveillance system on its premises that operates 24 hours per day, seven days a week, and visually records:

(1) All areas that might contain medical cannabidiol, including all safes, vaults, and storage areas;

(2) All points of entry and exit;

(3) The entrance to the video surveillance control room; and

(4) Parking areas, which shall have appropriate lighting for the normal conditions of the area under surveillance.

b. *Camera specifications.* Cameras shall:

(1) Capture clear and certain identification of any person entering or exiting a dispensary or its parking areas to the extent identification is technologically feasible with generally accepted commercial security cameras;

(2) Have the ability to produce a clear, color still photograph live or from a recording;

(3) Have on all recordings an embedded date-and-time stamp that is synchronized to the recording and does not obscure the picture; and

(4) Continue to operate during a power outage.

c. *Video recording specifications.*

(1) A video recording shall export still images in an industry standard image format, such as .jpg, .bmp, or .gif.

(2) Exported video shall be archived in a format that ensures authentication and guarantees that the recorded image has not been altered.

(3) Exported video shall also be saved in an industry standard file format that can be played on a standard computer operating system.

(4) All recordings shall be erased or destroyed at the end of the retention period and prior to disposal of any storage medium.

d. *Additional requirements.* A dispensary shall maintain all security system equipment and recordings in a secure location to prevent theft, loss, destruction, corruption, and alterations.

e. *Retention.* A dispensary shall ensure that recordings from all video cameras are:

(1) Available for viewing by the department upon request;

(2) Retained for at least 60 days;

(3) Maintained free of alteration or corruption; and

(4) Retained longer, as needed, if a dispensary is given actual notice of a pending criminal, civil, or administrative investigation, or other legal proceeding for which the recording may contain relevant information.

f. *Required signage.* A dispensary shall post a sign in capital letters in a conspicuous location at every entrance to the dispensary that reads, "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE."

154.42(3) Security alarm system requirements.

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a. A dispensary shall install and maintain a professionally monitored security alarm system that provides intrusion and fire detection of all:

- (1) Dispensary entrances and exits;
- (2) Rooms with exterior windows;
- (3) Rooms with exterior walls;
- (4) Roof hatches;
- (5) Skylights; and
- (6) Storage rooms.

b. For the purposes of this subrule, a security alarm system means a device or series of devices that summons law enforcement personnel during, or as a result of, an alarm condition. Devices may include:

- (1) Hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audio, visual, or electronic signal;
- (2) Motion detectors;
- (3) Pressure switches;
- (4) A duress alarm;
- (5) A panic alarm;
- (6) A holdup alarm;
- (7) An automatic voice dialer; and
- (8) A failure notification system that provides an audio, text, or visual notification of any failure in the surveillance system.

c. A dispensary's security alarm system and all devices shall continue to operate during a power outage.

d. A dispensary's security alarm system shall be inspected and all devices tested annually by a qualified alarm vendor. A dispensary shall provide documentation of the annual inspection and device testing to the department upon request.

154.42(4) Personnel identification system. A dispensary shall use a personnel identification system that controls and monitors individual employee access to restricted access areas within the dispensary and that meets the requirements of this subrule and subrule 154.42(1).

a. Requirement for employee identification card. An employee identification card shall contain:

- (1) The name of the employee;
- (2) The date of issuance and expiration;
- (3) An alphanumeric identification number that is unique to the employee; and
- (4) A photographic image of the employee.

b. A dispensary's employees shall keep the identification card visible at all times when the employee is in a dispensary or a vehicle transporting medical cannabidiol.

c. Upon termination or resignation of an employee, a dispensary shall immediately:

- (1) Revoke the employee's access to restricted access areas of the dispensary; and
- (2) Obtain and destroy the employee's identification card, if possible.

641—154.43(124E) Location. All dispensing of medical cannabidiol shall take place in an enclosed facility at one physical address provided to the department during the licensure process.

154.43(1) Proximity to manufacturers. A dispensary shall not operate at the same physical location as a manufacturer.

154.43(2) Proximity to schools. A dispensary shall not operate in any location within 1,000 feet of a public or private school existing before the date of the dispensary's licensure by the department.

641—154.44(124E) Advertising and marketing.

154.44(1) Permitted marketing and advertising activities.

a. A dispensary may:

(1) Display the dispensary's business name and logo on medical cannabidiol labels, signs, website, and informational material provided to patients. The name or logo shall not include:

1. Images of cannabis or cannabis-use paraphernalia;

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2. Colloquial references to cannabis;
3. Names of cannabis plant strains or varieties;
4. Unsubstantiated medical claims; or
5. Medical symbols that bear a reasonable resemblance to established medical associations.

Examples of established medical organizations include the American Medical Association or American Academy of Pediatrics. The use of medical symbols is subject to approval by the department.

- (2) Display signs on the dispensary; and
- (3) Maintain a business website that contains the following information:
 1. The dispensary's name and contact information;
 2. The medical cannabidiol forms and quantities provided;
 3. Medical cannabidiol pricing;
 4. Hours of operation; and
 5. Other information as approved by the department.

b. The business website shall not include any false, misleading, or unsubstantiated statements.

c. The department reserves the right to review a dispensary's marketing and advertising materials and to require a dispensary to make changes to the content. The department has 30 calendar days following submission to approve or deny marketing and advertising materials of a dispensary.

154.44(2) *Other marketing and advertising activities.* A dispensary shall request and receive the department's written approval before beginning marketing or advertising activities that are not specified in subrule 154.44(1). The department has 30 calendar days to approve, deny, or request additional information regarding marketing and advertising activity requests from a dispensary. In the event the department fails to respond to a dispensary within 30 days with an approval, denial, or request for additional information, the dispensary's marketing and advertising activity requests shall be deemed approved.

154.44(3) *Inconspicuous display.* A dispensary shall arrange displays of medical cannabidiol, interior signs, and other exhibits to reasonably prevent public viewing from outside the dispensary.

641—154.45(124E) Storage.**154.45(1) *Storage of saleable medical cannabidiol.***

a. A dispensary shall store medical cannabidiol to prevent diversion, theft, or loss, including ensuring that:

- (1) Medical cannabidiol is kept in a secure and monitored location within the dispensary; and
- (2) Cabinets or storage containers inside the secure and monitored area are locked at the end of a business day.

b. A dispensary shall store all medical cannabidiol:

- (1) In areas that are maintained in a clean, orderly, and well-ventilated condition;
- (2) In areas that are free from infestation by insects, rodents, birds, and other pests of any kind;
- (3) According to the manufacturer's requirements regarding temperature, light exposure, or other environmental conditions;
- (4) Under conditions that will protect the product and its container against physical, chemical, and microbial contamination and deterioration.

154.45(2) *Storage of returned medical cannabidiol.* A dispensary shall maintain a separate secure storage area for medical cannabidiol that is to be returned to a manufacturer for disposal, including medical cannabidiol that is outdated, damaged, deteriorated, mislabeled, or contaminated, or whose containers or packaging has been opened or breached, until the medical cannabidiol is collected by a manufacturer. For purposes of this subrule, a separate secure storage area includes a container, closet, or room that can be locked or secured.

641—154.46(124E) Dispensing.

154.46(1) *Access to all forms of product.* A dispensary shall provide access to all medical cannabidiol forms produced by each licensed manufacturer.

