



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXVI  
February 5, 2014

NUMBER 16  
Pages 1653 to 1722

## CONTENTS IN THIS ISSUE

Pages 1660 to 1722 include **ARC 1297C** to **ARC 1317C**

### ADMINISTRATIVE SERVICES

#### DEPARTMENT[11]

Notice, Procurement, 1.2(5), 117.3(3),  
117.7(4), 117.15, 118.7(2) **ARC 1302C** . . . . . 1660

### ALL AGENCIES

Agency identification numbers . . . . . 1658  
Citation of administrative rules . . . . . 1655  
Schedule for rule making . . . . . 1656

### HUMAN SERVICES DEPARTMENT[441]

Notice, Funding for empowerment areas,  
rescind ch 169 **ARC 1311C** . . . . . 1661  
Filed, Medicaid coverage for transplants,  
78.1(20)“a” **ARC 1297C** . . . . . 1677

### INSPECTIONS AND APPEALS

#### DEPARTMENT[481]

Notice, Nursing facilities—  
administrators, services, classification  
of violations, 58.1, 58.8, 58.14(8),  
58.18(2), 58.19, 58.28(3) **ARC 1313C** . . . . . 1662  
Filed, Hospital accreditation  
organizations, 51.2, 51.6, 51.53(7)  
**ARC 1305C** . . . . . 1678  
Filed, Hospitals—criminal, dependent  
adult abuse, and child abuse record  
checks for prospective employees,  
51.41 **ARC 1304C** . . . . . 1679

### INTERIOR DESIGN EXAMINING

#### BOARD[193G]

Professional Licensing and Regulation Bureau[193]  
COMMERCE DEPARTMENT[181]“umbrella”

Notice, Registration fees, 2.1(4) **ARC 1298C** . . . . . 1663

### NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Notice, Description and organization of  
board; newsletter, 1.3, 1.4 **ARC 1312C** . . . . . 1664

### PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Filed, Procedures required during the  
absence of the pharmacist, 6.7(2),  
7.6(2) **ARC 1308C** . . . . . 1683

Filed, Use of automated medication  
distribution system (AMDS) by EMS  
programs, 11.20(1) **ARC 1307C** . . . . . 1684

Filed, Strip pack dispensing of drugs,  
22.1(1), 22.5 **ARC 1309C** . . . . . 1685

### PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Notice, Speech pathologists and  
audiologists—examinations,  
continuing education, 300.3(4),  
300.5, 300.6, 300.9, 300.17(3), 303.1,  
303.2(3), 303.3 **ARC 1314C** . . . . . 1667

### PUBLIC HEALTH DEPARTMENT[641]

Notice, Mammography and stereotactic  
breast biopsy equipment—  
workstations, physician training,  
quality control, 41.6, 41.7(7) **ARC 1317C** . . . . . 1670

Notice, Reimbursement for certain  
autopsies, 127.4 **ARC 1316C** . . . . . 1671

Notice, Iowa health information network,  
ch 206 **ARC 1315C** . . . . . 1672

**PUBLIC HEALTH DEPARTMENT[641] (Cont'd)**

Filed, Plumbing and mechanical systems board—licensure fees, 28.1 <b>ARC 1299C</b> . . . . .	1686
Filed, Mandatory reporter training curricula; abuse education review panel, amendments to ch 93 <b>ARC 1300C</b> . . . . .	1688

**PUBLIC HEARINGS**

Summarized list . . . . .	1657
---------------------------	------

**PUBLIC SAFETY DEPARTMENT[661]**

Filed, Energy conservation code—adoption by reference, 301.10, 303.1 to 303.3 <b>ARC 1301C</b> . . . . .	1689
--	------

**RACING AND GAMING COMMISSION[491]**

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Notice, License suspension; debt arrangements; jockey agent representation; definition of “administrator”; gambling game shipping notification, 4.7, 5.4(8), 10.5(4)“a,” 11.1, 11.4(6) <b>ARC 1310C</b> . . . . .	1674
--	------

**REVENUE DEPARTMENT[701]**

Filed, Department organization; individual, corporation, and franchise taxes and credits, amendments to chs 3, 6 to 8, 10, 38 to 43, 46, 48, 52, 53, 58, 59 <b>ARC 1303C</b> . . . . .	1695
Filed, Property assessment appeal board, 71.21 <b>ARC 1306C</b> . . . . .	1714

**USURY**

Notice . . . . .	1676
------------------	------

## 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

Telephone: (515)281-3355

Fax: (515)281-5534

### 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 2014

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
18	Friday, February 14, 2014	March 5, 2014
19	Friday, February 28, 2014	March 19, 2014
20	Friday, March 14, 2014	April 2, 2014

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days 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\*\*\***

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Procurement, 1.2(5), 117.3(3), 117.7(4), 117.15, 118.7(2) IAB 2/5/14 ARC 1302C	Room 8, A Level Hoover State Office Bldg. Des Moines, Iowa	February 25, 2014 9 to 10 a.m.
---	--	-----------------------------------

**EDUCATIONAL EXAMINERS BOARD[282]**

Teacher intern license—minimum grade point average, 13.9(3) IAB 1/8/14 ARC 1272C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 5, 2014 1 p.m.
--	--	----------------------------

**INSURANCE DIVISION[191]**

Duties of pharmacy benefits managers and insurers, 59.1 to 59.10 IAB 1/22/14 ARC 1295C	Division Offices, Fourth Floor Two Ruan Center 601 Locust Street Des Moines, Iowa	February 11, 2014 10 a.m.
---	--	------------------------------

**INTERIOR DESIGN EXAMINING BOARD[193G]**

Registration fees, 2.1(4) IAB 2/5/14 ARC 1298C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	February 25, 2014 9 a.m.
--	--	-----------------------------

**PROFESSIONAL LICENSURE DIVISION[645]**

Speech pathologists and audiologists—examinations, continuing education, 300.3(4), 300.5, 300.6, 300.9, 300.17(3), 303.1, 303.2(3), 303.3 IAB 2/5/14 ARC 1314C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	February 25, 2014 8 to 8:30 a.m.
---	---	-------------------------------------

**RACING AND GAMING COMMISSION[491]**

License suspension; debt arrangements; jockey agent representation; definition of “administrator”; gambling game shipping notification, 4.7, 5.4(8), 10.5(4), 11.1, 11.4(6) IAB 2/5/14 ARC 1310C	Commission Office, Suite 100 1300 Des Moines St. Des Moines, Iowa	February 25, 2014 9 a.m.
--	---	-----------------------------

**TRANSPORTATION DEPARTMENT[761]**

Bridge safety fund, rescind ch 162 IAB 1/22/14 ARC 1288C	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	February 13, 2014 10 a.m. (If requested)
--	--	--

The following list will be updated as changes occur.

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

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

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
AGING, DEPARTMENT ON[17]  
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
    Soil Conservation Division[27]  
ATTORNEY GENERAL[61]  
AUDITOR OF STATE[81]  
BEEF INDUSTRY COUNCIL, IOWA[101]  
BLIND, DEPARTMENT FOR THE[111]  
CAPITAL INVESTMENT BOARD, IOWA[123]  
CITIZENS’ AIDE[141]  
CIVIL RIGHTS COMMISSION[161]  
COMMERCE DEPARTMENT[181]  
    Alcoholic Beverages Division[185]  
    Banking Division[187]  
    Credit Union Division[189]  
    Insurance Division[191]  
    Professional Licensing and Regulation Bureau[193]  
        Accountancy Examining Board[193A]  
        Architectural Examining Board[193B]  
        Engineering and Land Surveying Examining Board[193C]  
        Landscape Architectural Examining Board[193D]  
        Real Estate Commission[193E]  
        Real Estate Appraiser Examining Board[193F]  
        Interior Design Examining Board[193G]  
    Utilities Division[199]  
CORRECTIONS DEPARTMENT[201]  
    Parole Board[205]  
CULTURAL AFFAIRS DEPARTMENT[221]  
    Arts Division[222]  
    Historical Division[223]  
EARLY CHILDHOOD IOWA STATE BOARD[249]  
ECONOMIC DEVELOPMENT AUTHORITY[261]  
    City Development Board[263]  
IOWA FINANCE AUTHORITY[265]  
EDUCATION DEPARTMENT[281]  
    Educational Examiners Board[282]  
    College Student Aid Commission[283]  
    Higher Education Loan Authority[284]  
    Iowa Advance Funding Authority[285]  
    Libraries and Information Services Division[286]  
    Public Broadcasting Division[288]  
    School Budget Review Committee[289]  
EGG COUNCIL, IOWA[301]  
EMPOWERMENT BOARD, IOWA[349]  
ENERGY INDEPENDENCE, OFFICE OF[350]  
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
EXECUTIVE COUNCIL[361]  
FAIR BOARD[371]  
HUMAN RIGHTS DEPARTMENT[421]  
    Community Action Agencies Division[427]  
    Criminal and Juvenile Justice Planning Division[428]  
    Deaf Services Division[429]  
    Persons With Disabilities Division[431]  
    Latino Affairs Division[433]  
    Status of African-Americans, Division on the[434]

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

## ARC 1302C

## ADMINISTRATIVE SERVICES DEPARTMENT[11]

## Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services (DAS) proposes to amend Chapter 1, “Department Organization,” Chapter 117, “Procurement of Goods and Services of General Use,” and Chapter 118, “Purchasing Standards for Service Contracts,” Iowa Administrative Code.

The Department of Administrative Services proposes to amend certain procurement rules to eliminate conflict with statute and to provide flexibility and retain accountability for sole source procurements.

The Department of Administrative Services does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Department’s general rules concerning waivers.

Interested persons may make written comments on the proposed amendments until 4:30 p.m. on February 25, 2014. Comments should be directed to Caleb Hunter, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by e-mail to [Caleb.Hunter@iowa.gov](mailto:Caleb.Hunter@iowa.gov).

A public hearing will be held on February 25, 2014, from 9 to 10 a.m. in Room 8, A Level, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise the Department of Administrative Services of their specific needs by calling (515)281-3351.

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

These amendments are intended to implement Iowa Code chapter 8A, subchapter III.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 1.2(5):

**1.2(5) Central procurement enterprise location.** The central procurement enterprise’s primary office is located in the Hoover State Office Building, Third Floor, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)725-2725. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

ITEM 2. Amend subrule 117.3(3) as follows:

**117.3(3) Construction procurement.** Formal competition shall be used for selection of a vendor for construction, erection, demolition, alteration, or repair of a public improvement when the cost of the work exceeds \$100,000 or the adjusted competitive threshold established in Iowa Code section 314.1B.

ITEM 3. Amend subrule 117.7(4) as follows:

**117.7(4) ~~Construction~~ Advertisement of construction procurement exceeding \$100,000.** Construction solicitations shall be advertised twice in a newspaper of general circulation published in the county within which the work is to be done when the cost of the work exceeds \$100,000 or the adjusted competitive threshold established in Iowa Code section 314.1B. Additional means of advertisement used shall be consistent with practices in the construction industry. The department may publish an advertisement in an electronic format as an additional method of soliciting bids.

ITEM 4. Amend rule 11—117.15(8A) as follows:

**11—117.15(8A) Thresholds for delegating procurement authority.**

**117.15(1)** No change.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

**117.15(2)** *Agency direct purchasing—advanced level.* An agency ~~certified by the director or designee as a “procurement center of excellence”~~ may procure non-master agreement goods up to \$50,000 per transaction in a competitive manner. ~~To be certified, only in the event the agency personnel engaged in the purchase of goods must complete~~ have completed enhanced procurement training established by the director or designee. ~~Agency personnel must complete training within a two-year period in order for the agency to be certified.~~

**117.15(3)** and **117.15(4)** No change.

**117.15(5)** *Misuse of agency authority.*

a. to c. No change.

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

~~e. The director or designee may revoke an agency’s delegated authority if the agency fails to maintain “procurement center of excellence” certification or uses the authority to procure goods or services already available on a master agreement.~~

ITEM 5. Amend subrule 118.7(2) as follows:

**118.7(2)** *Special procedures required for sole source procurements.*

a. When the annual value of the service contract exceeds \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than \$15,000, ~~the head director~~ of a state agency or designee shall sign the sole source contract or the amendment. In the absence of the director of a state agency or designee, the sole source contract shall be signed only by the DAS director or designee. Use of sole source procurement does not relieve a state agency from negotiating a fair and reasonable price and thoroughly documenting the procurement action.

b. When the annual value of the service contract exceeds \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is equal to or greater than \$15,000, a state agency shall be required to complete a sole source justification form. The director of the state agency or designee shall sign the sole source justification form. In the absence of the director of the state agency or designee, the sole source justification form shall be signed only by the DAS director or designee. The claim for the first payment on a contract requires a copy of the signed original contract, a copy of the precontract questionnaire, a copy of the sole source justification form, and an original invoice or original claimant signature.

c. No change.

**ARC 1311C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to rescind Chapter 169, “Funding for Empowerment Areas,” Iowa Administrative Code.

In 2010, the Iowa Legislature transitioned the Community Empowerment Initiative to the Early Childhood Iowa Initiative. In 2013 Iowa Acts, Senate File 446, section 16(8), the Iowa Legislature changed the funding source for the early childhood funds from federal funds to state funds. The proposed amendment rescinds Chapter 169 because the rules are no longer relevant, based on the funding source change from federal funds to state funds in the Health and Human Services appropriation. The Early Childhood Iowa State Board rather than the Department has the authority to set policy and promulgate administrative rules for the early childhood funds that are distributed to Early Childhood Iowa areas

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(see 249—Chapter 1). In addition, the Early Childhood Iowa State Board currently sets policy and promulgates administrative rules for the school ready funds (state funding source) distributed to Early Childhood Iowa areas.

Any interested person may make written comments on the proposed amendment on or before February 25, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 256I.11(4).

The following amendment is proposed.

Rescind and reserve **441—Chapter 169**.

**ARC 1313C****INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 135C.14 and 135C.36, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 58, “Nursing Facilities,” Iowa Administrative Code.

The proposed amendments rescind outdated definitions, change the length of time for which a provisional administrator may be appointed, and provide clarification for several rules. The amendments also change the possible classification for violations of subrule 58.18(2), the content of which is moved to new paragraph 58.28(3)“f,” and of paragraph 58.28(3)“e.” The Department can cite numerous examples of violations of these rules that would fall within the definition of a Class I penalty as provided in Iowa Code section 135C.36(1). The amendments allow the Department greater flexibility when determining whether a violation should be classified as a Class I, II or III violation.

The State Board of Health initially reviewed the proposed amendments at its January 8, 2014, meeting.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 25, 2014. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to [david.werning@dia.iowa.gov](mailto:david.werning@dia.iowa.gov).

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

These amendments are intended to implement Iowa Code sections 135C.14 and 135C.36.

The following amendments are proposed.

ITEM 1. Rescind the definitions of “Alcoholic” and “Drug addiction” in rule **481—58.1(135C)**.