154.46(2) *Dispensing to a patient.*

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a. Prior to dispensing any medical cannabidiol to a patient, a dispensary shall do all of the following:

- (1) Verify the patient's identity;
- (2) Verify that the patient is registered and listed in the secure sales and inventory tracking system and has a valid medical registration card;
- (3) Assign a tracking number to any medical cannabidiol that is to be dispensed to the patient;
- (4) Issue a label that contains the following information:
 1. The medical cannabidiol tracking number;
 2. The date and time the medication is being dispensed;
 3. The name and address of the dispensary;
 4. The patient's registry identification number, name, and date of birth;
 5. The patient's address; and
 6. Any specific instructions for use based upon manufacturer or departmental guidelines. Labeling text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

b. The dispensary shall record the patient name, the amount dispensed, the price, the medical cannabidiol tracking number, the time and date, and other information required by the department in the secure sales and inventory tracking system within one business day.

154.46(3) *Dispensing to a primary caregiver.*

a. Prior to dispensing any medical cannabidiol to a primary caregiver, a dispensary shall do all of the following:

- (1) Verify the primary caregiver's identity;
- (2) Verify that the patient and the primary caregiver are registered and listed in the secure sales and inventory tracking system and have valid medical registration cards;
- (3) Assign a medical cannabidiol tracking number to any medical cannabidiol that is to be dispensed to the primary caregiver;
- (4) Issue a label that contains the following information:
 1. The medical cannabidiol tracking number;
 2. The date and time the medication is being dispensed;
 3. The name and address of the dispensary;
 4. The patient's registry identification number, name, and date of birth;
 5. The primary caregiver's registry identification number, name, and date of birth;
 6. The patient's address; and
 7. Any specific instructions for use based upon manufacturer or departmental guidelines. Labeling text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

b. The dispensary shall record the names of the patient and primary caregiver, the amount dispensed, the price, the medical cannabidiol tracking number, the time and date, and other information required by the department in the secure sales and inventory tracking system within one business day.

641—154.47(124E) Transportation of medical cannabidiol. A dispensary is not authorized to transport medical cannabidiol, unless approved by the department. Any approved transport shall be logged in the secure sales and inventory tracking system.

641—154.48(124E) Disposal of medical cannabidiol.

154.48(1) *Identification of excess, expired, or damaged medical cannabidiol.*

a. Dispensaries shall identify unused, excess, expired, or damaged medical cannabidiol for return to manufacturers.

b. Unused, excess, expired, or damaged medical cannabidiol shall be stored as described in subrule 154.45(2).

154.48(2) *Return of medical cannabidiol from a patient or primary caregiver to a dispensary.*

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a. A dispensary shall accept at no charge unused, expired, or unwanted medical cannabidiol from any patient or primary caregiver.

b. The dispensary shall enter the following information into the secure sales and inventory tracking system for all medical cannabidiol returned from a patient or primary caregiver:

(1) The tracking number assigned at the time of the dispensing, if available, or the name of the patient, if the tracking number is unavailable, when the medical cannabidiol was returned to the dispensary from a patient or primary caregiver;

(2) The date the medical cannabidiol was returned;

(3) The quantity of medical cannabidiol returned; and

(4) The type and lot number of medical cannabidiol returned.

c. A dispensary shall store medical cannabidiol returned from patients and primary caregivers as described in subrule 154.45(2).

154.48(3) *Return of medical cannabidiol to a manufacturer.*

a. A manufacturer shall collect and dispose of medical cannabidiol from dispensaries as provided in rule 641—154.23(124E).

b. A dispensary shall record information on all medical cannabidiol collected by the manufacturer in the secure sales and inventory tracking system. Information shall include:

(1) The date the medical cannabidiol was collected by the manufacturer;

(2) The quantity of medical cannabidiol collected; and

(3) The type and lot number of medical cannabidiol collected.

641—154.49(124E) Record-keeping requirements.

154.49(1) *Sales.* A dispensary shall maintain complete and accurate electronic sales transaction records in the department's secure sales and inventory tracking system, including:

a. The name of the patient and, if purchase is made by the primary caregiver, the name of the primary caregiver;

b. The date of each sale;

c. The item number, product name and description, and quantity of medical cannabidiol sold;

d. The sale price;

e. Other information required by the department.

154.49(2) *Financial transactions.* A dispensary shall maintain records that reflect all financial transactions and the financial condition of the business. The following records shall be maintained for at least five years and made available for review, upon request of the department:

a. Purchase invoices, bills of lading, sales records, copies of bills of sale, and any supporting documents, to include the items or services purchased, from whom the items were purchased, and the date of purchase;

b. Bank statements and canceled checks for all business accounts;

c. Accounting and tax records;

d. Records of all financial transactions, including contracts and agreements for services performed or services received.

154.49(3) *Other records.*

a. A dispensary shall maintain the following for at least five years, unless otherwise noted, and provide to the department upon request:

(1) All personnel records; and

(2) Records of any theft, loss, or other unaccountability of any medical cannabidiol.

b. A dispensary shall maintain for at least one year and provide to the department upon request its controlled access system data and visitor manifests.

c. A dispensary shall use the department's secure sales and inventory tracking system to maintain the following:

(1) Inventory records;

(2) Return of medical cannabidiol from a patient or primary caregiver; and

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- (3) Return of unused, excess, expired, or damaged medical cannabidiol to a manufacturer.

641—154.50(124E) Quality assurance and control. A dispensary shall cooperate with manufacturers and the department on quality assurance and control procedures, including participating in stability-testing studies, developing sampling strategies, and returning medical cannabidiol that has been recalled or withdrawn from the market.

641—154.51(124E) Inventory.

154.51(1) *Inventory controls and procedures.* A dispensary shall establish inventory controls and procedures for conducting inventory reviews to prevent and detect any diversion, theft, or loss in a timely manner.

154.51(2) *Real-time inventory required.* A dispensary shall use the department-approved secure sales and inventory tracking system to maintain a real-time record of the dispensary's inventory of medical cannabidiol to include:

- a. The quantity and form of saleable medical cannabidiol maintained at the dispensary on a daily basis;
- b. The amount of damaged, expired, or returned medical cannabidiol being held at the dispensary for return to a manufacturer; and
- c. Other information deemed necessary and requested by the department.

154.51(3) *Reconciliation.* At least once a calendar week, a dispensary shall reconcile all medical cannabidiol at the dispensary with the secure sales and inventory tracking system. Inconsistencies shall be reported to the department and law enforcement within 24 hours of discovery.

641—154.52(124E) Inspection by department or independent consultant. A dispensary is subject to reasonable inspection by the department, a department-approved consultant, or other agency as authorized by Iowa Code chapter 124E and these rules or state or local laws and regulations.

154.52(1) *Types of inspections.* Inspections may include:

- a. Aspects of the business operations;
- b. The physical location of a dispensary, including any storage facilities;
- c. Financial information and inventory documentation;
- d. Physical and electronic security alarm systems; and
- e. Other aspects or areas as determined by the department.

154.52(2) *Local safety inspections.* A dispensary may be subject to inspection of its dispensary by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local licensing authority restrictions related to medical cannabidiol dispensing or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.

154.52(3) *Health and sanitary inspection.* The department has discretion to determine when an inspection by an independent consultant is necessary. The following is a nonexhaustive list of examples that may justify an independent inspection:

- a. The department has reasonable grounds to believe that the dispensary is in violation of one or more of the requirements set forth in these rules or other applicable public health or sanitary laws, rules or regulations;
- b. The department has reasonable grounds to believe that the dispensary was the cause or source of contamination of medical cannabidiol; or
- c. The department has reasonable grounds to believe that the dispensary was the cause of loss of product quality or change in chemical composition due to improper storage and handling of medical cannabidiol.

154.52(4) *Compliance required.* A dispensary shall pay for and cooperate in a timely manner with the department's requirement that the dispensary undergo an independent health and sanitary inspection in accordance with this rule.

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641—154.53(124E) Assessment of penalties. The department shall assess to a dispensary a civil penalty of up to \$1,000 per violation of Iowa Code chapter 124E or these rules in addition to other applicable penalties.

641—154.54(124E) Suspension or revocation of a dispensary license.

154.54(1) The department may suspend or revoke a dispensary license upon any of the following grounds:

- a.* Submission of false, inaccurate, misleading, or fraudulent information to the department in the application or inspection processes.
- b.* Failure to submit required reports and documents.
- c.* Violation of Iowa Code chapter 124E or these rules, or violation of state or local law related to operation of the licensee.
- d.* Conduct or practices detrimental to the safety, health, or welfare of a patient, primary caregiver, or the public.
- e.* Criminal, civil, or administration action taken against a license or registration in this or another state or country related to manufacturing or dispensing medical cannabidiol.
- f.* False, misleading, or deceptive representations to the department, another state or federal agency, or a law enforcement agency.
- g.* Discontinuance of operation for more than 30 days, unless the department approves an extension of such period for good cause shown.
- h.* Failure to maintain effective controls against diversion, theft, or loss of medical cannabidiol.
- i.* Failure to correct a deficiency within the time frame required by the department.
- j.* Failure of a dispensary's business owner to have a satisfactory result in a background investigation or national criminal history background check conducted by the department of public safety and as determined by the department.

154.54(2) The department shall notify the licensee of the proposed action pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of issuance of a suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

154.54(3) A request for appeal concerning the suspension or revocation of a license shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Office of Medical Cannabidiol, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the suspension or revocation has been or will be removed. After the hearing or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the suspension or revocation. If no request for appeal is received within the 20-day time period, the department's notice of suspension or revocation shall become the department's final agency action.

154.54(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

154.54(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

154.54(6) When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

154.54(7) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative

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law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

154.54(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections, and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

154.54(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

154.54(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

154.54(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

154.54(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

154.54(13) Emergency adjudicative proceedings.

a. Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

b. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

(1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

(2) Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

(3) Whether the licensee required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

(4) Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

(5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

c. Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the licensee that is required to comply with the order. The order shall be delivered by one or more of the following methods:

1. Personal delivery.

2. Certified mail, return receipt requested, to the last address on file with the department.

3. Fax. Fax may be used as the sole method of delivery if the licensee required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

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(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the licensee that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the licensee that is required to comply with the order is the party requesting the continuance.

641—154.55(124E) Closure of operations.

154.55(1) Notice. A dispensary shall notify the department at least six months before the closure of the dispensary.

154.55(2) Procedures. If a dispensary ceases operation, the dispensary shall work with the department to verify the remaining inventory of the dispensary and ensure that any medical cannabidiol is returned to a manufacturer.

641—154.56 to 154.59 Reserved.

641—154.60(124E) Purpose and duties of board.

154.60(1) The purpose of the board is to administer the provisions of Iowa Code section 124E.5.

154.60(2) Responsibilities of the board include but are not limited to:

a. Accepting and reviewing petitions to add medical conditions, medical treatments, or debilitating diseases to the list of debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial under Iowa Code chapter 124E.

b. Making recommendations to the board of medicine relating to the removal or addition of debilitating medical conditions to the list of allowable debilitating medical conditions for which the medical use of cannabidiol under Iowa Code chapter 124E would be medically beneficial.

c. Working with the department regarding the requirements for the licensure of manufacturers and dispensaries, including licensure procedures.

d. Advising the department regarding the location of manufacturers and dispensaries throughout the state.

e. Making recommendations to the board of medicine relating to the form and quantity of allowable medical uses of cannabidiol.

f. Considering recommendations to the general assembly for statutory revisions to the definition of medical cannabidiol to increase the tetrahydrocannabinol (THC) level to more than 3 percent.

g. Submitting an annual report to the general assembly detailing the activities of the board no later than January 1.

641—154.61(124E) Organization of board and proceedings.

154.61(1) Membership. The board shall be composed of nine members appointed by the governor pursuant to Iowa Code section 124E.5. The appointments, unless provided otherwise by law, shall be for three-year staggered terms which shall expire on June 30. Board members shall be knowledgeable about the use of medical cannabidiol. The medical practitioners appointed to the board shall be licensed in Iowa and be nationally board-certified in their area of specialty.

154.61(2) Vacancies. Vacancies shall be filled in the same manner in which the original appointments were made for the balance of the unexpired term.

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154.61(3) Absences. Three consecutive unexcused absences shall be grounds for the governor to consider dismissal of a board member and to appoint another. Department staff is charged with providing notification of absences to the governor’s office.

154.61(4) Board meetings.

- a. The board shall convene at least twice but no more than four times a year.
- b. Board meetings shall be conducted in accordance with the open meetings requirements of Iowa Code chapter 21.
- c. The department’s office of medical cannabidiol shall schedule the time, date and location of meetings.
- d. A majority of the members shall constitute a quorum for conducting business of the board.
- e. An affirmative vote of a majority of the board members present at a meeting is required for a motion to pass.

154.61(5) Facilities and staffing. The department shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter but shall be reimbursed for all costs incurred by fee revenue generated from licensing activities and registration card applications.

154.61(6) Subcommittees. The board may designate one or more subcommittees to perform such duties as may be deemed necessary.

641—154.62(124E) Official communications. All official communications, including submissions, petitions and requests, may be addressed to the Medical Cannabidiol Board, Office of Medical Cannabidiol, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

641—154.63(124E) Office hours. The board office is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

641—154.64(124E) Public meetings. Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained through the Iowa department of public health’s website (idph.iowa.gov/mcarecp) or directly from the board office.

154.64(1) Exclusion of participants. The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

154.64(2) Recording of meetings. Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the presiding department staff member at the meeting may request the user to discontinue use of the camera or device.

641—154.65(124E) Petitions for the addition or removal of medical conditions, medical treatments or debilitating diseases. Petitions for the addition or removal of medical conditions, medical treatments, or debilitating conditions for which the medical use of cannabidiol would be medically beneficial under Iowa Code chapter 124E may be submitted to the board pursuant to this rule.

154.65(1) Petition form. Any person or entity may file a petition to add or remove medical conditions, medical treatments or debilitating diseases with the board. A petition is deemed filed when it is received by the medical cannabidiol office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE MEDICAL CANNABIDIOL BOARD

Petition by (Name of Petitioner)
for the (addition or removal) of (medical
conditions, medical treatments or
debilitating diseases) to the list of
debilitating medical conditions for which
the medical use of cannabidiol would be
medically beneficial.



PETITION FOR
(ADDITION or REMOVAL)

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The petition must provide the following information:

- a. A statement of the specific medical condition, medical treatment or debilitating disease the petitioner is seeking to add to or remove from the list of debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial.
- b. A brief summary of the petitioner's arguments in support of the action urged in the petition.
- c. A brief summary of any data or scientific evidence supporting the action urged in the petition.
- d. A list of reference material supporting the petition.
- e. A list of subject matter experts who are willing to testify in support of the petition. The list of subject matter experts must contain names, credentials (if applicable), email addresses, telephone numbers, and mailing addresses.
- f. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

154.65(2) *Signature and address.* The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, telephone number and email address of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

154.65(3) *Denial for format.* The board may deny a petition because it does not substantially conform to the required form.