ITEM 2. Amend subrule 58.8(4), introductory paragraph, as follows:

**58.8(4)** A provisional administrator may be appointed on a temporary basis by the nursing facility licensee to assume the administrative duties when the facility, through no fault of its own, has lost its administrator and has been unable to replace the administrator provided that no facility licensed under

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

Iowa Code chapter 135C shall be permitted to have a provisional administrator for more than 6 12 months in any 12-month period and further provided that:

ITEM 3. Amend subrule 58.8(5), introductory paragraph, as follows:

**58.8(5)** In the absence of the administrator, a responsible person shall be designated in writing to the department to be in charge of the facility. The administrator shall not be absent from the facility for more than 3 months without approval of the department. (III)

The person designated shall:

ITEM 4. Amend paragraph **58.8(5)“d”** as follows:

*d.* Be at least ~~18~~ 21 years of age; (III)

ITEM 5. Amend subrule 58.14(8), introductory paragraph, as follows:

**58.14(8)** Physician delegation of tasks. Each resident, including private pay residents, shall be visited by or shall visit the resident's physician at least twice a year. The year period shall be measured from the date of admission and is not to include preadmission physicals.

ITEM 6. Rescind and reserve subrule **58.18(2)**.

ITEM 7. Amend rule 481—58.19(135C), introductory paragraph, as follows:

**481—58.19(135C) Required nursing services for residents.** ~~The program plan for nursing facilities shall have~~ resident shall receive and the facility shall provide, as appropriate, the following required nursing services under the 24-hour direction of qualified nurses with ancillary coverage as set forth in these rules:

ITEM 8. Amend paragraph **58.19(2)“b”** as follows:

*b.* ~~Wound care~~ Provision of the appropriate care and treatment of wounds, including pressure sores, to promote healing, prevent infection, and prevent new sores from developing; (I, II)

ITEM 9. Amend paragraph **58.28(3)“e”** as follows:

*e.* Each resident shall receive adequate supervision to ~~ensure~~ protect against ~~hazard~~ hazards from self, others, or elements in the environment. (I, II, III)

ITEM 10. Adopt the following new paragraph **58.28(3)“f”**:

*f.* Residents shall be protected against physical or environmental hazards to themselves. (I, II, III)

**ARC 1298C**

## **INTERIOR DESIGN EXAMINING BOARD[193G]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 544C.3, the Interior Design Examining Board hereby gives Notice of Intended Action to amend Chapter 2, “Registration,” Iowa Administrative Code.

The proposed amendment reduces the registration fee and places the fee structure in the rules.

Consideration will be given to all written suggestions or comments received no later than 4:30 p.m. on February 25, 2014. Comments should be addressed to Toni Bright, Interior Design Examining Board, 200 E. Grand Ave., Suite 350, Des Moines, Iowa 50309. E-mail may be sent to [InteriorDesignBoard@iowa.gov](mailto:InteriorDesignBoard@iowa.gov).

A public hearing will be held on February 25, 2014, at 9 a.m. in the Board Office, 200 E. Grand Ave., Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendment either orally or in writing. At the hearing, any person who wishes to speak will be asked to

## INTERIOR DESIGN EXAMINING BOARD[193G](cont'd)

give the person's name and address for the record and to confine remarks to the subject of the proposed amendment.

This amendment has a fiscal impact to the state of Iowa of under \$2000 annually based on the number of current registrants.

This rule is subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, a positive jobs impact could exist. A person may practice as an interior designer without registering with the Board; however, the proposed amendment reduces the registration fee, which may make registration more attractive to interior designers.

This amendment is intended to implement Iowa Code chapters 17A, 272C, and 546 and section 544C.3.

The following amendment is proposed.

Amend subrule 2.1(4) as follows:

**2.1(4) Applications.** Persons applying for initial or renewal registration shall submit an application on a form provided by the board and shall pay a registration fee of \$275. Certificates issued to registrants with last names beginning with A through K shall expire on June 30 of even-numbered years, and certificates issued to registrants with last names beginning with L through Z shall expire on June 30 of odd-numbered years. Registration fees and continuing education requirements shall be applied pro rata to those registrants whose certificates expire in less than two years.

<u>Type of fee</u>	<u>Amount</u>
<u>Initial registration fee</u>	<u>\$275</u>
<u>Renewal</u>	<u>\$275</u>
<u>Late renewal fee</u>	<u>\$25</u>
<u>Reinstatement of lapsed registration</u>	<u>\$100</u>

**ARC 1312C**

## NURSING BOARD[655]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 1, “Administrative and Regulatory Authority,” Iowa Administrative Code.

The proposed amendments:

- Replace the current mission statement with the new mission statement.
- Change the election date of Board officers to occur prior to May 1 of each year.
- Establish standing committees after May 1 of each year.
- Alter scheduling requirement for future Board meeting dates.
- Remove the requirement that meetings must be held in Des Moines, Iowa.
- Replace the use of Robert's Rules of Order with broader requirements for conducting meetings and ensuring equal rights and responsibilities for members.
- Eliminate references to provisions rescinded in 2001.
- Remove the subrule that provided for licensee notification in the Board newsletter.
- Remove reference to the state's general fund.

## NURSING BOARD[655](cont'd)

Any interested person may make written comments or suggestions on or before February 25, 2014. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685, or e-mail [rules.comments@iowa.gov](mailto:rules.comments@iowa.gov). Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. 8th Street, by appointment.

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

These amendments are intended to implement Iowa Code chapters 17A, 147, and 152.

The following amendments are proposed.

ITEM 1. Amend rule 655—1.3(17A,147,152) as follows:

**655—1.3(17A,147,152) Description and organization of the board.**

**1.3(1) Description of the board.** The board derives its legal authority for regulating and enforcing regulations for nursing education, nursing practice and continuing education for nurses under the provisions of Iowa Code chapters 147, 147A, 152, 152E and 272C. The mission of the board is to protect the public health, safety and welfare by ~~ensuring that nursing is practiced by at least minimally competent licensed individuals who practice within their authorized scope of practice~~ regulating the licensure of nurses, the practice of nurses, and nursing education and continuing education.

**1.3(2) Organization of the board and meetings.** The composition of the board is defined in Iowa Code sections 147.14 and 147.19. The board shall:

- ~~a.~~ At the last regularly scheduled meeting prior to May 1<sup>st</sup>
  - ~~(1) Elect~~ elect a chairperson and vice chairperson from its membership to begin serving as officers on May 1.
  - ~~(2) b.~~ Establish At the first regularly scheduled meeting after May 1, establish standing committees.
  - ~~(3) c.~~ Schedule regular meeting dates ~~through the summer of the following year.~~
  - ~~(4) Hold~~ and hold regularly scheduled meetings ~~in Des Moines, Iowa.~~
- ~~b.~~ d. Hold special meetings called by the chairperson or upon request of four members of the board to the chairperson or executive director. Special meetings may be held by electronic means in accordance with Iowa Code section 21.8.
- ~~e.~~ e. Make available to the public, the date, time, and location of board meetings.
- ~~d.~~ f. Make available to the public, the date on which board materials are due in the board office for the agenda of regularly scheduled meetings. Materials received three weeks prior to a scheduled board meeting shall be placed on the agenda. Materials from emergency or unusual circumstances may be added to the agenda with the chairperson's approval.
- ~~e.~~ g. Allow members of the public to be present during board meetings unless the board votes to hold a closed session.
  - (1) Anyone who has submitted materials for the agenda or whose presence has been requested by the board will be given the opportunity to address the board.
  - (2) At every regularly scheduled board meeting, time will be designated for "Public Comment." During the time on the agenda labeled "Public Comment," anyone may speak for up to two minutes per person. Requests to speak at a later time for two minutes per person when a particular topic comes before the board should be made at the time of "Public Comment" and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted to public comment at any one time unless the chairperson indicates otherwise.
  - (3) One who has not asked to address the board during "Public Comment" may be recognized by the chairperson if one raises a hand. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.
- ~~f.~~ h. Hold a closed session if the board voted to do so in a public roll call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if less ~~are~~ than two-thirds of the board is present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. Minutes of all discussion, persons present, and action occurring

## NURSING BOARD[655](cont'd)

at a closed session will be recorded along with a tape recording of the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

~~g. i.~~ Govern its meetings in accordance with Iowa Code chapter 21 ~~and its proceedings by "Robert's Rules of Order, Revised."~~ The board proceedings shall be conducted to ensure that all members have equal rights, privileges and obligations.

~~h. j.~~ Appoint a full-time executive director who, under the direction of the board, is responsible for the administration of policies and programs of the board and for the operation of the board office. Appointment or termination of appointment of the executive director shall require a majority vote of the entire board.

~~i. k.~~ Act on a petition for adoption of rules. Any person may request the promulgation, amendment, or repeal of a rule in accordance with Iowa Code section 17A.7 and 655—Chapter 8.

~~(1) to (4) Rescinded IAB 4/4/01, effective 5/9/01.~~

~~j. l.~~ Adopt, amend, or repeal rules in accordance with Iowa Code sections 17A.3, 17A.4, 17A.5, 17A.6, and 17A.7.

**1.3(3) Information.** Members of the public may obtain information or submit requests to the board office that relate to regulating and enforcing regulations on nursing education, nursing practice, and continuing education for nurses. Requests for information resulting in legally binding answers require a petition for rule making or a petition for declaratory ruling order. See 655—Chapter 8, "Petition Petitions for Rule Making"; 655—Chapter 9, "Declaratory Rulings Orders"; and 655—Chapter 10, "Agency Procedure for Rule Making."

**1.3(4) Petition for declaratory orders.** Any person may petition the board for a declaratory order as to the applicability of statute, rule, policy statement, decision or order which is under the board's jurisdiction. The petition shall be submitted in writing to the board office and shall be in accordance with 655—Chapter 9.

~~a. to e. Rescinded IAB 4/4/01, effective 5/9/01.~~

**1.3(5) Public hearings.** Public hearings shall be held in accordance with Iowa Code section 17A.4, subsection 1, paragraphs "a" and "b," with respect to rule making and 655—Chapter 10.

~~a. to e. Rescinded IAB 4/4/01, effective 5/9/01.~~

**1.3(6) Public records and rosters.** Public records and rosters of licensees shall be made available in accordance with Iowa Code chapter 22 and ~~sections section~~ section 147.8 and 147.43 and 655—Chapter 11.

ITEM 2. Amend rule 655—1.4(147,152,272C) as follows:

**655—1.4(147,152,272C) Newsletter.**

**1.4(1)** The board may publish or contract with a vendor to publish a newsletter as a nonpublic forum to disseminate official information related to the regulated profession. This official information may include statutory requirements, statutory changes, rules, rule changes, proposed or pending rule changes, licensing requirements, license renewal procedures, board action, board interpretative rulings or guidelines, office procedures, disciplinary action, ethical or professional standards, education requirements, education opportunities (prelicense education, continuing education and professional development), board business, board meetings and board news.

~~1.4(2) When the board is required or allowed to mail notices to licensees about matters such as license renewal, the board may include such notices in the newsletter.~~

~~1.4(3) 1.4(2) The newsletter may include vendor advertising to enable~~ enables the board to communicate with licensees and other interested persons ~~without expending moneys appropriated from the state's general fund,~~ and may include vendor advertising in order to defray the cost of the newsletter and to provide a targeted opportunity for licensees to receive profession-specific information to facilitate entry into the profession and enhance professional performance.

~~1.4(4) 1.4(3) All newsletter advertising must be consistent with the board's mission as set forth in subrule 1.3(1). The board derives its legal authority for regulating and enforcing regulations for nursing education, nursing practice and continuing education for nurses under the provisions of Iowa Code chapters 147, 147A, 152, 152E and 272C. The mission of the board is to protect the public health, safety~~

## NURSING BOARD[655](cont'd)

~~and welfare by ensuring that nursing is practiced by at least minimally competent licensed individuals who practice within their authorized scope of practice.~~

~~1.4(5)~~ **1.4(4)** All newsletter advertising must be professional and respectful of the nature of the regulated profession, established as a nonpublic forum, and consistent with rules established by the board. Advertising shall be restricted to commercial offerings of goods and services directly related to the lawful practice of the profession or the regulation of the profession. Political, advocacy or issue-oriented advertising shall not be permitted.

~~1.4(6)~~ **1.4(5)** Newsletter advertising shall be considered consistent with the board's mission if the advertising pertains to commercial offerings of goods or services in one or more of the following areas:

- a. Entry into the profession, such as prelicense education or internship opportunities.
- b. A licensee's compliance with statute or board rules, such as continuing education courses or publications containing professional standards.
- c. The lawful and competent performance of the profession, e.g., malpractice insurance, or goods or services uniquely used in the profession.
- d. Employment opportunities in the profession.
- e. A professional's marketing of professional services to other professionals.
- f. Education programs designed to enhance credentials of professionals, or professional-specific degrees.

g. Private and public notices of scholarship and grant opportunities.

~~1.4(7)~~ **1.4(6)** Newsletter advertising shall be clearly separated from the substantive sections of each newsletter. Vendors authorized to solicit newsletter advertising must do so consistent with the board's advertising guidelines in a manner which is viewpoint-neutral and nondiscriminatory in all respects. Goods or services advertised in a newsletter must be lawful for all possible readers of any age to view, use or buy. The front page of each newsletter containing advertising must include a prominent disclaimer notifying the reader that the board plays no role in the solicitation of advertising and does not explicitly or implicitly endorse any advertiser or any good or service advertised in the newsletter.

**ARC 1314C****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology hereby gives Notice of Intended Action to amend Chapter 300, “Licensure of Speech Pathologists and Audiologists,” and Chapter 303, “Continuing Education for Speech Pathologists and Audiologists,” Iowa Administrative Code.

These proposed amendments remove outdated language addressing examination requirements and update and clarify the continuing education requirements for renewal.

Any interested person may make written comments on the proposed amendments no later than February 25, 2014, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail [judith.manning@idph.iowa.gov](mailto:judith.manning@idph.iowa.gov).

A public hearing will be held on February 25, 2014, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments are intended to implement Iowa Code sections 147.34, 154F.3, and 272C.2. The following amendments are proposed.

ITEM 1. Amend subparagraph **300.3(4)“b”(3)** as follows:

(3) Results of the ~~National Teacher Praxis~~ Examination.

ITEM 2. Amend rule 645—300.5(147) as follows:

**645—300.5(147) Examination requirements.** The examination required by the board shall be the ~~National Teacher Praxis~~ Examination in speech pathology or audiology. This examination is administered by the Educational Testing Service. ~~The applicant should contact the nearest accredited college or university for the time and place of the examination.~~

**300.5(1)** The applicant has full responsibility for making arrangements to take the ~~National Teacher Praxis~~ Examination in speech pathology or audiology and for bearing all expenses associated with taking the examination. The applicant also has the responsibility for having the examination scores sent directly to the board from the Educational Testing Service.

**300.5(2)** No change.

ITEM 3. Amend paragraph **300.6(1)“f”** as follows:

f. Results of the ~~National Teacher Praxis~~ Examination.

ITEM 4. Amend paragraph **300.6(2)“f”** as follows:

f. Results of the ~~National Teacher Praxis~~ Examination.

ITEM 5. Amend rule **645—300.9(147)**, numbered paragraph “4,” as follows:

4. Shows evidence that the ~~National Teacher Praxis~~ Examination scores have been sent directly from the examination service to the board;

ITEM 6. Amend subparagraph **300.17(3)“b”(3)** as follows:

(3) Verification of passing the ~~National Teacher Praxis~~ Examination (NTE) for ~~Speech Pathology or Audiology~~ in speech pathology or audiology within the last two years prior to application for reactivation.

ITEM 7. Rescind the definition of “Continuing education” in rule **645—303.1(147)** and adopt the following **new** definition in lieu thereof:

“*Continuing education*” means a planned individual learning experience or activity that is directly related to the sciences or contemporary clinical practice of audiology, speech-language pathology and speech-language-hearing science and whose content and focus are beyond the basic preparation required for entry into the professions. These activities result in improving, adding to, or positively changing the knowledge and skills of the licensee to improve the safety and welfare of the public.

ITEM 8. Rescind the definition of “Independent study” in rule **645—303.1(147)**.

ITEM 9. Amend subrule 303.2(3) as follows:

**303.2(3)** Hours of continuing education credit may be obtained by ~~attending and participating~~ participation in a continuing education ~~program or~~ activity. ~~These hours must be in accordance with these rules. Such programs and activities may take place individually or in group settings including in-person conferences, journal readings, teleconferences, videoconferences and online programs or activities as long as such programs and activities meet the criteria specified in the definition of continuing education in rule 645—303.1(147).~~

ITEM 10. Rescind subrule 303.3(1) and adopt the following **new** subrule in lieu thereof:

**303.3(1) General criteria.** A continuing education program or activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education program or activity:

a. Meets the definition of continuing education as defined in rule 645—303.1(147);

b. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

c. Fulfills state program goals, objectives, or both; and

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- d.* Provides proof of attendance to licensees in attendance including:
- (1) Date(s), location, course title, presenter(s);
  - (2) Number of program contact hours; and
  - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

ITEM 11. Amend subparagraph **303.3(2)“a”(1)** as follows:

(1) Basic communication processes. Information (beyond the basic licensure requirements) applicable to the normal development and use of speech, language, and hearing, i.e., anatomic and physiologic bases for the normal development and use of speech, language, and hearing; physical bases and processes of the production and perception of speech, language, and hearing; linguistic and psycholinguistic variables related to normal development and use of speech, language, and hearing; and technological, biomedical, engineering, and instrumentation information which would enable expansion of knowledge in the basic communication processes. ~~Any computer course used for continuing education must involve the actual application to the communicatively impaired population.~~

ITEM 12. Amend subparagraph **303.3(2)“a”(3)** as follows:

(3) Related areas. Study pertaining to the understanding of human behavior, both normal and abnormal, as well as services available from related professions which apply to the contemporary practice of speech-language pathology/audiology, e.g., theories of learning and behavior; services available from related professions that also deal with persons who have disorders of communication; information from these professions about the sensory, physical, emotional, social or intellectual states of child or adult; ~~and other areas such as general principles of program management, professional ethics, clinical supervision, counseling; and interviewing.~~

Unacceptable subject matter includes personal development, human relations, collective bargaining, and tours. While desirable, these subjects are not applicable to the licensees' skill, knowledge and competence as expressed in Iowa Code section 272C.2, paragraph "g." Such courses will receive no credit toward the minimum 30 hours required for license renewal.

ITEM 13. Amend paragraph **303.3(2)“b”** as follows:

*b.* A licensee may elect to take the ~~National Teacher~~ Praxis Examination in speech pathology or audiology in lieu of earning continuing education credits. The licensee shall have the results of the examination sent to the board by the agency administering the examination.

ITEM 14. Rescind paragraph **303.3(2)“c”** and adopt the following new paragraph in lieu thereof:

*c.* A licensee may present professional programs which meet the criteria in this rule. Two hours of credit will be allowed for each hour of newly developed presentation material. A course schedule or brochure must be maintained for audit.

ITEM 15. Adopt the following new paragraph **303.3(2)“f”**:

*f.* A maximum of 16 hours of continuing education credit may be earned per biennium by participation in continuing education programs and activities which meet the criteria in this rule and which are completed through journal readings, teleconference or videoconference participation, and online program participation. In addition, such programs and activities must include a posttest that the participant must pass in order to receive continuing education credit.

## ARC 1317C

## PUBLIC HEALTH DEPARTMENT[641]

## Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 41, “Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials,” Iowa Administrative Code.

These proposed amendments expand soft copy review workstations requirements to allow for the use of workstations that meet an additional criterion option of being cleared by the United States Food and Drug Administration 510K process with an intended use for digital mammography; expand the initial new modality training requirements for physicians to allow the use of training provided by a vendor manufacturing new modality equipment; adjust wording from “full field digital mammography” to “new mammographic modality” to be consistent with the multiple modalities for which physicians may need to obtain training; remove the reference to outdated film screen technology; and add a reference to require adherence to quality control procedures outlined by new stereotactic breast biopsy equipment manufacturers. The proposed amendments will better match industry practices for training, equipment requirements and quality control tests. These changes will maintain the protection of public health while reducing the burden on the regulated community.

Any interested person may make written comments or suggestions on the proposed amendments on or before February 25, 2014. Such written comments should be directed to Angela Leek, Bureau of Radiological Health, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [angela.leek@idph.iowa.gov](mailto:angela.leek@idph.iowa.gov).

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

These amendments are intended to implement Iowa Code section 136C.15.

The following amendments are proposed.

ITEM 1. Rescind the definition of “Soft copy review workstation” in subrule **41.6(1)**.

ITEM 2. Amend paragraph **41.6(2)“i”** as follows:

*i.* Soft copy review workstation requirements.

(1) Soft copy review workstations used for final interpretation of mammogram images must be a configuration of two ~~5 megapixel~~ monitors: that meet one of the following criteria:

1. Have 5 megapixel resolution; or

2. Be approved by the United States Food and Drug Administration 510K process and be intended for digital mammography use.

(2) The workstation must have a quality control program substantially the same as that outlined by the image receptor manufacturer’s quality control manual or that outlined by the image receptor manufacturer’s designated soft copy review workstation quality control manual.

ITEM 3. Amend subparagraph **41.6(3)“a”(1)**, numbered paragraph **“5,”** as follows:

5. Before an interpreting physician may begin independently interpreting mammograms produced by a new mammographic modality other than the modality in which the initial training was received, the interpreting physician shall have at least 8 hours of Category 1 continuing medical education credits in the new mammographic modality or at least 8 hours of training in the new mammographic modality provided by a vendor manufacturing the new mammographic modality equipment. An interpreting physician previously qualified to interpret ~~full field digital mammography~~ a new mammographic modality in another state will have six months to complete this requirement. The six-month time

PUBLIC HEALTH DEPARTMENT[641](cont'd)

frame begins when the interpreting physician commences Iowa ~~full field digital mammography~~ new mammographic modality interpretation.

ITEM 4. Rescind subparagraph **41.7(7)“e”(3)** and adopt the following new subparagraph in lieu thereof:

(3) Phantom image (weekly). Phantom image must meet the criteria of 5 fibers, 4 speck groups and 3 masses for the ACR accreditation phantom or 3 fibers, 3 speck groups and 2.5 masses for the mini phantom unless otherwise stated by the phantom manufacturer. Failures must be corrected before further procedures are performed.

ITEM 5. Rescind subparagraph **41.7(7)“e”(5)** and adopt the following new subparagraph in lieu thereof:

(5) Any additional quality control testing indicated by the stereotactic breast biopsy unit manufacturer must be completed as outlined in the quality control manual applicable to the unit.

**ARC 1316C**

## **PUBLIC HEALTH DEPARTMENT[641]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 691.6, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 127, “County Medical Examiners,” Iowa Administrative Code.

The Department does not have funding to reimburse Iowa counties for county medical examiner expenses for autopsies ordered on decedents who were brought into Iowa for emergency medical treatment. These proposed amendments direct counties to submit such requests for reimbursement directly to the state appeal board for review and processing. This will make processing of such claims more efficient, streamlined and customer-friendly. Also, no funding has been allocated to the Department for reimbursement for autopsies in cases in which SIDS was the cause of death. Therefore, the proposed amendments rescind the paragraph indicating reimbursement is available.

Any interested person may make written comments or suggestions on the proposed amendments on or before February 25, 2014. Such written comments should be directed to John Kraemer, Iowa Office of the State Medical Examiner, 2250 S. Ankeny Blvd., Ankeny, Iowa 50023; fax (515)725-1414. E-mail may be sent to [john.kraemer@idph.iowa.gov](mailto:john.kraemer@idph.iowa.gov).

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

These amendments are intended to implement Iowa Code sections 331.802(2)“c,” 331.802(4) and 691.6.

The following amendments are proposed.

ITEM 1. Amend paragraph **127.4(2)“c”** as follows:

*c. Out-of-state resident—law enforcement involvement.* The fee and expenses of a county medical examiner who performs an investigation or autopsy of a person who dies after being brought into the state for emergency medical treatment by or at the direction of an out-of-state law enforcement officer or public authority shall be paid by the state. A claim for payment shall be filed with the ~~department~~ state appeal board.

ITEM 2. Rescind and reserve paragraph **127.4(2)“e.”**

**ARC 1315C****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 135.156B, the Iowa Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 206, “Iowa Health Information Network,” Iowa Administrative Code.

This proposed chapter will accomplish the following:

- Identify the procedure by which the Iowa Health Information Network (IHIN) policies and procedures are developed and approved with the input from workgroup members and oversight of the Executive Committee and approval of the State Board of Health.
- Provide the policies and procedures for monitoring participant usage and the enforcement of compliance standards.
- Provide the means and the process by which patients may choose to opt out of participation in the IHIN as well as the process by which patients may choose to opt back in.
- Provide procedures for patients to receive notice of violation of confidentiality.
- Provide procedures for patients to request and receive an audit report.

Any interested person may make written comments or suggestions on the proposed rules on or before February 25, 2014. Such written comments should be directed to Sarah Brooks, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by e-mail to [sarah.brooks@idph.iowa.gov](mailto:sarah.brooks@idph.iowa.gov).

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

These rules are intended to implement Iowa Code sections 135.156E(2) and 135.156E(9).

The following amendment is proposed.

Adopt the following **new** 641—Chapter 206:

## CHAPTER 206

## IOWA HEALTH INFORMATION NETWORK

**641—206.1(135) Scope and applicability.** This chapter describes how the department will address issues regarding the Iowa health information network, including: the development of policies and procedures for auditing participants’ usage of the Iowa health information network and enforcing compliance with applicable standards, requirements, rules and procedures; the process by which individuals can decline to have their health information shared through the Iowa health information network; and the process by which the department will notify individuals if there has been unauthorized access to or disclosure of their protected health information through the Iowa health information network.

**641—206.2(135) Definitions.** For the purposes of this chapter, the following definitions shall apply:

“*Advisory council*” means the electronic health information advisory council established in Iowa Code section 135.156(2) “a.”

“*Board*” means the state board of health established in Iowa Code chapter 136.

“*Breach*” means breach as such term is defined in the HIPAA Privacy Rule.

“*Department*” means the Iowa department of public health.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*“Executive committee”* means the executive committee of the electronic health information advisory council established in Iowa Code section 135.156(2) *“b.”*

*“HIPAA”* means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act, and the regulations promulgated thereunder, including the Privacy Rule, the Security Rule and the Omnibus Final Rule.

*“Individual”* means a patient or client of a participant.

*“Iowa health information network”* means the health information exchange operated by the department pursuant to Iowa Code section 135.155.

*“Opt out”* means to decline to have one’s health information exchanged through the Iowa health information network.

*“Participant”* means an authorized organization or individual that has voluntarily agreed to enter into a participation agreement to access or use the Iowa health information network.

*“Participation agreement”* means the agreement that is entered into between the department and a participant and prescribes the terms and conditions for access and use of the Iowa health information network.

*“Privacy policies and security policies”* means the department’s rules, regulations, policies and procedures for access to and use of the Iowa health information network, as approved and amended by the executive committee and advisory council and the board, that are posted electronically on the Iowa health information network Web site or otherwise furnished to participants.

*“Protected health information”* means protected health information as defined in HIPAA that is created, transmitted or received by an authorized participant.

*“Provider”* means a person or organization that is a health care provider under HIPAA and is licensed or otherwise permitted to provide health care items and services under applicable state law.

*“Security incident”* means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information available through the Iowa health information network or interference with Iowa health information network operations, including attempted and successful privacy breaches.

**641—206.3(135) Policy development and governance.** The department is required to develop and implement the privacy policies and security policies to protect protected health information exchanged through the Iowa health information network. The policies must be reviewed by the executive committee and advisory council and approved by the board prior to implementation. Any changes to the policies must go through the same review and approval process.

**641—206.4(135) Monitoring and audit.** The department shall monitor and audit participant usage of the Iowa health information network in a manner consistent with the privacy policies and security policies.

**206.4(1)** The department shall enforce the privacy policies and security policies, which shall include audit and monitoring requirements for participants.

**206.4(2)** Participant monitoring and audit activity requirements shall be included in the participation agreement. Participants unwilling or unable to abide by the requirements and participants that violate the policies or terms of the participation agreement may face sanctions up to and including suspension or termination of the participation agreement.

**641—206.5(135) Consumer participation in the Iowa health information network.** Pursuant to Iowa Code section 135.156E(2), consumers have the opportunity to opt out of participation in the Iowa health information network.

**206.5(1)** The department shall explain the process and provide forms for patients to complete in order to opt out of participation in the Iowa health information network. The information shall be made available in places including, but not limited to, provider offices and on the Iowa health information network Web site.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

**206.5(2)** Patients who decline to have their health information shared through the Iowa health information network may later choose to have their information shared by providing verification of identity.

**641—206.6(135) Security incidents, breaches.**

**206.6(1)** The department and all participants shall promptly investigate, respond to and report privacy breaches related to the Iowa health information network in compliance with applicable federal and state law.

**206.6(2)** The department shall include in the privacy policies and security policies more detailed requirements regarding security incidents and shall develop a security incident response plan identifying the responsible parties and action steps to be taken in the event of a security incident.

**641—206.7(135) Health information audit.** The department shall make available upon request and on the Iowa health information network Web site a form for individuals to request an audit report showing who or what system has accessed their health information through the Iowa health information network.

**206.7(1)** Individuals may request an audit report by contacting the department by:

Mail: Office of Health IT

Iowa Department of Public Health

Lucas State Office Building

321 E. 12th Street

Des Moines, Iowa 50319

Fax: (515)281-4958

E-mail: [ehealth@idph.state.ia.us](mailto:ehealth@idph.state.ia.us)

The department may require proof of legal authority to view health information records.

**206.7(2)** The department shall process the health information audit request and provide a response to the individual within 30 days of receipt of the request.

These rules are intended to implement Iowa Code sections 135.156E(2) and 135.156E(9).

**ARC 1310C**

**RACING AND GAMING COMMISSION[491]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby proposes to amend Chapter 4, “Contested Cases and Other Proceedings,” Chapter 5, “Track and Excursion Boat Licensees’ Responsibilities,” Chapter 10, “Thoroughbred and Quarter Horse Racing,” and Chapter 11, “Gambling Games,” Iowa Administrative Code.

Item 1 allows the Commission to suspend a license for up to five years.

Items 2 and 3 clarify when debt arrangements need to be submitted for approval.

Item 4 clarifies allowable jockey agent representation.

Item 5 clarifies the definition of “administrator.”