154.65(4) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person or entity concerning the substance of the petition.

154.65(5) *Inquiries.* Inquiries concerning the status of a petition may be made to the Office of Medical Cannabidiol, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

154.65(6) *Additional information.* The board may request the petitioner to submit additional information concerning the petition. The board may also solicit comments from any person on the substance of the petition. Comments on the substance of the petition may be submitted to the board by any person.

154.65(7) *Presentation to the board.* The board may request or allow the petitioner to make an oral presentation of the contents of a petition at a board meeting following submission of the petition.

154.65(8) *Board response.* Within six months after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, either deny the petition and notify the petitioner of the board's action and the reasons therefore, or grant the petition and notify the petitioner that the board has recommended addition or removal of the medical condition, medical treatment, or debilitating disease to the board of medicine. A petitioner shall be deemed notified of the denial or recommendation on the date when the board mails the required notification to the petitioner.

154.65(9) *Denials.* Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

ITEM 6. Amend **641—Chapter 154**, implementation sentence, as follows:

These rules are intended to implement ~~2017 Iowa Acts, House File 524~~ Iowa Code chapter 124E.

[Filed 1/11/18, effective 3/7/18]

[Published 1/31/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.

ARC 3607C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to Iowa health information network

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The Department of Public Health hereby rescinds Chapter 206, "Iowa Health Information Network," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 135 and 2017 Iowa Acts, House File 393.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 135 and 2017 Iowa Acts, House File 393.

Purpose and Summary

2017 Iowa Acts, House File 393, division VI, finalized the transition of the Iowa Health Information Network outside of state government. Pursuant to 2015 Iowa Acts, House File 381 (86th General Assembly), the Iowa Department of Public Health engaged in a competitive bid process to move the management and governance of the Iowa Health Information Network outside of state government. The transition of duties to the designated entity occurred by agreement effective March 31, 2017. Accordingly, as provided in 2015 Iowa Acts, House File 381, Iowa Code sections 135.154 through 135.156F were repealed effective March 31, 2017, and Iowa Code sections 135D.1 through 135D.7 took effect. The rules associated with the repealed Iowa Code sections are rescinded.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 11, 2017, as **ARC 3352C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 10, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

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 State Board of Health for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 7, 2018.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The following rule-making action is adopted:

Rescind and reserve **641—Chapter 206**.

[Filed 1/11/18, effective 3/7/18]

[Published 1/31/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.

ARC 3608C

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Rule making related to updates to racing and gaming rules

The Racing and Gaming Commission hereby amends Chapter 3, "Fair Information Practices," Chapter 5, "Track, Gambling Structure, and Excursion Gambling Boat Licensees' Responsibilities," Chapter 6, "Occupational and Vendor Licensing," Chapter 8, "Wagering, Simulcasting and Advance Deposit Wagering," Chapter 10, "Thoroughbred and Quarter Horse Racing," Chapter 11, "Gambling Games," and Chapter 12, "Accounting and Cash Control," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapters 99F and 99D.

State or Federal Law Implemented

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

Purpose and Summary

Item 1 adds records that are to be considered confidential and makes a corrective change in subparagraph 3.13(2)"F"(3).

Item 2 clarifies that advanced deposit wagering licensees need to follow the same rule as other licensees.

Item 3 clarifies that all remodeling associated with the licensed facility needs to be submitted for approval.

Item 4 adds a provision for exceptions to be approved.

Item 5 clarifies that a list of the person(s) hired should be filed before the person(s) begins working.

Item 6 lowers minimum payoff for win, place and show wagers.

Item 7 removes allowance for coupled entries.

Item 8 clarifies requirements for jockey clothing.

Item 9 clarifies disqualifications.

Item 10 changes the amount of time allowed to declare overweight limit for jockeys.

Item 11 removes allowance for coupling.

Item 12 clarifies that a riding suspension relates to a careless riding infraction and that each trial race ridden by a jockey is counted as one race for the purpose of applying suspension days.

RACING AND GAMING COMMISSION[491](cont'd)

Item 13 allows a trainer to enter a horse to race without papers on file if certain other conditions are met.

Item 14 removes allowance for coupled entries.

Item 15 clarifies eligibility for in-foal fillies.

Item 16 clarifies that prescriptions for race horses shall only be written and dispensed by licensed veterinarians.

Item 17 specifies labeling requirements for prescription medications.

Item 18 clarifies that prescription medications must be prescribed in compliance with certain requirements.

Items 19 and 20 declare that practicing veterinarians shall not have contact with an entered horse to race within 24 hours of the race except in the case of emergency.

Item 21 specifies which software must be tested and secured for table games.

Item 22 imposes a minimum payout in instances where an operator sets an aggregate payback limit.

Item 23 allows for the game Big Six.

Item 24 removes the requirement for each facility to provide certain names with regard to alarm system access.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 8, 2017, as **ARC 3434C**. A public hearing was held on November 28, 2017. No one attended the public hearing.

The Iowa Gaming Association, on behalf of its members, wished to have further clarification regarding the language in subrule 5.4(15) and also asked the Commission to consider its concerns with paragraph 11.7(2)“c.” In addition, the Jockey Guild requested an allowance for black pants in the amendment to subparagraph 10.5(2)“j”(1). The Commission received several comments from the betting public unhappy with the proposed change to subrule 8.2(20) and one comment in support of the change.

As a result of the comments received, changes to the proposed amendments to 5.4(15), 10.5(2)“j”(1), and 11.7(2)“c” were made, and the revised rule making was added to the Commission’s January 4, 2018, meeting agenda.

Adoption of Rule Making

This rule making was adopted by the Racing and Gaming Commission on January 4, 2018.

Fiscal Impact

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

Jobs Impact

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

RACING AND GAMING COMMISSION[491](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 Commission for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 7, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 3.13(2) as follows:

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

a. to e. No change.

f. Those portions of commission staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by commission staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) and (2) No change.

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

g. and h. No change.

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

j. Personnel files and employee records. Information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

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

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

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

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

ITEM 2. Amend paragraph **5.4(12)“a,”** introductory paragraph, as follows:

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

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 3. Amend subrule 5.4(15) as follows:

5.4(15) Remodeling. For any ~~change to be made to~~ construction that changes the specific function of a public space of the facility itself directly associated with racing or gaming or in the structure of the boat itself, the licensee must first submit plans to and receive the approval of the administrator.

ITEM 4. Amend subrule 5.5(11) as follows:

5.5(11) Designated wagering area. The designated wagering area is a rectangular area within a minimum of five feet from the front and from either side of a stationary wagering window or self-service wagering device, not otherwise obstructed by a wall or other barrier. The facility shall either section off or clearly delineate the floor of the area and post a sign near the area, which is visible to patrons approaching the area, denotes the wagering area and specifies that the wagering area is not accessible to persons under the age of 21. The designation applies only when the wagering window or device is open to transact wagering. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. Exceptions to this rule must be approved in writing by the commission.

ITEM 5. Amend subrule 6.9(2) as follows:

6.9(2) When a facility hires a person who is already in possession of a current occupational license, a list of the person(s) hired must be filed weekly with the local commission office before the person(s) begins working. The list should contain the license number, name, social security number, and birth date of each person hired.