Item 6 clarifies shipping notification requirements.

Any person may make written suggestions or comments on the proposed amendments on or before February 25, 2014. Written material should be directed to the Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

## RACING AND GAMING COMMISSION[491](cont'd)

Also, there will be a public hearing on February 25, 2014, at 9 a.m. in the office of the Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

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

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Amend rule 491—4.7(99D,99F), introductory paragraph, as follows:

**491—4.7(99D,99F) Penalties (gaming board and board of stewards).** All penalties imposed will be promptly reported to the commission and facility in writing. The board may impose one or more of the following penalties: eject and exclude an individual from a facility; revoke a license; suspend a license for up to ~~365 days~~ five years from the date of the original suspension; place a license on probation; deny a license; impose a fine of up to \$1000; or order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board may set the dates for which the suspension must be served. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by a state racing or gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission.

ITEM 2. Renumber subparagraph **5.4(8)“a”(2)** as **5.4(8)“a”(3)**.

ITEM 3. Adopt the following new subparagraph **5.4(8)“a”(2)**:

(2) A debt transaction greater than \$3 million entered into by a licensee or licensee's parent company assigning an obligation to a licensee, except a debt transaction previously approved in subrule 5.4(20), is subject to commission jurisdiction. The request for approval shall include:

1. The names and addresses of all parties;
2. The amount and source of funds;
3. The nature and amount of security and collateral provided;
4. The specific nature and purpose of the transactions; and
5. The term sheet or executive summary of the transaction.

ITEM 4. Rescind subparagraph **10.5(4)“a”(5)** and adopt the following new subparagraph in lieu thereof:

(5) No jockey agent shall represent more than two jockeys and one apprentice jockey at the same time except:

1. A jockey agent may represent three jockeys at a “mixed” meeting so long as no more than two of the jockeys ride the same breed.
2. A jockey agent may represent three jockeys at a race meeting exclusive of thoroughbred racing.

ITEM 5. Amend rule **491—11.1(99F)**, definition of “Administrator,” as follows:

“Administrator” means the administrator of the racing and gaming commission or the administrator’s designee.

ITEM 6. Rescind subrule 11.4(6) and adopt the following new subrule in lieu thereof:

**11.4(6) Distribution, movement and disposal.**

a. Except as otherwise authorized by the administrator, written notice, submitted by facsimile or electronic mail, shall be filed with the commission when a gambling game or implement of gambling is shipped, moved or disposed of. The written notice shall be provided as follows:

(1) At least five calendar days prior to arrival of a gambling game or implement of gambling at a licensed facility, the licensed distributor shall provide notice.

(2) At least one day before a gambling game is removed from or disposed of by a licensed facility, the licensed facility or the owner shall provide notice. All methods of disposal for gambling games or implements of gambling are subject to administrator approval.

b. The administrator may approve licensee transfers of gambling games or implements of gambling among subsidiaries of the licensee's parent company.

**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, 2013 — February 28, 2013	3.75%
March 1, 2013 — March 31, 2013	4.00%
April 1, 2013 — April 30, 2013	4.00%
May 1, 2013 — May 31, 2013	4.00%
June 1, 2013 — June 30, 2013	3.75%
July 1, 2013 — July 31, 2013	4.00%
August 1, 2013 — August 31, 2013	4.25%
September 1, 2013 — September 30, 2013	4.50%
October 1, 2013 — October 31, 2013	4.75%
November 1, 2013 — November 30, 2013	4.75%
December 1, 2013 — December 31, 2013	4.50%
January 1, 2014 — January 31, 2014	4.75%
February 1, 2014 — February 28, 2014	5.00%

## ARC 1297C

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

The amendment of paragraph 78.1(20)"a" adds diagnoses/conditions that will be covered for allogeneic and autologous bone marrow transplants, now generally known as "stem cell" transplants. Changes are also being made to the subparagraph pertaining to heart transplants to make, with preprocedure review, artificial hearts and ventricular assist devices (VADs) covered as temporary life-support systems until a human heart becomes available for transplant and to add introductory language that describes the general types of medical circumstances for which heart transplants are allowed, consistent with existing language for other types of transplants addressed in the rules. Lastly, a technical correction is being made to change an existing reference to "Iowa Foundation for Medical Care" to the "Iowa Medicaid enterprise medical services prior authorization unit."

The Department is updating current tissue and organ transplant rules to reflect current standards of care. These changes are also being made to reduce the number of requests for exceptions to policy the Department receives, which are routinely approved, for these transplants.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1185C** on November 13, 2013. The Department received no comments during the comment period. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on January 8, 2014.

This amendment does not provide for waiver in specified situations because the amendment confers a benefit on the affected providers and Medicaid members by allowing coverage for additional diagnoses/conditions for stem cell transplants. Similarly, the amendment confers a benefit on providers and members relative to coverage of artificial hearts and VADs under regular policy as temporary life-support systems, with preprocedure review. Finally, this amendment does not provide for waiver in specified situations because such waiver may be requested under the Department's general rule on exceptions at rule 441—1.8(17A,217).

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

This amendment is intended to implement Iowa Code section 249A.4.

This amendment will become effective April 1, 2014.

The following amendment is adopted.

Amend paragraph **78.1(20)"a"** as follows:

a. Payment will be made only for the following organ and tissue transplant services:

(1) No change.

(2) Allogeneic bone marrow stem cell transplants for the treatment of aplastic anemia, severe combined immunodeficiency disease (SCID), Wiskott-Aldrich syndrome, follicular lymphoma, Fanconi anemia, paroxysmal nocturnal hemoglobinuria, pure red cell aplasia, amegakaryocytosis/congenital thrombocytopenia, beta thalassemia major, sickle cell disease, Hurler's syndrome (mucopolysaccharidosis type 1 [MPS-1]), adrenoleukodystrophy, metachromatic leukodystrophy, refractory anemia, agnogenic myeloid metaplasia (myelofibrosis), familial erythrophagocytic lymphohistiocytosis and other histiocytic disorders, acute myelofibrosis, Diamond-Blackfan anemia, epidermolysis bullosa, or the following types of leukemia: acute myelocytic leukemia in relapse or remission, chronic myelogenous leukemia, juvenile myelomonocytic leukemia, chronic myelomonocytic leukemia, acute myelogenous leukemia, and acute lymphocytic leukemia in remission.

(3) Autologous bone marrow stem cell transplants for treatment of the following conditions: acute leukemia in remission with a high probability of relapse when there is no matched donor; chronic lymphocytic leukemia; plasma cell leukemia; resistant non-Hodgkin's lymphomas; Hodgkin's

HUMAN SERVICES DEPARTMENT[441](cont'd)

lymphoma; relapsed Hodgkin's lymphoma; lymphomas presenting poor prognostic features; follicular lymphoma; recurrent or refractory neuroblastoma; medulloblastoma; or advanced Hodgkin's disease when conventional therapy has failed and there is no matched donor; primitive neuroendocrine tumor (PNET); atypical/rhabdoid tumor (ATRT); Wilms' tumor; Ewing's sarcoma; metastatic germ cell tumor; or multiple myeloma.

(4) No change.

(5) Heart transplants for persons with inoperable congenital heart defects, heart failure, or related conditions. Artificial hearts and ventricular assist devices, ~~either as a permanent replacement for a human heart or as a temporary life-support system until a human heart becomes available for transplants,~~ are ~~not covered.~~ Artificial hearts and ventricular assist devices as a permanent replacement for a human heart are not covered. Heart-lung transplants are covered where bilateral or unilateral lung transplantation with repair of a congenital cardiac defect is contraindicated.

Heart transplants, ~~and~~ heart-lung transplants, artificial hearts, and ventricular assist devices described above require preprocedure review by the Iowa ~~Foundation for Medical Care Medicaid enterprise medical services prior authorization unit.~~ (Cross-reference 78.1(19) and 78.28(1)"f.") Covered heart transplants are payable only when performed in a facility that meets the requirements of 78.3(10).

(6) and (7) No change.

[Filed 1/8/14, effective 4/1/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

## ARC 1305C

### INSPECTIONS AND APPEALS DEPARTMENT[481]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

The purpose of the adopted amendments is to add the Center for Improvement in Healthcare Quality (CIHQ) to the list of hospital accreditation organizations. Current rules specify three accreditation organizations: The Joint Commission, the American Osteopathic Association, and Det Norske Veritas. The CIHQ was recently approved by the federal Centers for Medicare and Medicaid Services (CMS) as a hospital accreditation organization.

The Department does not believe that the amendments impose any financial hardship on any regulated entity. Rather, the amendments simply add CIHQ to the existing list of hospital accreditation organizations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 2013, as **ARC 1230C**. No comments were received on the proposed amendments. The adopted amendments are identical to those published under Notice of Intended Action.

The amendments were presented to the Hospital Licensing Board at its October 24, 2013, meeting, at which time the Board approved them.

The State Board of Health initially reviewed the amendments at its November 13, 2013, meeting and subsequently approved this rule making at its January 8, 2014, meeting.

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

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

These amendments shall become effective March 12, 2014.

The following amendments are adopted.

ITEM 1. Amend subrules 51.2(5) and 51.2(6) as follows:

**51.2(5)** The department shall recognize, in lieu of its own licensure inspection, the comparable inspections and inspection findings of The Joint Commission (JC), the American Osteopathic

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

Association (AOA), ~~or~~ Det Norske Veritas (DNV), or the Center for Improvement in Healthcare Quality (CIHQ) if the department is provided with copies of all requested materials relating to the inspection process. In cases of the initial licensure, the department may require its own inspection when needed in addition to comparable accreditations to allow the hospital to begin operations. The department may also initiate its own inspection when it is determined that the inspection findings of the JC, AOA, ~~or~~ DNV, or CIHQ are insufficient to address concerns identified as possible licensure issues.

**51.2(6)** Hospitals not accredited by the JC, AOA, ~~or~~ DNV, or CIHQ shall be inspected by the department utilizing the current Medicare conditions of participation found in Title XVIII of the federal Social Security Act and 42 CFR Part 482, Subparts A, B, C, D, and E, or 42 CFR Part 485, Subpart F, as of October 1, 2006. Licensed-only hospitals shall be inspected utilizing the requirements of this chapter. The department may promulgate additional standards. The department may recognize, in lieu of its own licensure inspection, the comparable inspection and inspection findings of a Medicare conditions of participation survey.

ITEM 2. Amend rule 481—51.6(135B), introductory paragraph, as follows:

**481—51.6(135B) Patient rights and responsibilities.** The hospital governing board shall adopt a statement of principles relating to patient rights and responsibilities. In developing a statement of principles, the hospital may use reference statements of patient rights and responsibilities developed by the American Hospital Association, The Joint Commission (JC), the American Osteopathic Association (AOA), Det Norske Veritas (DNV), the Center for Improvement in Healthcare Quality (CIHQ), and other appropriate sources.

ITEM 3. Amend subrule 51.53(7) as follows:

**51.53(7)** The department shall recognize, in lieu of its own inspection, the comparable inspections and inspections findings of The Joint Commission (JC), the American Osteopathic Association (AOA), ~~or~~ Det Norske Veritas (DNV), or the Center for Improvement in Healthcare Quality (CIHQ) if the department is provided with copies of all requested materials relating to the inspections and the inspection process.

[Filed 1/15/14, effective 3/12/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

**ARC 1304C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

This rule implements Iowa Code section 135B.34, which requires hospitals to conduct criminal record checks and child abuse and dependent adult abuse record checks of prospective employees and includes changes made during the 2013 legislative session. Specific changes contained in the rule deal with conditional employment and the transfer of employees from one facility to another facility owned by the same business entity.

The Department does not believe that this rule imposes any financial hardship on any regulated entity, body, or individual.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 2013, as **ARC 1242C**. No comments were received on the proposed rule. The adopted rule is identical to that published under Notice of Intended Action.

The Hospital Licensing Board approved the rule at its October 24, 2013, meeting.

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

The State Board of Health initially reviewed the rule at its November 13, 2013, meeting and subsequently approved it at the Board's January 8, 2014, meeting.

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

This rule is intended to implement Iowa Code sections 135B.7 and 135B.34 and 2013 Iowa Acts, Senate File 347.

This rule shall become effective March 12, 2014.

The following amendment is adopted.

Adopt the following **new** rule 481—51.41(135B):

**481—51.41(135B) Criminal, dependent adult abuse, and child abuse record checks.**

**51.41(1) Definitions.** The following definitions apply for the purposes of this rule.

*"Background check"* or *"record check"* means criminal history, child abuse and dependent adult abuse record checks.

*"Direct services"* means services provided through person-to-person contact. "Direct services" excludes services provided by individuals such as building contractors, repair workers, or others who are in a hospital for a very limited purpose, who are not in the hospital on a regular basis, and who do not provide any treatment or services for the patients of the hospital.

*"Employee"* means any individual who is paid, either by the hospital or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors).

*"Evaluation"* means review by the department of human services to determine whether a founded child abuse, dependent adult abuse or criminal conviction warrants the person's being prohibited from employment in a hospital.

*"Indirect services"* means services provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance.

**51.41(2) Requirements for employer prior to employing an individual.** Prior to employment of a person in a hospital, the hospital shall request that the department of public safety perform a criminal history check and that the department of human services perform child and dependent adult abuse record checks of the person in this state.

*a. Informing the prospective employee.* A hospital shall ask each person seeking employment by the hospital, "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime in this state or any other state?" The person shall also be informed that a background check will be conducted. The person shall indicate, by signature, that the person has been informed that the background check will be conducted.

*b. Conducting a background check.* The hospital may access the single contact repository (SING) to perform the required background check. If the SING is used, the hospital shall submit the person's maiden name, if applicable, with the background check request. If SING is not used, the hospital must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services.

*c. If a person considered for employment has been convicted of a crime.* If a person being considered for employment in a hospital has been convicted of a crime under a law of any state, the department of public safety shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the hospital.

*d. If a person considered for employment has a record of founded child abuse or dependent adult abuse.* If a department of human services child or dependent adult abuse record check shows that a person being considered for employment in a hospital has a record of founded child or dependent adult abuse, the department of human services shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the hospital.

*e. Employment pending evaluation.* The hospital may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person's employment.

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

- (1) The person is being considered for employment other than employment involving the operation of a motor vehicle;
- (2) The person does not have a record of founded child or dependent adult abuse;
- (3) The person has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or Iowa Code chapter 321 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2, subsection 1; and
- (4) The hospital has requested an evaluation to determine whether the crime warrants prohibition of the person's employment.

*f. Validity of background check results.* The results of a background check conducted pursuant to this rule shall be valid for a period of 30 calendar days from the date the results of the background check are received by the hospital.

**51.41(3) *Employment prohibition.*** A person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a hospital unless an evaluation has been performed by the department of human services.

**51.41(4) *Transfer of an employee to another hospital owned or operated by the same person.*** If an employee transfers from one hospital to another hospital owned or operated by the same person, without a lapse in employment, the hospital is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

**51.41(5) *Transfer of ownership of a hospital.*** If the ownership of a hospital is transferred, at the time of transfer the background check required by this rule shall be performed for each employee for whom there is no documentation that such background check has been performed. The hospital may continue to employ such employee pending the performance of the background check and any related evaluation.

**51.41(6) *Change of employment—person with criminal or abuse record—exception to record check evaluation requirements.*** A person with a criminal or abuse record who is or was employed by a certified hospital and is hired by another certified hospital shall be subject to the background check.

*a.* A reevaluation of the latest record check is not required, and the person may commence employment with the other hospital if the following requirements are met:

- (1) The department of human services previously performed an evaluation concerning the person's criminal or abuse record and concluded the record did not warrant prohibition of the person's employment;
- (2) The latest background check does not indicate a crime was committed or founded abuse record was entered subsequent to the prior evaluation;
- (3) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed;
- (4) Any restrictions placed on the person's employment in the previous evaluation by the department of human services and still applicable shall remain applicable in the person's subsequent employment; and
- (5) The person subject to the background check has maintained a copy of the previous evaluation and provided it to the subsequent employer, or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a current record check evaluation shall be performed.

*b.* For purposes of this subrule, a position is "substantially the same or has the same job responsibilities" if the position requires the same certification, licensure, or advanced training. For example, a licensed nurse has substantially the same or the same job responsibilities as a director of nursing; a certified nurse aide does not have substantially the same or the same job responsibilities as a licensed nurse.

*c.* The subsequent employer must maintain the previous evaluation in the employee's personnel file for verification of the exception to the requirement for a record check evaluation.

*d.* The subsequent employer may request a reevaluation of the background check and may employ the person while the reevaluation is being performed, even though an exemption under paragraph 51.41(6) "a" may be authorized.

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

**51.41(7)** *Employee notification of criminal convictions or founded abuse after employment.* If a person employed by an employer that is subject to this rule is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

*a.* The employer shall act to verify the information within 48 hours of notification. "Verify," for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

*b.* If the information is verified, the hospital shall follow the requirements of paragraphs 51.41(2) "c" and "d."

*c.* The employer may continue to employ the person pending the performance of an evaluation by the department of human services.

*d.* A person who is required by this subrule to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

*e.* The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under this subrule.

**51.41(8)** *Hospital receipt of credible information that an employee has been convicted of a crime or founded for abuse.* If the hospital receives credible information, as determined by the hospital, from someone other than the employee, that the employee has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment, and the employee has not informed the employer of the information within the time required by subrule 51.41(7), the hospital shall take the following actions:

*a.* The hospital shall act to verify credible information within 48 hours of receipt. "Verify," for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

*b.* If the information is verified, the hospital shall follow the requirements of paragraphs 51.41(2) "c" and "d."

**51.41(9)** *Proof of background checks for temporary employment agencies and contractors.* Proof of background checks may be kept in the files maintained by temporary employment agencies and contractors. Facilities may require temporary employment agencies and contractors to provide a copy of the result of the background checks. Copies of such results shall be made available to the department upon request.

This rule is intended to implement Iowa Code sections 135B.7 and 135B.34 and 2013 Iowa Acts, Senate File 347.

[Filed 1/15/14, effective 3/12/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

## ARC 1308C

## PHARMACY BOARD[657]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 6, "General Pharmacy Practice," and Chapter 7, "Hospital Pharmacy Licenses," Iowa Administrative Code.

The amendments clarify that, when the pharmacist is not present, a pharmacy is closed and shall be secured from public access. The amendments further require that if the pharmacist in charge of a pharmacy has authorized one or more pharmacy technicians or pharmacy support persons to be present in the pharmacy when the pharmacy is closed, the technician or support person shall prepare and maintain a log identifying each period the individual worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. The log shall be dated and signed by the individual preparing each entry, and the pharmacist in charge shall periodically review the log. The amendments clarify that a pharmacy technician or pharmacy support person working in a pharmacy when the pharmacy is closed may not dispense or deliver any drug, chemical, device, or prepared prescription to a patient or patient's agent.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 2, 2013, Iowa Administrative Bulletin as **ARC 1040C**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the January 14, 2014, meeting of the Board of Pharmacy.

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

These amendments are intended to implement Iowa Code sections 155A.13 and 155A.33.

These amendments will become effective on March 12, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 6.7(2) as follows:

**6.7(2) *Temporary absence of pharmacist.*** In the temporary absence of the pharmacist, only the pharmacist in charge may designate pharmacy technicians or pharmacy support persons who may be present in the prescription department to perform technical or nontechnical functions, respectively, designated by the pharmacist in charge. Activities identified in subrule 6.7(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours.

*a.* In the absence of the pharmacist, the pharmacy shall be secured from public access and the pharmacy shall notify the public that the pharmacist is temporarily absent and that no prescriptions will be dispensed until the pharmacist returns. If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician or a pharmacy support person to perform designated functions when the pharmacy is closed, the pharmacy technician or the pharmacy support person may not dispense or deliver any drug, chemical, device, or prepared prescription to a patient or patient's agent.

*b.* A pharmacy technician or a pharmacy support person who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the pharmacy technician or pharmacy support person worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. Each entry shall be dated, and each daily record shall be signed by the pharmacy technician or pharmacy support person who prepared the record. The log shall be periodically reviewed by the pharmacist in charge.

ITEM 2. Amend subrule 7.6(2) as follows:

**7.6(2) *Access when pharmacist absent.*** When the pharmacist is absent from the facility, the pharmacy is closed and shall be secured from public access. Policies and procedures shall be established that identify who will have access to the pharmacy when the pharmacy is closed and the procedures to

## PHARMACY BOARD[657](cont'd)

be followed for obtaining drugs, devices, and chemicals to fill an emergent need during the pharmacist's absence.

*a. to d.* No change.

[Filed 1/16/14, effective 3/12/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

**ARC 1307C**

**PHARMACY BOARD[657]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 11, "Drugs in Emergency Medical Service Programs," Iowa Administrative Code.

The amendment permits a pharmacy that utilizes a decentralized automated medication distribution system (AMDS) to authorize specific members of an emergency medical service program to replenish the service program's drug supplies from the AMDS. The amendment requires that a pharmacist verify the drugs to be stocked in the AMDS before the drugs are removed from the pharmacy and requires that authorized service program personnel be assigned unique identification and access codes limiting access to specific drugs authorized for use by the service program. The amendment also requires a pharmacist to verify and document verification of the access and removal of drugs by service program personnel within 72 hours of such access.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 2, 2013, Iowa Administrative Bulletin as **ARC 1039C**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 14, 2014, meeting of the Board of Pharmacy.

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

This amendment is intended to implement Iowa Code chapter 147 and Iowa Code sections 124.301 and 155A.13.

This amendment will become effective on March 12, 2014.

The following amendment is adopted.

Amend subrule 11.20(1) as follows:

**11.20(1) Pharmacy-based.** The pharmacist in charge, the medical director, and the service director shall jointly develop a list of drugs to be maintained for administration by the service program. The pharmacy shall maintain an accurate list of all prescription drugs including controlled substances that the pharmacy maintains at the primary program site and at any program substation.

*a.* No change.

*b. Replenishment using automated medication distribution system (AMDS).* A pharmacy utilizing a decentralized automated medication distribution system (AMDS) pursuant to 657—Chapter 9 may authorize replenishment of the service program's drug supplies from the AMDS provided that a pharmacist verifies the drugs stocked in the AMDS component before the drugs are removed from the pharmacy. Service program personnel authorized to remove drugs from the AMDS for restocking the service program's supplies shall be assigned a unique identification and access code for the purpose of accessing the AMDS. Access by authorized service program personnel shall be restricted to specific drug products authorized for use by the service program. A pharmacist shall, within 72 hours, verify the access of and removal of drugs from the AMDS by service program personnel and shall maintain documentation of that verification within the pharmacy records.

~~*b. c. Inspections.*~~ The pharmacist in charge shall ensure the completion of a monthly inspection of all prescription drugs maintained by the pharmacy at the primary program site and any program

## PHARMACY BOARD[657](cont'd)

substation. Inspection shall include the removal of outdated or adulterated drugs. All drugs removed from administration stock shall be returned to the pharmacy. Records of inspection shall be maintained for two years at the pharmacy. The pharmacist in charge may delegate the conduct of the monthly inspection to another pharmacist, a pharmacist-intern, a certified pharmacy technician, or the service director.

[Filed 1/16/14, effective 3/12/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

**ARC 1309C**

**PHARMACY BOARD[657]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 22, "Unit Dose, Alternative Packaging, and Emergency Boxes," Iowa Administrative Code.

The amendments provide that a medication strip pack prepared for a patient utilizing an automated medication distribution system (AMDS) is not a unit dose package. Such a strip pack is a patient med pak and is subject to the requirements regarding patient med paks. The amendments also prohibit the return to pharmacy stock or to the automated medication distribution system component of a drug dispensed in a strip pack or other patient med pak unless the drug was dispensed as a single unit and was not commingled with other patient medications in a single package or container.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the October 2, 2013, Iowa Administrative Bulletin as **ARC 1038C**. The Board received written comments regarding the proposed amendments from one pharmacy association. The comments expressed membership support for the amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the January 14, 2014, meeting of the Board of Pharmacy.

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

These amendments are intended to implement Iowa Code sections 126.9, 126.10, 126.11, 155A.13, 155A.28, 155A.35, and 155A.36.

These amendments will become effective on March 12, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule **22.1(1)**, definition of "Unit dose package," as follows:

*"Unit dose package"* means a package that contains that particular dose of a drug ordered for the patient for one administration time. A unit dose package is not always a single unit package. "Unit dose package" does not include a strip pack prepared utilizing an automated medication distribution system (AMDS). A strip pack is a patient med pak subject to the requirements of rule 657—22.5(126,155A).

ITEM 2. Amend subrule 22.5(1) as follows:

**22.5(1) Definition.** A patient med pak is a customized patient medication package prepared for a specific patient which comprises a series of immediate containers containing prescribed solid oral dosage forms, each container being labeled with the time or the appropriate period for the patient to take its contents. A patient med pak includes but is not limited to a strip pack prepared utilizing an automated medication distribution system (AMDS).

ITEM 3. Amend subrule 22.5(4) as follows:

**22.5(4) Repackaging of patient med paks.** In the event a drug is added to or discontinued from a patient's drug regimen, the pharmacist may repackage the patient's med pak and either add to or remove from the patient's drugs packaged as ordered by the prescriber. Drugs returned by the patient for repackaging shall may be reused by the pharmacist in the design of the new patient med pak, and any

PHARMACY BOARD[657](cont'd)

drug removed from the new drug regimen shall either be disposed of in compliance with board rules or returned, properly labeled, to the patient. Under no circumstances shall a drug within a container of a patient med pak be returned to the pharmacy stock or returned to an automated medication distribution system (AMDS) component unless the drug was dispensed as a single dose and was not commingled with other patient medications in a single package or container.

[Filed 1/16/14, effective 3/12/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

**ARC 1299C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of 2013 Iowa Acts, Senate File 427, section 35, the Department of Public Health hereby amends Chapter 28, "Plumbing and Mechanical Systems Board—Licensure Fees," Iowa Administrative Code.

These amendments are necessary to implement 2013 Iowa Acts, Senate File 427, which became effective upon enactment on April 26, 2013, by operation of section 36 of the Senate File. These amendments identify the license fees associated with apprentice, journey, master, medical gas piping certificate, inactive license, contractor, and specialty licenses. The fees are applicable to initial licenses, reciprocal licenses, and renewal licenses. In addition, all licenses are issued for a period of three years, and until June 29, 2017, those renewed for less than three years will be prorated using a one-sixth deduction for each six-month period. Late fees and requirements for lapsed licenses are also included. A fee for converting an HVAC-refrigeration or hydronics license to a mechanical license is also included.

Notice of Intended Action was published in the October 16, 2013, Iowa Administrative Bulletin as **ARC 1128C**. No comments were received. These amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on January 8, 2014.

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

These amendments are intended to implement Iowa Code section 105.9 as amended by 2013 Iowa Acts, Senate File 427.

These amendments will become effective on March 12, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 28.1(1) as follows:

**28.1(1)** ~~License fee for~~ Fees for three-year initial licenses are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is ~~\$50~~ \$180.
- c. A master license as defined in 641—subrule 29.2(3) is ~~\$125~~ \$240.
- d. A medical gas pipe certificate as defined in 641—29.3(105) is ~~\$50~~ \$75.
- e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is \$50.
- f. A contractor license as defined in 641—subrule 29.2(4) is ~~\$150~~ \$250.
- g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and 29.2(11) is \$50.

h. Fees for all initial licenses issued for a period of less than three years shall be prorated using a one-sixth deduction for each six-month period.

ITEM 2. Amend subrule 28.1(2) as follows:

**28.1(2)** ~~Reciprocal license fee for~~ Fees for three-year reciprocal licenses are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is ~~\$50~~ \$180.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

- c. A master license as defined in 641—subrule 29.2(3) is ~~\$125~~ \$240.
- d. Fees for all reciprocal licenses issued for a period of less than three years shall be prorated using a one-sixth deduction for each six-month period.

ITEM 3. Amend subrule 28.1(3) as follows:

**28.1(3)** ~~Renewal license fee for~~ Fees for renewal of licenses are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is ~~\$50~~ \$180.
- c. A master license as defined in 641—subrule 29.2(3) is ~~\$125~~ \$240.
- d. A medical gas pipe certificate as defined in 641—29.3(105) is ~~\$50~~ \$75.
- e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is \$50.
- f. A contractor license as defined in 641—subrule 29.2(4) is ~~\$150~~ \$250.
- g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and 29.2(11) is \$50.
- h. ~~The renewal fee shall be waived for all licenses renewed from January 1, 2011, through December 31, 2012. However, if applicable, late fees as set forth in subrule 28.1(5) and paper application fees as set forth in subrule 28.1(10) will be applied. Through June 29, 2017, fees for all licenses renewed for a period of less than three years shall be prorated using a one-sixth deduction for each six-month period.~~

ITEM 4. Amend subrule 28.1(5) as follows:

**28.1(5)** A late fee for failure to renew before expiration is determined as follows:

- a. A Prior to July 1, 2017, a licensee who allows a license to lapse for 30 days or less may reinstate and renew the license with payment of the appropriate renewal fee and without payment of a late fee. Beginning July 1, 2017, a licensee who does not timely renew but renews a license on or before the following July 31 may reinstate and renew the license upon payment of the appropriate renewal fee and without payment of a late fee.
- b. A Prior to July 1, 2017, a licensee who allows a license to lapse for more than 30 days but less than 60 days may reinstate and renew the license without examination upon payment of a \$60 late fee and the appropriate renewal of license fee. Beginning July 1, 2017, a licensee who does not timely renew but renews a license between the following August 1 and August 31 may reinstate and renew the license without examination upon payment of a \$60 late fee and the appropriate renewal of license fee.
- c. A Prior to July 1, 2017, a licensee who allows a license to lapse for more than 60 days but not more than 365 days may reinstate and renew the license without examination upon payment of a \$100 late fee and the appropriate renewal of license fee. Beginning July 1, 2017, a licensee who does not timely renew but renews a license after the following August 31 and on or before the following June 30 may reinstate and renew the license without examination upon payment of a \$100 late fee and the appropriate renewal of license fee. A licensee whose license has lapsed for more than 60 days may not work as a plumbing or mechanical professional or contractor in Iowa until the license is renewed. A licensee who works as a plumbing or mechanical professional under a license that has lapsed more than 60 days, including under a special restricted license; works as a geothermal heat pump installer with a lapsed license; or operates as a contractor in the state of Iowa with a lapsed license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code chapter 105, criminal sanctions pursuant to Iowa Code chapter 105, and other available legal remedies.