ITEM 6. Amend subrule 8.2(20) as follows:

8.2(20) Minimum wager and payoff. The minimum wager to be accepted by any licensed facility for win, place and show wagering shall be \$2. The minimum payoff on a \$2 wager shall be ~~\$2.20~~ \$2.10. For all other wagers, the minimum wager to be accepted by any licensed facility shall be \$1. The minimum payoff for a \$1 wager shall be ~~\$1.10~~ \$1.05. Any deviation from these minimums must be approved by the administrator. In cases where a minus pool occurs, the facility is responsible for the payment of the minimum payoff and no breakage shall be incurred from that pari-mutuel pool.

ITEM 7. Amend subparagraph **10.4(4)“d”(3)** as follows:

(3) Fouls.

1. No change.

2. ~~Coupled entry. When a horse is disqualified under 10.4(4)“d”(3)“1” and that horse was a part of a coupled entry and, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may disqualify the other part of the entry.~~

3. 2. Jockey guilty of foul. The stewards may discipline any jockey whose horse has been disqualified as a result of a foul committed during the running of a race.

ITEM 8. Amend subparagraph **10.5(2)“j”(1)** as follows:

(1) Clothing and appearance. A jockey shall wear the racing colors furnished by the owner ~~of facility with the~~ of the horse the jockey is to ride, plus solid white riding pants, top boots, and a number on the right shoulder on the saddlecloth corresponding to the mount's number given as shown on the saddlecloth and in the racing daily program. ~~A jockey shall maintain a neat and clean appearance while engaged in duties on facility premises and shall wear a clean jockey costume, cap, helmet (approved by commission), a jacket of silk or waterproof fabric, breeches, and top boots. The stewards, at their discretion, may allow a jockey to wear solid black riding pants during poor weather or track conditions. The Jockeys' Guild logo, the Permanently Disabled Jockeys Fund logo, or the jockey's name may be displayed on the pants. The size of the display of the jockey's name on the pants is limited to a maximum of 32 square inches on each thigh of the pants on the outer sides between the hip and the knee, and 10 square inches on the rear at the base of the spine. A jockey shall not wear advertising or promotional material of any kind on clothing during a race, unless the following criteria are met:~~

1. A maximum of 32 square inches on each thigh of the pants on the outer side between the hip and knee and 10 square inches on the rear of the pant at the waistline at the base of the spine.

RACING AND GAMING COMMISSION[491](cont'd)

2. A maximum of 24 square inches on boots and leggings on the outside of each nearest the top of the boot.

3. A maximum of 6 square inches on the front center of the neck area (on a turtleneck or other undergarment).

4. Such advertising or promotional material does not compete with, conflict with, or infringe upon any current sponsorship agreement to the racing association race or race meet.

5. The stewards, at their discretion, may disallow any advertising that is not in compliance with this rule, any other rules of racing, or any advertising the stewards deem to be inappropriate, indecent, in poor taste, or controversial.

ITEM 9. Amend subparagraph **10.5(2)“m”(2)** as follows:

(2) The offending horse may be disqualified if, in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful, or the result of careless riding. When a horse causes interference under this rule, every horse in the same race entered by the same owner or trainer who benefited from the interference may be disqualified at the discretion of the stewards.

ITEM 10. Amend paragraph **10.5(2)“r,”** introductory paragraph, as follows:

r. Overweight limited. No jockey may weigh more than two pounds or, in the case of inclement weather, four pounds over the weight the horse is assigned to carry unless with consent of the owner or trainer and unless the jockey has declared the amount of overweight to the clerk of scales at least ~~45~~ 60 minutes before the scheduled post time of the first race. However, a horse shall not carry more than seven pounds overweight, except in inclement weather when nine pounds shall be allowed. The overweight shall be publicly announced and posted in a conspicuous place both prior to the first race of the day and before the running of the race.

ITEM 11. Amend subparagraph **10.5(2)“r”(4)** as follows:

(4) Underweight. When any horse places first, second, or third in a race, ~~or is coupled in any form of multiple exotic wagering,~~ and thereafter the horse's jockey is weighed in short by more than two pounds of the weight of which the jockey was weighed out, the mount may be disqualified and all purse moneys forfeited.

ITEM 12. Amend subparagraph **10.5(2)“v”(4)** as follows:

(4) Riding suspensions of ten days or less and participating in designated races. The stewards appointed for a race meeting shall immediately, prior to the commencement of that meeting, designate the stakes, futurities, futurity trials, or other races in which a jockey will be permitted to compete, notwithstanding the fact that such jockey is ~~technically~~ under suspension for ten days or less for a careless riding infraction at the time the designated race is to be run.

1. to 3. No change.

4. A day in which a jockey participated in one designated race while on suspension shall count as a suspension day. If a jockey rides in more than one designated race on a race card while on suspension, the day shall not count as a suspension day. ~~Designated trials~~ Each designated trial race for a stake shall be considered one race.

ITEM 13. Amend subparagraph **10.6(1)“b”(2)** as follows:

(2) The horse's breed registration certificate is not on file with the racing secretary, or horse identifier, ~~except in the case of a quarter horse~~ where the racing secretary has submitted the certificate to the breed registry for correction or transfer of ownership. The stewards may, in their discretion, waive the requirement ~~in nonclaiming races~~ provided the registration certificate is in the possession of another board of stewards, a copy of the registration certificate is on file with the racing secretary, and the horse is otherwise properly identified. For claiming races, if the claimed horse has been approved by the stewards to run without the registration certificate on file in the racing office, then the registration certificate must be provided to the racing office within seven business days for transfer to the new owner before claiming funds will be approved for transfer by the stewards.

ITEM 14. Amend subrule 10.6(11) as follows:

10.6(11) Racing numbers.

RACING AND GAMING COMMISSION[491](cont'd)

a. No change.

~~b. Coupled entries. In the case of a coupled or other entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall be entered as 1 and 1-A.~~

~~c. b. Field horses. In a combined field of horses, each horse in the field shall carry a separate number.~~

ITEM 15. Adopt the following **new** paragraph **10.6(18)“I”**:

l. *Eligibility of in-foal filly or mare.* An in-foal filly or mare shall be eligible to be entered into a claiming race only if the following conditions are fulfilled:

(1) Full disclosure of such fact is on file with the racing secretary and such information is posted in the secretary's office;

(2) The stallion service certificate has been deposited with the racing secretary's office before the horse runs;

(3) All payments due for the service in question and for any live progeny resulting from that service are paid in full;

(4) The release of the stallion service certificate to the successful claimant at the time of claim is guaranteed; and

(5) The cutoff for racing is 150 days of gestation.

ITEM 16. Amend subparagraph **10.7(1)“d”(2)**, introductory paragraph, as follows:

(2) No person except a veterinarian shall have in the person's possession any prescription drug. Prescriptions shall be written or dispensed or both only by duly licensed veterinarians in the context of a valid veterinarian-client-patient relationship and based upon a specific medical diagnosis. However, a person may possess a noninjectable prescription drug for animal use if:

ITEM 17. Amend subparagraph **10.7(1)“d”(4)** as follows:

(4) No veterinarian or any other person shall dispense, sell, or furnish any feed supplement, tonic, veterinary preparation, medication, or any other substance that can be administered or applied to a horse by any route, to any person within the premises of the facility unless there is a label specifying the name of the substance dispensed, the name of the dispensing person, the name of the horse or horses for which the substance is dispensed, the purpose for which said substance is dispensed, the dispensing veterinarian's recommendations for withdrawal before racing (if applicable), and the name of the person to whom dispensed, it is labeled in conformance with this rule or is otherwise labeled as required by law. A substance does not comply with this rule if the label is missing, illegible, tampered with, or altered.