ITEM 5. Amend subrule 28.1(11) as follows:

**28.1(11)** Combined license.

- a. For purposes of this subrule, “combined license” shall mean more than one active master, contractor, or journey person license under subrules 28.1(1) through 28.1(3) in one or multiple disciplines held by the same individual.
- b. A license fee for a combined license shall be the sum total of each of the separate license fees as set forth in subrules 28.1(1) through 28.1(3) reduced by 30 percent.
- c. In order to be eligible for the combined license fee reduction, all individual licenses must be purchased in a single transaction.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 6. Adopt the following **new** subrule 28.1(12):  
**28.1(12)** The fee for converting an HVAC-refrigeration or hydronics license to a mechanical license is \$50. This fee shall not apply at the time of reissue.

ITEM 7. Amend **641—Chapter 28**, implementation sentence, as follows:  
 These rules are intended to implement Iowa Code ~~chapter 105 section 105.9~~ as amended by ~~2011 2013~~ Iowa Acts, ~~House File 392~~ Senate File 427, and ~~chapter 272C~~.

[Filed 1/13/14, effective 3/12/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

**ARC 1300C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 93, "Abuse Education Review Panel," Iowa Administrative Code.

These amendments are necessary to implement 2013 Iowa Acts, Senate File 396, section 49, which strikes the language that established an abuse education review panel and which makes the review and approval of mandatory reporter training curricula a duty of the Department.

Notice of Intended Action was published in the October 2, 2013, Iowa Administrative Bulletin as **ARC 1036C**. No comments were received. The adopted amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on January 8, 2014.

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

These amendments are intended to implement Iowa Code section 135.11(24) as amended by 2013 Iowa Acts, Senate File 396, section 49.

These amendments will become effective on March 12, 2014.

The following amendments are adopted.

ITEM 1. Amend **641—Chapter 93**, title, as follows:  
~~ABUSE EDUCATION REVIEW PANEL~~ MANDATORY REPORTER TRAINING CURRICULA

ITEM 2. Amend rule 641—93.1(135) as follows:

**641—93.1(135) Purpose.** The purpose of the ~~abuse education review panel~~ mandatory reporter training curricula process is to provide an objective method by which curricula for child and dependent adult abuse mandatory reporter training are reviewed and approved. Approved curricula are to be taught to persons who work in a position classification that under law makes the persons mandatory reporters of child or dependent adult abuse and the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 3. Rescind and reserve rules **641—93.2(135)** and **641—93.3(135)**.

ITEM 4. Strike “panel” wherever it appears in rules **641—93.4(135)** to **641—93.7(135)** and insert “department” in lieu thereof.

ITEM 5. Strike “panel’s” wherever it appears in subrule **93.6(1)** and insert “department’s” in lieu thereof.

ITEM 6. Strike “chairperson” wherever it appears in rule **641—93.7(135)** and insert “department” in lieu thereof.

ITEM 7. Amend **641—Chapter 93**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~135.11~~ 135.11(24) as amended by ~~2004~~ 2013 Iowa Acts, ~~chapter 122, section 4~~ Senate File 396, section 49.

[Filed 1/13/14, effective 3/12/14]

[Published 2/5/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

**ARC 1301C****PUBLIC SAFETY DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 103A.7, 103A.11, and 103A.14, the Building Code Commissioner in the Department of Public Safety, with the approval of the Building Code Advisory Council, hereby amends Chapter 301, “State Building Code—General Provisions,” and Chapter 303, “State Building Code—Requirements for Energy Conservation in Construction,” Iowa Administrative Code.

The Building Code Commissioner in the Department of Public Safety is authorized to adopt administrative rules, and the Building Code Advisory Council is authorized to approve or disapprove the administrative rules, according to Iowa Code sections 103A.7, 103A.11, and 103A.14. These amendments implement the policy of adopting the energy code provisions that are closely connected to the mechanical code adopted in Iowa. Plumbing and mechanical codes are required to comply with the most current code cycle, pursuant to Iowa Code section 105.4 as amended by 2013 Iowa Acts, Senate File 427, effective April 26, 2013. The most recent editions of the codes used in the construction industry reflect current industry standards, and adoption of the current codes helps to promote consistency in the regulations affecting the construction industry.

The Department is adopting the 2012 energy code because the energy code and mechanical code are closely related, and newly enacted statutory provisions require the adoption of the most recent edition of the mechanical code. In addition, federal regulations mandate substantial compliance (by 2017) with certain standards set in the 2009 International Energy Conservation Code (IECC). That level of compliance would require changes in current standard practices in the industry, although business trends are making compliance easier and more affordable. Adoption of the 2012 energy code establishes progress toward compliance, which may make federal funding options available to Iowans, and promotes economic development. The out-of-pocket expense for purchase of the energy code is a fraction of the cost of the entire family of 2012 building codes.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1198C** on November 27, 2013, and a public hearing was held on January 7, 2014.

Prior to publication of the Notice, informal meetings were held with stakeholders in the construction industry. Those stakeholders reached consensus in support of the adoption of the most recent edition of the International Building Code, including the adoption of the 2012 energy code.

An informal working group of stakeholders was also convened to discuss plans to achieve compliance in the most effective way. The working group met several times from March 2013 to May 2013 to focus on the practical implications of adoption of amendments to the state energy code. The informal

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

working group included representatives from multiple stakeholders, including the Iowa Home Builders Association; local building code officials; Iowa Finance Authority; Iowa Economic Development Authority; Alliant Energy; Cedar Falls Utilities; American Institute of Architects (AIA); American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE); Leadership in Energy & Environmental Design (LEED); Home Energy Rating System (HERS); residential and commercial contractors, including Hubbell Construction, Bell Brothers and Jerry's Homes; American Chemistry Association; and American Plywood Association. The working group also benefited from assistance from the Midwest Energy Efficiency Alliance (MEEA), which assists many Midwestern states with energy code issues, because MEEA representatives were familiar with the amendments adopted in the surrounding states of Minnesota, Illinois and Nebraska.

Based on the recommendations of the working group, the rule making is designed to adopt the commercial IECC with no amendments and to adopt the residential IECC with five amendments. The amendments are consistent with recent 2012 IECC adoptions in Minnesota and Illinois.

Written comments were provided by several associations before the public hearing. Written comments in support of the proposed amendments were provided by the Midwest Energy Efficiency Alliance, the American Chemistry Council, the Responsible Energy Codes Alliance, and the Alliance to Save Energy. No comments in opposition were submitted before the public hearing. In addition to written comments, representatives of these organizations and other individuals attended the public hearing and provided comments.

Representatives of the Midwest Energy Efficiency Alliance noted that the recommendations of the stakeholder group were adopted in large part, but noted one area in which the recommendations were not incorporated. The rules regarding duct tightness and duct leakage, appearing in Rule 403.2.2, set standards that would be difficult for the industry to meet in the short term without adding expense, estimated to range in the thousands of dollars per residential project, to new residential building projects. The stakeholder group had concluded that an increase in the standards was appropriate but not at the levels set in the 2012 International Energy Efficiency Code (Code). The suggested change to the Notice of Intended Action would make the rules consistent with the standards recommended by the stakeholder group.

One individual attending the public hearing objected to the suggested change and recommended instead that a significantly higher standard be set. The other attendees at the public hearing felt that the higher standard would be unworkable now, but that notification to the industry of the need to comply with higher standards with the adoption of the next edition of the International Energy Efficiency Code would be workable. The primary concern expressed by those who favored the suggested change was that setting an unworkable standard now would reduce compliance with the Code generally. Iowa has experienced a high rate of compliance in comparison with other states, and also has had success in notifying the industry of expected changes in the standards. A gradual change is more likely to support higher levels of compliance.

Attendees also noted that the transition period refers to projects commenced between January 1, 2014, and March 31, 2014. Given the rule-making process, the transition period is too short, and should be extended to May 31, 2014, in order to provide sufficient notice to the industry.

The Adopted and Filed amendments differ from those published under Notice of Intended Action in that the adopted amendments set standards for the sealing of ducts in residential buildings. The energy code considers safety, comfort, indoor air quality and energy efficiency. Most heating and cooling is accomplished via duct systems throughout the home. The sealing of ducts can reduce leakage and increase energy efficiency and can have an incidental impact on comfort and indoor air quality. The stakeholder group concluded that current industry standards in Iowa have progressed toward the 2017 energy goals but that adoption of the standards set out in the 2012 energy code could add thousands of dollars to building costs for each home. The amended standard set out in the Adopted and Filed amendments requires higher standards than those in place now but should not result in dramatic cost increases. The amended standard also allows time to notify the building industry that additional changes will be required by 2015.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Rules regarding the building code are subject to the waiver provisions of rule 661—10.222(17A). The Commissioner and the Board do not have authority to waive requirements established by statute, according to Iowa Code section 103A.7.

The Building Code Commissioner in the Department of Public Safety, with the approval of the Building Code Advisory Council, adopted these amendments on January 7, 2014.

The economic impact of the adoption of the energy code should be positive. United States Census data show that Iowa suffered less and has recovered faster than its neighboring states during the latest recessionary period. Similarly, Associated General Contractor data also show that Iowa's economic recovery has occurred faster than the national average. In fact, construction employment in Iowa rose 7 percent from 2008 to 2012, in comparison to the national average of just 1.3 percent, and Iowa ranked fourth out of 51 jurisdictions in its construction employment numbers. Given Iowa's economic edge in recovering from the recessionary period in 2008 to 2010, it is not surprising to see that measures of both residential and nonresidential construction are stronger in Iowa in comparison to its neighbors.

Iowa's strong recovery means that construction in the state is likely to continue to be strong. Eligibility for federal funding programs can provide additional incentives to build in Iowa, and the use of energy-efficient construction also can support financing of construction and reduce the long-term costs for the buildings constructed. This investment in infrastructure can have long-term benefits for businesses, workers and homeowners.

After analysis and review of this rule making, there should be a positive impact on jobs. Increased opportunity for building in Iowa, including access to federal funding to support the projects, is likely to increase jobs in the construction industry. It also supports other economic growth opportunities because new construction supports and enhances other economic development. The Board will continue to work with stakeholders to maximize this rule making's positive impact on jobs.

These amendments are intended to implement Iowa Code sections 103A.7, 103A.8, and 103A.8A.

These amendments will become effective March 12, 2014.

The following amendments are adopted.

ITEM 1. Rescind rule 661—301.10(103A) and adopt the following **new** rule in lieu thereof:

**661—301.10(103A) Transition period.** A construction project which is subject to the provisions of any rule in 661—Chapter 301 or 661—Chapter 303 which requires compliance with provisions of the 2009 edition of any code published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, may comply with the requirements established either in the edition of the code adopted herein or the requirements established in the edition of the same code previously in effect if the project is commenced between January 1, 2014, and May 31, 2014.

ITEM 2. Amend rule 661—303.1(103A) as follows:

**661—303.1(103A) Scope and applicability of energy conservation requirements.**

**303.1(1) Scope.** Rules 661—303.1(103A) through 661—303.3(103A) establish thermal energy efficiency standards for the design of new buildings and structures or portions thereof, additions to existing buildings, and renovation and remodeling of existing buildings, except for residential buildings of one or two dwelling units, which are intended for human occupancy and which are heated or cooled by regulating their exterior envelopes and selection of their heating, ventilation, and air-conditioning systems, service water heating systems and equipment for the efficient use of energy, and lighting efficiency standards for buildings intended for human occupancy which are lighted.

**303.1(2) Applicability.** Rules 661—303.1(103A) through 661—303.3(103A) apply to design and construction of buildings which are intended for human occupancy throughout the state of Iowa. Any construction of buildings or facilities which are intended for human occupancy and which are heated or cooled is covered, with the exception of renovation and remodeling of residential buildings of one or two dwelling units, which are not covered. Rule 661—303.2(103A) establishes standards for design and construction of residential buildings of three or fewer stories. Rule 661—303.3(103A) establishes standards for design and construction of commercial buildings and residential buildings of four or more

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

stories. The occupancy of any building covered by this chapter shall be determined based upon the occupancy definitions in chapter 3 of the International Building Code, ~~2006~~ 2012 edition.

**303.1(3)** No change.

ITEM 3. Amend rule 661—303.2(103A) as follows:

**661—303.2(103A) Residential energy code.** The International Energy Conservation Code – Residential Provisions, ~~2009~~ 2012 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is adopted by reference as the residential energy code of the state of Iowa building code, applicable to residential construction limited to three or fewer stories throughout the state of Iowa, with the following amendments:

~~Delete section 101.1.~~

~~Delete section 101.2.~~

~~Delete section 103.3.1.~~

~~Delete section 103.3.2.~~

~~Delete section 103.3.3.~~

~~Delete section 103.4.~~

~~Delete section 103.5.~~

~~Delete sections 104, 107, 108, and 109 and all sections contained within each of these.~~

~~Delete chapter 5.~~

~~Delete section R101.1.~~

~~Delete section R101.2 and insert in lieu thereof the following new section:~~

R101.2 Scope. This code applies to residential buildings and the building sites and associated systems and equipment as defined pursuant to 661—subrule 303.1(2). The remodeling or renovation of one- and two-family dwelling units is not within the scope of this code.

~~Delete section R103.3.1.~~

~~Delete section R103.3.2.~~

~~Delete section R103.3.3.~~

~~Delete section R104.1 and insert in lieu thereof the following new section:~~

R104.1 General. Construction or other work that is required to be inspected by state law or local ordinance shall be in accordance with sections R104.2 through R104.8. The state fire marshal shall have authority to perform audits to ensure compliance with the requirements of this code. When local governments conduct compliance audits, the information may be provided to the Department of Energy or to the state fire marshal in a timely way. Local governments may contract with the state fire marshal to conduct audits.

~~Delete sections R108 and R109 and all sections contained therein.~~

~~Delete section R402.1.1 and insert in lieu thereof the following new section:~~

R402.1.1 Insulation and fenestration criteria. The building thermal envelope shall meet the requirements of Table R402.1.1 based on the climate zone specified in chapter 3.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Table R402.1.1

Table R402.1.1 Insulation and Fenestration Requirements by Component<sup>a</sup>

Climate Zone	Fenestration U-Factor <sup>b</sup>	Skylight U-Factor <sup>b</sup>	Glazed Fenestration SHGC <sup>b,e</sup>	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value <sup>i</sup>	Floor R-Value	Basement Wall R-Value <sup>c</sup>	Slab R-Value & Depth <sup>d</sup>	Crawl Space <sup>e</sup> Wall R-Value
1	NR	.75	.25	30	13	3/4	13	0	0	0
2	.40	.65	.25	38	13	4/6	13	0	0	0
3	.35	.55	.25	38	20 or 13+5 <sup>h</sup>	8/13	19	5/13 <sup>f</sup>	0	5/13
4	.35	.55	.40	49	20 or 13+5 <sup>h</sup>	8/13	19	10/13	10, 2ft	10/13
5	.32	.55	NR	49	20 or 13+5 <sup>h</sup>	13/17	30 <sup>g</sup>	15/19	10, 2ft	15/19
6	.32	.55	NR	49	20 or 13+5 <sup>h</sup>	15/20	30 <sup>g</sup>	15/19	10, 4ft	15/19
7 & 8	.32	.55	NR	49	20+5 or 13+10 <sup>h</sup>	19/21	38 <sup>g</sup>	15/19	10, 4ft	15/19

<sup>a</sup> R-values are minimums. U-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the installed R-value of the insulation shall not be less than the R-value specified in the table.