1. Labels for all substances must include the name of the substance dispensed; the name of the dispensing person; the name of the horse or horses for which the substance is dispensed; the purpose for which the substance is dispensed; the dispensing veterinarian's recommendations for withdrawal before racing, if applicable; and the name of the person to whom dispensed.

2. Labels for medications or other prescribed substances must include all items from subparagraph 10.7(1)“d”(1) and, in addition, the date the prescription was filled; the name of the trainer or owner of the horse for whom the product was dispensed; dose; dosage; route of administration; duration of treatment of the prescribed product; and expiration date.

ITEM 18. Adopt the following **new** subparagraph **10.7(1)“d”(7)**:

(7) Any drug or medication for horses which is used or kept on facility premises and which requires a prescription must be prescribed in compliance with applicable state law and regulations by a veterinarian who is duly licensed by the commission, the Iowa veterinary board, or the state in which the horse was located at the time of the examination, diagnosis and prescription.

ITEM 19. Rescind paragraph **10.7(4)“d”** and adopt the following **new** paragraph in lieu thereof:

d. Practicing veterinarians shall not have contact with an entered horse within 24 hours before the scheduled post time of the race in which the horse is scheduled to compete unless approved by the state veterinarian except in the case of emergency. In case of an emergency, the state veterinarian must be notified prior to entering the stall. A documented attempt to contact the state veterinarian prior to

RACING AND GAMING COMMISSION[491](cont'd)

entering the stall shall comply with the notification requirements pursuant to this rule. Any unauthorized contact may result in the horse's being scratched from the race in which it was scheduled to compete and may result in further disciplinary action by the stewards.

ITEM 20. Rescind paragraph **10.7(4)“h.”**

ITEM 21. Rescind subrule 11.7(1) and adopt the following **new** subrule in lieu thereof:

11.7(1) Devices that determine or affect the outcome of wagers or are used in the collection of wagers on table games are subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3). Removable storage media shall be sealed with tamper-evident tape by a commission representative prior to implementation.

ITEM 22. Rescind subrule 11.7(2) and adopt the following **new** subrule in lieu thereof:

11.7(2) Wagers.

a. All wagers at table games shall be made by placing gaming chips or coins on the appropriate areas of the layout.

b. Information pertaining to the minimum and maximum allowed at the table shall be posted on the game.

c. A facility may impose an aggregate payout limit on a per round basis for approved table game odds payouts that are greater than 50 to 1. If imposed, aggregate limits shall be at least the highest available award at the posted minimum bet, or \$25,000, whichever amount is greater, and the amount shall be posted on the game. When applying the aggregate payout limit to multiple players' wins, facilities shall calculate each player's win as a pro rata share of the aggregate payout limit. Alternate aggregate or individual player payout limits may be established, as determined by the administrator.

d. Any other fee collected to participate in a table game shall be subject to the wagering tax pursuant to Iowa Code section 99F.11.

ITEM 23. Adopt the following **new** subrule 11.7(6):

11.7(6) Big six.

a. Wagers must be made before the spin of the wheel.

b. Each player shall be responsible for the correct positioning of the player's wager on the layout regardless of whether that player is assisted by the dealer.

c. The wheel may be spun in either direction, but must complete at least three revolutions to be considered a valid spin.

d. Each wager shall be settled strictly in accordance with its position on the layout when the wheel stops with the winning indicator in a compartment of the wheel. In accordance with subrule 11.4(3), the rules shall include procedures addressing wheel stops that land between two compartments of the wheel. These procedures shall be posted at the game.

ITEM 24. Amend subrule 12.4(3) as follows:

12.4(3) Each facility shall place on file with the commission the names of all persons authorized to enter the cashier's cage; and persons who possess the combination or keys to the locks securing the entrance to the cage; ~~and persons who possess the ability to operate alarm systems.~~

[Filed 1/9/18, effective 3/7/18]

[Published 1/31/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.

ARC 3609C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to planting and harvesting period

TRANSPORTATION DEPARTMENT[761](cont'd)

The Department of Transportation hereby amends Chapter 520, “Regulations Applicable to Carriers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 307A.2, 321.449 and 321.450.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.449 and 321.450.

Purpose and Summary

The Department is amending rule 761—520.8(321), planting and harvesting periods. The Federal Motor Carrier Safety regulations established by the Federal Motor Carrier Safety Administration (FMCSA) impose hours-of-service limits on drivers of commercial motor vehicles, but exempt certain agricultural operations from those hours-of-service limits during the planting and harvesting period. 49 CFR 395.1(k) states that the hours-of-service limits imposed by 49 CFR Part 395, Hours of Service of Drivers, do not apply “during planting and harvesting periods, as determined by each State, to drivers transporting

“(1) Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

“(2) Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

“(3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.”

The Department implements this exception through rule 761—520.8(321). Rule 761—520.8(321) set the planting and harvesting period in Iowa as the period from March 15 through June 30 and October 4 through December 14.

This set and limited time period has proved too restrictive and inflexible, as it often does not align to changing weather and other conditions that may accelerate, delay, extend, or otherwise alter the planting and harvesting period. To remedy this, other states have defined their planting and harvesting period for this purpose to extend throughout the calendar year, January 1 to December 31, and the FMCSA has accepted this approach. The Department is amending rule 761—520.8(321) to take the same approach and define the planting and harvesting period in Iowa as January 1 to December 31. This change will allow Iowa drivers engaged in the subject agricultural operations to take advantage of the federal hours-of-service exemption whenever they are engaged in those operations, regardless of fluctuations in the actual planting and harvesting period in a given year. The change will also make this declaration of the planting and harvesting period match the declaration of the planting and harvesting period made for restricted commercial driver’s licenses (CDLs), which are licenses issued to suppliers or employees of suppliers of agricultural inputs that allow the license holder to operate commercial motor vehicles for the purpose of supplying agricultural inputs during planting and harvesting without applying and testing for a full CDL. In January 2017, the Department amended rule 761—607.49(321) to similarly change the planting and harvesting period declared for operation under restricted CDLs from March 15 through June 30 and October 4 through December 14 to January 1 to December 31. Making these declarations match will ensure that agricultural input drivers with restricted CDLs will not be subjected to inconsistent regulations that unnecessarily require them to comply with hours-of-service requirements while performing subject agricultural operations.

TRANSPORTATION DEPARTMENT[761](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 6, 2017, as **ARC 3482C**. This rule making was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 3483C** on the same date. A public hearing was held on December 28, 2017. Five respondents submitted oral comments in support of the rule making. The Department received written comments from 15 respondents in support of the rule making. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

Adoption of Rule Making

This rule making was adopted by the Department on January 11, 2018.

Fiscal Impact

The fiscal impact of this rule making cannot be determined. This rule making may result in fewer citations being issued for log book violations since the amendment extends the planting and harvesting period to last the calendar year.

Jobs Impact

After analysis and review of this rule making, the Department determined that this amendment should have a positive impact on private sector jobs and employment opportunities in Iowa. Drivers engaged in agricultural operations subject to the exemption and businesses that employ the drivers will have more flexibility to conduct those operations throughout the year, regardless of year-to-year fluctuations in planting and harvesting seasons, and will be able to avoid unnecessarily investing in and using electronic logging devices, which should improve performance, profitability, and opportunity for employment.

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 March 7, 2018, at which time the Adopted and Filed Emergency rule making is hereby rescinded.

The following rule-making action is adopted:

TRANSPORTATION DEPARTMENT[761](cont'd)

Amend rule 761—520.8(321) as follows:

761—520.8(321) Planting and harvesting periods period. In accordance with the provisions of 49 CFR ~~395.1~~ 395.1(k), the planting and harvesting ~~periods~~ period pertaining to agricultural operations ~~are March 15 through June 30 and October 4 through December 14~~ is January 1 through December 31.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.

ARC 3610C

**WORKFORCE DEVELOPMENT BOARD AND WORKFORCE
DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]**

Adopted and Filed

**Rule making related to operations of workforce development board
and regional advisory boards**

The Iowa Workforce Development Board hereby amends Chapter 1, "Workforce Development Board," and Chapter 6, "Regional Advisory Boards," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 84A and Public Law No. 113-128.

Purpose and Summary

These amendments will give the Workforce Development Department a clearer framework from which to operate with regard to technology and modern efficiencies. The amendments will also help eliminate inefficiencies that remain as a result of outdated rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 6, 2017, as **ARC 3480C**. The Department received an inquiry regarding the timing of this rule making, as additional Workforce Innovation and Opportunity Act updates may necessitate further changes. The Department takes the position that these rules should be as updated as possible at this time, and delaying updates to accommodate future changes in the law is not necessary. **ARC 3480C** came before the Administrative Rules Review Committee for review on January 5, 2018, and no comments were received at that time. Three corrective changes from the Notice were made to Iowa Code citations in Items 4 and 15.

Adoption of Rule Making

This rule making was adopted by the Iowa Workforce Development Board on January 10, 2018.

Fiscal Impact

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

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
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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 Workforce Development Board and Workforce Development Center Administration Division for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 7, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 877—1.1(84A) as follows:

877—1.1(84A,PL113-128) Composition.

1.1(1) Voting members. ~~The board consists of nine voting members appointed by the governor. One member shall represent a nonprofit organization involved in workforce development, four members shall represent employers, and four members shall represent nonsupervisory employees. Of the members appointed to represent nonsupervisory employees, two members shall be from statewide organized labor organizations, one member shall be an employee representative of a labor management council, and one member shall be a person with work experience in worker training programs.~~ shall have voting members in accordance with Iowa Code section 84A.1A(1) "a" and Section 101(b) of the Workforce Innovation and Opportunity Act (WIOA), Public Law No. 113-128. For purposes of the board's membership criteria, the following terms shall have the following meanings:

"Community-based organization" means a private nonprofit organization (which may include a faith-based organization) that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce development.

"Competitive integrated employment" shall have the meaning given the term in Section 7 of the Rehabilitation Act of 1973 (29 United States Code Section 705), for individuals with disabilities.

"Demonstrated expertise and effectiveness" means that an individual has documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function, which may include individuals with experience in education or the training of job seekers with barriers to employment, as defined in Section 3(24) of WIOA, including but not limited to serving veterans; providing or supporting competitive integrated employment for individuals with disabilities; or serving eligible youth.

"Eligible youth" means, except as provided in subtitles C and D of Title I of WIOA, in-school youth, as described in Section 129(a)(1)(B) of WIOA, or out-of-school youth, as described in Section 129(a)(1)(C) of WIOA.

"In-demand industry sector" means an industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the state economy and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

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“In-demand occupation” means an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the state.

“Optimum policymaking authority” means that an individual can reasonably be expected to speak affirmatively on behalf of the entity the individual represents and to commit that entity to a chosen course of action.

“Veteran” has the meaning given the term in 38 United States Code Section 101.

1.1(2) Nonvoting members. The board consists of eight ex officio, nonvoting members. Of the eight members, four members shall be members of the general assembly; one member shall be a president or president’s designee of one of the three state universities, designated by the board of regents on a rotating basis; one member shall represent the largest statewide public employees’ organization representing state employees; one member shall be a superintendent or superintendent’s designee of a community college, appointed by the Iowa association of community college presidents; and one member shall represent the independent colleges and universities in Iowa. shall have nonvoting members in accordance with Iowa Code section 84A.1A(1) “b.”

1.1(3) Chairperson. The governor shall select a chairperson for the board from among the members who are representatives of business.

ITEM 2. Amend rule 877—1.2(84A) as follows:

~~877—1.2(84A) Meetings.~~ The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. The chairperson and vice chairperson shall not be of the same political party or gender, or represent the same group of persons. The board shall meet at the call of the chairperson or when five a majority of members of the board file a written request of the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

ITEM 3. Amend rule 877—1.3(84A) as follows:

~~877—1.3(84A, PL 113-128) Duties Purpose and duties.~~ The board shall perform the duties outlined in Iowa Code section 84A.1B and other functions as necessary and proper to carry out its responsibilities. The board approves contracts and administrative rules for the programs administered by the division of workforce development center administration.

1.3(1) Purpose. The purpose of the board is to convene state, regional, and local workforce system and partners to:

- a. Enhance the capacity and performance of the workforce development system;
- b. Align and improve the outcomes and effectiveness of federally funded and other workforce programs and investments and, through these efforts, promote economic growth;
- c. Engage public workforce system representatives, including businesses, education providers, economic development, labor representatives, and other stakeholders to help the workforce development system achieve the purpose of the Workforce Innovation and Opportunity Act, Public Law No. 113-128; and
- d. Assist to achieve the state’s strategic and operational vision and goals as outlined in the state plan under Iowa Code section 84A.1 and the Workforce Innovation and Opportunity Act, Public Law No. 113-128.

1.3(2) Duties. The board shall perform the duties outlined in Iowa Code section 84A.1B and other functions as necessary and proper to carry out its responsibilities under the Workforce Innovation and Opportunity Act, Public Law No. 113-128.

ITEM 4. Amend rule 877—1.4(84A) as follows:

~~877—1.4(84A) Records.~~ Agendas, minutes, and materials presented to the board are available from the Division of Policy and Information Public Records Custodian, Iowa Workforce Development, 1000 East

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Grand Avenue, Des Moines, Iowa 50319, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection ~~21.5(4)~~ 21.5(5) or which are otherwise confidential by law. Board records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and subsection ~~96.11(5)~~ 96.11(6). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier. ~~Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.~~

ITEM 5. Rescind rule 877—6.1(84A,PL105-220) and adopt the following new rule in lieu thereof:

877—6.1(84A,PL113-128) Definitions.

“*Chief elected official*” means designated representatives of the units of local government joined through a 28E agreement, pursuant to Section 107(c)(1)(B) of WIOA, for the purpose of sharing liability and responsibility in accordance with Title I of the WIOA.

“*Community-based organization*” means a private nonprofit organization (which may include a faith-based organization) that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce development.

“*Department*” means the department of workforce development.

“*Eligible youth*” means, except as provided in Subtitles C and D of Title I of WIOA, in-school youth, as described in Section 129(a)(1)(B) of WIOA, or out-of-school youth, as described in Section 129(a)(1)(C) of WIOA.