<sup>b</sup> The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration. EXCEPTION: Skylights may be excluded from glazed fenestration SHGC requirements in Climate Zones 1 through 3 where the SHGC for such skylights does not exceed .30.

<sup>c</sup> "15/19" means R-15 continuous insulation on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "15/19" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulation on the interior or exterior of the home. "10/13" means R-10 continuous insulation on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

<sup>d</sup> R-5 shall be added to the required slab edge R-values for heated slabs. Insulation depth shall be the depth of the footing or 2 feet, whichever is less in Climate Zones 1 through 3 for heated slabs.

<sup>e</sup> There are no SHGC requirements in the Marine Zone.

<sup>f</sup> Basement wall insulation is not required in warm-humid locations as defined by Figure R301.1 and Table R301.1.

<sup>g</sup> Or insulation sufficient to fill the framing cavity, R-19 minimum.

<sup>h</sup> First value is cavity insulation; second value is continuous insulation or insulated siding. Therefore, "13+5" means R-13 cavity insulation plus R-5 continuous insulation or insulated siding. If structural sheathing covers 40 percent or less of the exterior, continuous insulation R-value shall be permitted to be reduced by no more than R-3 in the locations where structural sheathing is used – to maintain a consistent total sheathing thickness.

<sup>i</sup> The second R-value applies when more than half the insulation is on the interior of the mass wall.

Delete section R402.4.1.2 and insert in lieu thereof the following new section:

**R402.4.1.2 Testing.** The building or dwelling unit shall be tested and verified as having an air leakage rate not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 4 air changes per hour in Climate Zones 3 through 8. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 pascals). Where required by the code official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

**During testing:**

1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed beyond the intended weatherstripping or other infiltration control measures;
2. Dampers including exhaust, intake, makeup air, backdraft and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;
3. Interior doors, if installed at the time of the test, shall be open;
4. Exterior doors for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;

PUBLIC SAFETY DEPARTMENT[661](cont'd)

5. Heating and cooling systems, if installed at the time of the test, shall be turned off; and

6. Supply and return registers, if installed at the time of the test, shall be fully open.

Delete section R403.2.2 and insert in lieu thereof the following new section:

R403.2.2 Sealing (mandatory). Ducts, air handlers, and filter boxes shall be sealed. Joints and seams shall comply with either the International Mechanical Code or International Residential Code, as applicable.

EXCEPTIONS:

1. Air-impermeable spray foam products shall be permitted to be applied without additional joint seals.

2. Where a duct connection is made that is partially inaccessible, three screws or rivets shall be equally spaced on the exposed portion of the joint so as to prevent a hinge effect.

3. Continuously welded and locking-type longitudinal joints and seams in ducts operating at static pressures less than 2 inches of water column (500 Pa) pressure classification shall not require additional closure systems.

Duct tightness shall be verified by either of the following:

1. Postconstruction test: Leakage to outdoors shall be less than or equal to 4 cfm (113.3 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area or total leakage shall be less than or equal to 6 cfm (170 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test.

2. Rough-in test: Total leakage shall be less than or equal to 6 cfm (170 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure. All registers shall be taped or otherwise sealed during the test. If the air handler is not installed at the time of the test, total leakage shall be less than or equal to 3 cfm (85 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area.

Testing shall be conducted by an approved third party. A written report of the results shall be signed by the party conducting the test and provided to the code official.

EXCEPTION: The duct leakage test is not required for ducts and air handlers located entirely within the building thermal envelope unless cavities are used for returns.

Delete section R403.2.3 and insert in lieu thereof the following new section:

R403.2.3 Building cavities (mandatory). Building framing cavities shall not be used as supply ducts. Building framing cavities may be used as return ducts if both of the following conditions exist:

1. Ducts must be tested for duct leakage in accordance with section R403.2.2.

2. Exterior wall cavities shall not be used for return ducts.

ITEM 4. Amend rule 661—303.3(103A) as follows:

**661—303.3(103A) Adoption of nonresidential energy code.** The International Energy Conservation Code – Commercial Provisions, 2009 2012 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the nonresidential energy code of the state building code, applicable to commercial construction or residential construction of four or more stories within the state of Iowa, with the following amendments:

~~Delete section 101.1.~~

~~Delete section 101.2.~~

~~Delete section 103.3.1.~~

~~Delete section 103.3.2.~~

~~Delete section 103.3.3.~~

~~Delete section 103.4.~~

~~Delete section 103.5.~~

~~Delete sections 104, 107, 108, and 109 and all sections contained within each of these.~~

~~Delete chapter 4.~~

~~Delete section C101.1.~~

Delete section C101.2 and insert in lieu thereof the following new section:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

C101.2 Scope. This code applies to commercial buildings and the buildings' sites and associated systems and equipment as defined pursuant to 661—subrule 303.1(2).

Delete section C103.3.1.

Delete section C104.1 and insert in lieu thereof the following new section:

C104.1 General. Construction or other work that is required to be inspected by state law or local ordinance shall be in accordance with sections C104.2 through C104.8.

Delete sections C108 and C109 and all sections contained therein.

[Filed 1/14/14, effective 3/12/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

**ARC 1303C**

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 3, "Voluntary Disclosure Program," Chapter 6, "Organization, Public Inspection," Chapter 7, "Practice and Procedure Before the Department of Revenue," Chapter 8, "Forms and Communications," Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 38, "Administration," Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax and Tax Credits," Chapter 43, "Assessments and Refunds," Chapter 46, "Withholding," Chapter 48, "Composite Return," Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Chapter 53, "Determination of Net Income," Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXVI, No. 12, p. 1414, on December 11, 2013, as **ARC 1231C**.

Item 1 amends paragraph 3.1(4)"a" to specify that tax must be due in order for a taxpayer to be eligible for the voluntary disclosure program.

Item 2 amends subrule 6.1(2) to reflect recent changes to divisions within the Department.

Item 3 amends rule 701—7.8(17A) to correct a reference to a post office box for the Hearings Section of the Department.

Item 4 amends paragraph 7.17(8)"d" to clarify that the 30-day period to appeal a decision of a presiding officer to the Director of Revenue includes Saturdays, Sundays and legal holidays.

Item 5 amends subrule 8.2(2) to update mailing addresses to be used for sending correspondence to the Department.

Item 6 amends paragraph 8.5(2)"b" to provide that an electronic return originator, which is an authorized IRS e-file provider, is not required to provide a copy of the actual forms filed to the taxpayer and that this information can be provided in an alternative format.

Item 7 amends rule 701—10.72(452A) to remove obsolete language regarding the calculation of interest for assessments and refunds of motor fuel tax for periods prior to July 1, 1997.

Item 8 amends rule 701—38.10(422) to remove a reference to the inflation adjustment related to the civil service annuity exclusion for individual income tax since this exclusion was stricken by the Legislature in 1989.

Item 9 amends rule 701—38.15(422) to reference updated changes made to the innocent spouse provisions by the Internal Revenue Service for individual income tax, which Iowa adopts in accordance with Iowa Code section 422.21, subsection 7.

## REVENUE DEPARTMENT[701](cont'd)

Item 10 amends subrule 38.17(3) to provide that the provisions of the Servicemembers Civil Relief Act, Public Law 108-189, for individual income tax only applies to nonresidents of Iowa who are in an active duty status under Title 10 of the United States Code.

Item 11 amends subrule 39.1(7) to update the list of refundable tax credits for individual income tax purposes.

Items 12 and 13 amend subrules 39.5(10) and 39.5(11) to specify that the filing threshold for individual income tax must reflect an adjustment for the pension exclusion and phase-out exclusion for social security benefits.

Items 14, 15 and 16 amend paragraphs 39.7(1)“a,” “b” and “c” to correct references to Iowa Code sections.

Items 17, 18 and 19 amend paragraph 40.38(1)“b” and the introductory paragraph and subparagraphs (7) and (9) of paragraph 40.38(1)“f” regarding the Iowa capital gains exclusion for individual income tax to clarify provisions regarding material participation for work done as an investor, work done involving rental activities, and record-keeping requirements.

Items 20 and 21 amend subrule 41.3(1) to provide that the federal net investment income tax, also known as the unearned income Medicare contribution tax, is considered to be federal income tax that can be deducted for individual income tax.

Item 22 amends rule 701—42.44(422) to update the sequence of tax credits allowed to be claimed for individual income tax.

Item 23 amends subrule 42.48(2) regarding the solar energy system tax credit for individual income tax, which is based on a percentage of the federal credit, to use the term “placed in service,” which is the term used in determining when the federal credit can be claimed.

Item 24 amends subrule 43.3(1) to correct a reference to an Iowa Code section.

Item 25 amends subrule 46.1(2) to remove obsolete provisions regarding Iowa withholding tax for periods prior to January 1, 2001.

Item 26 amends subrule 48.7(2) to reference the new amount of the personal exemption credit for individual income tax for years beginning on or after January 1, 1998.

Items 27 and 28 amend paragraph 52.1(1)“d” and subrule 52.1(4) to reference a 2010 Iowa Supreme Court decision regarding the definition of intangible property which may require the filing of corporation income tax returns.

Item 29 amends rule 701—52.12(422) to update the sequence of tax credits allowed to be claimed for corporation income tax.

Item 30 amends subrule 52.44(2) regarding the solar energy system tax credit for corporation income tax, which is based on a percentage of the federal credit, to use the term “placed in service,” which is the term used in determining when the federal credit can be claimed. This amendment is similar to the one in Item 23.

Item 31 amends rule 701—53.8(422) by adding new subrules 53.8(3), 53.8(4), 53.8(5) and 53.8(6) to provide that deductions for charitable contributions for corporation income tax will not be allowed if the taxpayer claimed a charitable conservation tax credit, school tuition organization tax credit, endow Iowa tax credit, or from farm to food donation tax credit for the same contribution.

Item 32 amends the implementation sentence for rule 701—53.8(422).

Item 33 amends subrule 58.5(4) to remove obsolete language regarding the alternative minimum tax credit for franchise tax for periods beginning prior to January 1, 1990, and to add new examples regarding the calculation of the alternative minimum tax credit.

Item 34 adopts new rule 701—59.17(15E,422) to specify that the deduction for charitable contributions for franchise tax will not be allowed if the taxpayer claimed an endow Iowa tax credit for the same contribution.

Except for a grammatical correction that was made in subparagraph 6.1(2)“b”(4), these amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code chapter 422 and Executive Order Number 8.

## REVENUE DEPARTMENT[701](cont'd)

These amendments will become effective March 12, 2014, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendments are adopted.

ITEM 1. Amend paragraph 3.1(4)“a” as follows:

a. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities and must have tax due;

ITEM 2. Amend subrule 6.1(2) as follows:

**6.1(2) Organization of the department.** The department consists of the office of the director; the following divisions: ~~compliance~~, property tax, tax policy and communications, ~~revenue operations~~, internal services, ~~and technology and information management~~ tax management, research and analysis, process improvement and innovation; and the state board of tax review. For ease of administration, the director has organized the department’s divisions in some instances into bureaus, sections, subsections and units.

a. *The office of the director.* The office of the director consists of the director and the following areas within this office: strategic planning, ~~internal audit, clerk of the hearing section, and public/private partnership, and research and fiscal analysis~~. The essential functions of the director’s office include:

- (1) Overall management of the agency and review of protest and revocation cases on appeal.
- (2) Strategic planning and coordination of the future operations and goals of the department.
- (3) Providing financial checks and balances within the department.

~~(4) The clerk of the hearing section receives all protests, tracks protests and coordinates protest processing.~~

~~(5) (4)~~ Public/private partnership provides for a working relationship between the public sector and private sector.

b. *Divisions.*

(1) Property tax division. The property tax division provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for railroads, electric, water, and pipeline companies.

(2) ~~Compliance~~ Tax management division. The ~~compliance tax management~~ division includes the ~~examination section, investigative audit section, in-state field offices and out-of-state field offices processing services section, the compliance services section and the collection services section~~. The essential functions of the ~~compliance tax management~~ division include:

1. ~~Examination, which includes office examination of returns, assessment, and review and approval of refund claims, and which identifies nonfilers and those that underreport income~~ Functions performed by the processing services section, including registration of taxpayers, deposit of tax revenue, processing of tax returns, records management and mail services;

2. ~~Investigative audit, which is responsible for audits for criminal prosecution, reviews cases for potential prosecution and represents the department in criminal proceedings and depositions~~ Functions performed by the compliance services section, including office examination of returns, identification of nonfilers and underreporters of income, assessment, and review and approval of refund claims. The compliance services section also performs field audits and is responsible for audits for criminal prosecution; and

3. ~~In-state field offices, which provide assistance to taxpayers concerning procedure and perform audits; and~~ Functions performed by the collection services section, which is responsible for the timely collection of past-due tax liabilities, as well as collection activities for the judicial branch of state government and for other state agencies and local governments.

~~4. Out-of-state field offices, which perform audits for all taxes throughout the country from nine locations throughout the United States.~~

(3) ~~Policy~~ Tax policy and communications division. The ~~tax policy and communications~~ division consists of audit services, taxpayer services, and policy and tax research and data analysis. The essential functions of the tax policy and communications division include:

## REVENUE DEPARTMENT[701](cont'd)

1. ~~Audit Functions performed by the audit services section, which includes the development and review of develops and reviews audit programs and completed audits, manuals, and guidelines for auditors, and which coordinates the administrative process of protests and protest resolution and includes the clerk of the hearings section;~~

2. ~~Taxpayer Functions performed by the taxpayer services section, which is responsible for responding to inquiries from the public, practitioners and other agencies, drafting brochures and graphics, completing returns, maintaining the department's library and Web page, and coordinating public education by the department; and~~

3. ~~Policy Functions performed by the tax policy section, which is responsible for the interpretation of legislation, statutes and cases, developing and maintaining rules for the department and monitoring tax-related issues considered by the general assembly and the United States Congress. This section also drafts declaratory orders, offers technical advice and completes studies and reports;~~

4. ~~Tax research and data analysis, which provides research, data information, fiscal analysis and reporting, which includes fact finding, defining issues, issue resolution, and projection of revenues, and evaluates the fiscal impact of tax legislation and policies on state budget.~~

(4) Internal services division. The essential functions of the internal services division include:

1. ~~Central Functions performed by the central accounting team, which includes include operating budget development, maintenance and reporting; and~~

2. ~~Employee Functions performed by the employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service.~~

(5) ~~Technology and information management division. This division consists of information resources management, application design and development, program management, program evaluation, operations, forms management, reporting, and technical planning and support. The essential functions of the technology and information management division include: Research and analysis division. The essential functions of the research and analysis division include:~~

1. ~~Application development, which includes system analysis, programming, database administration and support;~~

2. ~~Forms management, which includes review and performing the function of compliance with federal and state law and managing electronic filing programs; and~~

3. ~~Technical planning and support, which includes technical support to the agency on software and hardware issues, and which assists in application and development regarding technology related issues.~~

1. ~~Functions performed by the research and program analysis section, which provides research on tax issues, compiles statistical tax data, undertakes tax credit tracking and analysis, projects state receipts and refunds, and evaluates the fiscal impact of tax legislation and policies on the state budget; and~~

2. ~~Functions performed by the performance analysis section, which develops and maintains performance measures for the department to align the department's resources, systems, and employees to meet strategic goals and priorities.~~

(6) ~~Revenue operations division. This division includes collections (accounts receivable, central collections, field office advanced collections), customer accounts, document processing, and data operations and information technology. The essential functions of the revenue operations division include: Process improvement and innovation division. The essential functions of the process improvement and innovation division include:~~

1. ~~Collections, which includes accounts receivable, central collections, field office advanced collections and customer accounts;~~

2. ~~Document processing, which includes preparing tax information for processing, deposits and records; and~~

3. ~~Data entry, which includes entry of all tax forms, files, and databases, and which edits taxpayer documents and mailing information.~~

1. ~~Functions performed by the application development section, including system analysis, programming, database administration and support, in coordination with the information technology enterprise of the department of administrative services;~~

## REVENUE DEPARTMENT[701](cont'd)

2. Functions performed by the technical planning and support section, including providing technical support to the department on software and hardware issues, in coordination with the information technology enterprise of the department of administrative services; and

3. Functions performed by the process improvement section, including identifying, analyzing, and improving existing processes within the department.