“*In-demand industry sector*” means an industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

“*In-demand occupation*” means an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the state, regional, or local economy, as appropriate.

“*Local workforce development board*” means a local workforce development board established in accordance with Section 107 of the Workforce Innovation and Opportunity Act, Public Law No. 113-128.

“*Optimum policymaking authority*” means that an individual can reasonably be expected to speak affirmatively on behalf of the entity the individual represents and to commit that entity to a chosen course of action.

“*Representative with demonstrated expertise and effectiveness on a local workforce development board*” means an individual who is a workplace learning advisor as defined in Section 3(70) of WIOA; who contributes to the field of workforce development, human resources, training and development, or a function of a core program as defined in Section 3(12) of WIOA; or whom the local workforce development board recognizes for valuable contributions in education or workforce development-related fields.

“*Veteran*” has the meaning given the term in Section 101 of Title 38, United States Code.

“*WIOA*” means the federal Workforce Innovation and Opportunity Act, Public Law No. 113-128.

ITEM 6. Amend rule **877—6.2(84A,PL105-220)**, parenthetical implementation statute, as follows:

877—6.2(84A,PL105-220 PL113-128) Number of boards.

ITEM 7. Rescind rule 877—6.3(84A,PL105-220) and adopt the following new rule in lieu thereof:

877—6.3(84A,PL113-128) Composition—voting members. Each regional local workforce development board shall meet the membership criteria in Section 107(b) or Section 107(i) of WIOA.

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ITEM 8. Amend rule 877—6.4(84A,PL105-220) as follows:

877—6.4(84A,PL105-220 PL113-128) Nomination process for voting members. The following procedures shall be used in soliciting nominations for voting members.

6.4(1) All nominations for members which represent business shall be made by local or regional business organizations or trade associations. Business representatives should be owners of businesses, chief executive or operating officers of business and other business executives or employers with optimum ~~policy-making~~ policymaking or hiring authority and represent businesses with employment opportunities that reflect the employment opportunities of the region.

6.4(2) All nominations for members which represent labor shall be made by appropriate local federations of labor, union councils, or state federations of labor.

6.4(3) All nominations for members ~~which represent local school districts or community colleges shall be made by local school districts or community colleges, respectively~~ representing an eligible provider of adult education and literacy where there is more than one such eligible provider in the local workforce development area shall be made by such eligible providers.

6.4(4) All nominations for members ~~who are county or city officials shall be made individually or collectively by the region's county boards of supervisors or mayors and city councils, respectively~~ representing a vocational rehabilitation program shall be made by Iowa vocational rehabilitation services or the Iowa department for the blind.

6.4(5) All nominations shall be made in writing with the signed approval of the required nominating organization.

6.4(6) The overall membership of the board shall be balanced by gender and political affiliation consistent with Iowa Code sections 69.16 and 69.16A. To the extent possible, the members should represent all counties within a region served by the board and both voting and nonvoting members should represent persons with disabilities, minorities and older workers of the region.

6.4(7) ~~Existing and future regional advisory board members that represent business, labor or education do not have to be renominated as outlined in this subrule unless required to do so by the local elected officials of a region~~ All nominations for members representing the employment service program under the Wagner-Peyser Act shall be made by the department.

6.4(8) Nominations are valid for an unlimited time period unless the local elected officials of a region set a specific time limit in the local annual plan.

ITEM 9. Amend rule 877—6.5(84A,PL105-220) as follows:

877—6.5(84A,PL105-220 PL113-128) Appointment process.

6.5(1) In making appointments to the boards, the chief local elected officials shall submit a list of ~~nominees~~ nominee for a board vacancy to the department within 45 days of the vacancy. ~~Chief elected officials shall submit at least two nominees for each vacancy for the governor to review.~~

6.5(2) The governor shall ~~review the list, add or delete nominees from the list, and return the revised list to the chief elected officials within 45 days of receipt of the list by the department~~ a nominee for a vacancy on a local workforce development board and either appoint or reject such nominee. The governor shall notify the chief elected officials within 45 days of a nominee's appointment or rejection.

6.5(3) The chief elected officials will ~~review the revised list and make the final selection of a person to fill a vacancy from the revised list. If the revised list of candidates is not acceptable to the chief elected officials, the chief elected officials may submit new candidates to the governor for consideration within 45 days and repeat the process specified in subrules 6.5(1) and 6.5(2) until a candidate is appointed~~ If the governor rejects a nominee, the chief elected officials shall submit the name of a new nominee to the department within 45 days of such rejection.

6.5(4) ~~The chief elected officials will send an appointment letter to the person selected to fill the vacancy on behalf of the chief elected officials and the governor within 30 days of receipt of the revised list and send a copy of the letter to the department.~~

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~~6.5(5)~~ **6.5(4)** If the chief elected officials fail to submit ~~nominations~~ the name of a nominee for a vacancy within the 45-day time period or fail to reach agreement locally on appointments to the board, the governor may appoint a person to fill the vacancy.

ITEM 10. Amend rule 877—6.6(84A,PL105-220) as follows:

~~877—6.6(84A,PL105-220 PL113-128)~~ **Meetings.** The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. The chief elected official for the local workforce development area will name a chairperson from among the local workforce development board's representatives of business. The chairperson and vice chairperson shall not be of the same political party. The board shall meet at the call of the chairperson or when a majority of the members of the board file a written request of the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

ITEM 11. Rescind rule 877—6.7(84A,PL105-220) and adopt the following new rule in lieu thereof:

877—6.7(84A,PL113-128) Duties. The local workforce development board shall perform the following duties and other functions as necessary and proper to carry out its responsibilities under Title I of WIOA and listed in Iowa Code section 84A.4(2).

1. Conduct a needs assessment to identify the workforce development needs of the region.
2. Recommend to the state workforce development board and the department of workforce development awards of grants and contracts administered by the department in the region.
3. Monitor the performance of grants and contracts awarded in the region.
4. File an annual report with the department as required by Iowa Code section 84A.1B.
5. Recommend to the state workforce development board and department of workforce development the services to be delivered in the region.
6. Fulfill the responsibilities of a local workforce investment board as required by the WIOA, subsequent amendments and all related regulations.
7. Enter into an agreement with the region's chief elected officials board to delineate their respective duties related to administration of the WIOA.

ITEM 12. Rescind rule 877—6.8(84A,PL105-220) and adopt the following new rule in lieu thereof:

877—6.8(84A,PL113-128) Board certification and decertification. The governor will certify each local workforce development board in accordance with Section 107(c)(2) of WIOA and may decertify a board pursuant to Section 107(c) of WIOA.

ITEM 13. Rescind and reserve rule ~~877—6.9(84A,PL105-220)~~.

ITEM 14. Amend rule ~~877—6.10(84A,PL105-220)~~, parenthetical implementation statute, as follows:

~~877—6.10(84A,PL105-220 PL113-128)~~ **Member travel expenses.**

ITEM 15. Amend rule 877—6.11(84A,PL105-220) as follows:

~~877—6.11(84A,PL105-220 PL113-128)~~ **Records.** Agendas, minutes, and materials presented to the board are available from the Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection ~~21.5(4)~~ 21.5(5) or which are otherwise confidential by law. Board records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and

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subsection 96.11(6). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

ITEM 16. Amend **877—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 84A.4 and the federal Workforce Investment Act of 1998 (P.L. 105-220) Innovation and Opportunity Act, Public Law No. 113-128.

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