ITEM 3. Amend rule 701—7.8(17A), introductory paragraph, as follows:

**701—7.8(17A) Protest.** Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box ~~40472~~ 14457, Des Moines, Iowa 50306, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a protest, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section for the department is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

ITEM 4. Amend paragraph **7.17(8)“d”** as follows:

*d.* When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of the director within 30 days of the date of the order, including Saturdays, Sundays, and legal holidays, or 10 days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule 701—7.23(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director's motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues or selected issues presented at the hearing before the presiding officer or any issues of fact or law raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

ITEM 5. Amend subrule 8.2(2) as follows:

**8.2(2) Mailing addresses.** The following post office box numbers should be used when corresponding with the department. All addresses are completed: Des Moines, Iowa 50306.

## REVENUE DEPARTMENT[701](cont'd)

Box Number	Addressee
1792	<del>Individual Income Tax Returns</del> <u>Motor Vehicle Fuel Tax Returns</u>
9187	<del>Motor Vehicle Fuel Tax Returns</del> <u>Individual Income Tax Returns</u>
<del>10306</del>	<del>Deposit Unit</del>
10330	Central Collections Unit
10411	<del>Withholding Tax Returns</del> <u>Payments</u> <u>Verified Summary of Payments</u>
10412	Sales and Use Tax Returns <u>and Payments</u>
10413	Franchise Tax Returns and Estimated Payments <del>Field Services</del>
10455	Insurance Premiums Tax Household Hazardous Materials Environmental Protection Charge
10456	<del>Compliance Tax Management Division, Compliance</del> <u>Services Income Tax</u> <del>Examination Section</del>
10457	Policy and Communications Division
10459	Property Tax Rent Reimbursement Claims
10460	Internal Services Division <del>Technology and Information Management Division</del> <u>Process Improvement and Innovation Division</u>
10465	<del>Revenue Operations Division</del> <u>Tax Management Division,</u> <u>Business and Excise Tax</u> <del>Customer Accounts</del> <del>Registration Services</del>
10466	Individual <u>and Corporation Income Tax</u> Estimated Payments
10467	Fiduciary and Inheritance Tax
10468	Corporation Income Tax Returns <del>and Estimated Payments</del>
10469	Property Tax
10470	<del>Withholding</del> <u>Verified Summary of Payments Report</u> <u>Registration Services</u>

## REVENUE DEPARTMENT[701](cont'd)

Box Number	Addressee
10471	Accounts Receivable
10472	<u>Hearings Section Cigarette and Tobacco Tax</u>
10486	Property Assessment Appeal Board
<u>14454</u>	<u>Tax Management Division, Field Audit</u>
<u>14457</u>	<u>Audit Services Section</u>
	<u>Hearings Section</u>
<u>14461</u>	<u>Research and Analysis Division</u>

ITEM 6. Amend paragraph **8.5(2)“b”** as follows:

b. The ERO must provide the taxpayer a copy of all ~~forms and~~ information to be filed. The taxpayer and ERO must retain all tax documentation for three years. The Declaration for e-File Return form and accompanying schedules are to be furnished to the department only when specifically requested.

ITEM 7. Amend rule 701—10.72(452A) as follows:

**701—10.72(452A) Interest.** ~~Interest at the rate of three-fourths of one percent per month, based on the tax due, shall be assessed against the taxpayer for each month such tax remains unpaid prior to January 1, 1982. The interest shall accrue from the date the return was required to be filed. Interest shall not apply to penalty. Each fraction of a month shall be considered a full month for the computation of interest. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.~~

~~Refunds on reports or returns filed on or after July 1, 1986, but before July 1, 1997, will accrue interest beginning on the first day of the third calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later, at the rate in effect under Iowa Code section 421.7, counting each fraction of a month as an entire month. Refunds on reports or returns filed on or after July 1, 1997, will accrue interest beginning on the first day of the second calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later, at the rate in effect under Iowa Code section 421.7, counting each fraction of a month as an entire month. Claims for refund filed under Iowa Code sections 452A.17 and 452A.21 will accrue interest beginning with the first day of the second calendar month following the date the refund claim is received by the department. See rule 701—10.3(422,450,452A).~~

~~This rule is intended to implement Iowa Code section 452A.65 as amended by 1997 Iowa Acts, House File 266.~~

ITEM 8. Amend rule 701—38.10(422), introductory paragraph, as follows:

**701—38.10(422) Indexation.** ~~Acts of the Sixty-ninth General Assembly, 1981 Regular Session, chapter 132, and Iowa Code section 422.5 provide provides for the adjustment of the tax brackets and civil service annuity exclusion by a cumulative inflation factor to be determined by the director. The requirement that provided that the state general fund balance on June 30 of the prior calendar year had to be \$60 million or more before there was indexation of the tax rate brackets for the current year was repealed for tax years beginning on or after January 1, 1996.~~

ITEM 9. Amend rule **701—38.15(422)**, numbered paragraphs “4” and “5,” as follows:

4. Whether or not it would be equitable to hold the innocent spouse for the substantial understatement. Innocent spouse relief applies only if, taking into account all facts and circumstances, it would be inequitable to hold the claimed innocent spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement. Factors taken into account in determining whether it is inequitable to hold a spouse liable for a tax deficiency include whether the spouse seeking relief has

## REVENUE DEPARTMENT[701](cont'd)

been deserted, divorced, separated, or widowed or has been the subject of abuse or financial control by the other spouse. See Internal Revenue Service Notice 2012-8.

Another important factor in determining equitable treatment for the person claiming innocent spouse relief is whether the person received a benefit attributable to the substantial understatement of taxes. The fact that the spouse received a benefit in the nature of “ordinary support” does not support a finding of significant benefit to deny the spouse relief. In addition, ordinary family support may include maintaining an affluent lifestyle if the standard of living is not enhanced by the tax understatement.

Where the taxpayer participated in the financial affairs of the other spouse and enjoyed the benefits from the activities of the other spouse, innocent spouse relief will not be granted.

5. Time period for requesting innocent spouse relief. For tax periods beginning on or after January 1, 2004, innocent spouse relief must be requested within two years after the date the department initiates collection action on an income tax deficiency or assessment against the person claiming innocent spouse relief. However, an extended time period to request innocent spouse relief can be granted under the provisions of Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

ITEM 10. Amend subrule **38.17(3)**, fourth unnumbered paragraph, as follows:

Since military nonresidents of Iowa cannot be taxed on their military pay while they are stationed in Iowa, the military pay cannot be considered for purposes of Iowa’s taxation of nonresidents in accordance with the Servicemembers Civil Relief Act, Public Law 108-189. The military pay of the nonresident of Iowa must be excluded from the computation of the nonresident credit set forth in rule 701—42.5(422). This exclusion from the computation of the nonresident credit applies to military pay of nonresident servicemembers who are in an active duty status as defined under Title 10 of the United States Code.

ITEM 11. Amend subrule 39.1(7) as follows:

**39.1(7) Returns filed for refund.** A taxpayer whose Iowa source net income or all source net income is less than the amount for which the filing of an Iowa individual income tax return is required must file a return to receive a refund of Iowa income tax withheld or Iowa estimated tax paid in the tax year or to receive a refund from an Iowa refundable tax credit. Refundable tax credits include the child and dependent care credit, the early childhood development tax credit, the research activities credit, the motor vehicle fuel tax credit, the claim of right credit (if elected in accordance with rule 701—38.18(422)), the assistive device credit, the historic preservation and cultural and entertainment district tax credit, the ethanol blended gasoline tax credit, the investment tax credit for value-added agricultural products or biotechnology-related processes, the soy-based cutting tool oil tax credit, the wage-benefit tax credit, the soy-based transformer fluid tax credit, the E-85 gasoline promotion tax credit, ~~and~~ the biodiesel blended fuel tax credit, the ethanol promotion tax credit, and the E-15 plus gasoline promotion tax credit.

ITEM 12. Amend subrule 39.5(10), introductory paragraph, as follows:

**39.5(10) Thirteen thousand five hundred dollar exemption.** For tax years beginning on or after January 1, 1993, all taxpayers, except single taxpayers described in subrule 39.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3), is \$13,500 or less are exempt from paying Iowa individual income tax subject to the following conditions:

ITEM 13. Amend subrule 39.5(11), introductory paragraph, as follows:

**39.5(11) Nine thousand dollar exemption.** For tax years beginning on or after January 1, 1993, single taxpayers described in subrule 39.4(1); whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3), is \$9,000 or less; are exempt from paying Iowa individual income tax subject to the following conditions:

## REVENUE DEPARTMENT[701](cont'd)

ITEM 14. Amend paragraph **39.7(1)“a,”** introductory paragraph, as follows:

*a. An exemption of \$9,000 for single taxpayers and an exemption of \$13,500 for all other taxpayers. To be eligible for the \$9,000 or less exemption for single taxpayers and the \$13,500 or less exemption for all other taxpayers as provided in Iowa Code section 422.5, subsection ~~2~~ 3, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than \$9,000 for single taxpayers and less than \$13,500 for all other taxpayers, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount of income tax that exceeds \$9,000 for single taxpayers and \$13,500 for all other taxpayers (including the lump-sum distribution income).*

ITEM 15. Amend paragraph **39.7(1)“b,”** introductory paragraph, as follows:

*b. An exemption of \$18,000 for single taxpayers and an exemption of \$24,000 for other taxpayers who are 65 years of age or older. These exemption amounts apply for tax years beginning on or after January 1, 2007, but before January 1, 2009. To be eligible for the \$18,000 or less exemption for single taxpayers and the \$24,000 or less exemption for all other taxpayers as provided in 2007 Iowa Code section 422.5, subsection ~~2A~~ 3A, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than \$18,000 for single taxpayers and less than \$24,000 for all other taxpayers, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount of income tax that exceeds \$18,000 for single taxpayers and \$24,000 for all other taxpayers (including the lump-sum distribution income).*

ITEM 16. Amend paragraph **39.7(1)“c,”** introductory paragraph, as follows:

*c. An exemption of \$24,000 for single taxpayers and an exemption of \$32,000 for all other taxpayers who are 65 years of age or older. These exemption amounts apply for tax years beginning on or after January 1, 2009. To be eligible for the \$24,000 or less exemption for single taxpayers and the \$32,000 or less exemption for all other taxpayers as provided in Iowa Code section 422.5, subsection ~~2B~~ 3B, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than \$24,000 for single taxpayers and less than \$32,000 for all other taxpayers, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount of income tax that exceeds \$24,000 for single taxpayers and \$32,000 for all other taxpayers (including the lump-sum distribution income).*

ITEM 17. Amend paragraph **40.38(1)“b”** as follows:

*b. Work done in an activity by an individual in the individual's capacity as an investor is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business. Investor-type activities include the study and review of financial statements or reports on operations of the activity, preparing or compiling summaries or analyses of finances or operations of the activity for the individual's own use, and monitoring the finances or operations of the activity in a nonmanagerial capacity.*

ITEM 18. Amend paragraph **40.38(1)“f,”** introductory paragraph, as follows:

*f. The following paragraphs provide clarification regarding ~~the facts and circumstances test in~~ subparagraph 40.38(1)“e”(7) material participation:*

ITEM 19. Amend subparagraphs **40.38(1)“f”(7)** and **(9)** as follows:

*(7) Rental activities or businesses. For purposes of subrules 40.38(1) and 40.38(2), the general rule is that a taxpayer may have material participation in the rental activity unless covered by a specific exception in this subrule (for example, the exceptions for farm rental activities in subparagraphs 40.38(1)“f”(4), (5) and (6)). Rental activity or rental business is as the term is used in Section 469(c) of the Internal Revenue Code. Rental activity or rental business does not typically involve day-to-day involvement since gross income from this activity represents amounts paid mainly for the use of the property. Examples of qualifying involvement in operations of the property that are considered material*

## REVENUE DEPARTMENT[701](cont'd)

participation activities if performed on a regular, continuous and substantial basis include advertising, interviewing potential tenants, preparing leases, collecting rent, handling security deposits, receiving questions and complaints from tenants, and performing routine maintenance.

EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since 1998 and has received rental income from these duplexes since 1998. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repairs and other upkeep on the duplexes. However, no person spends more time in operating, managing and maintaining the duplexes than Mr. Stanley, and Mr. Stanley spends more than 100 hours per year in operating, managing and maintaining the duplexes. The duplexes are sold in 2011, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the 2011 Iowa return since he met the material participation requirements for this rental activity.

(9) Record-keeping requirements. Taxpayers are required to provide proof of services performed and the hours attributable to those services. Detailed records should be ~~kept~~ maintained by the taxpayer, on as close to a daily basis as possible at or near the time of the performance of the activity, to verify that the material participation test has been met ~~because the burden is on the taxpayer to demonstrate that the material participation test has been met.~~ However, material participation can be established by any other reasonable means, such as approximating the number of hours based on appointment books, calendars, or narrative summaries. Records prepared long after the activity, in preparation of an audit or proceeding, are insufficient to establish participation in an activity.

ITEM 20. Amend paragraphs **41.3(1)“b”** and **“c”** as follows:

*b.* Tax paid at any time during the taxable year on a filing of federal estimated tax or on any amendment to such filing. Where a husband and wife file separate Iowa returns or separately on a combined Iowa return, the federal estimated tax payments made in the tax year shall be prorated between the spouses by the ratio of each spouse's income not subject to withholding to the total income not subject to withholding of both spouses, including the federal estimated tax payment made in January of the tax year which was made for the prior tax year. If an estimated tax payment or portion of the payment is made for self-employment tax, then the spouse who has earned the self-employment income shall report the amount of estimated tax designated as self-employment tax. The federal tax deduction for the tax year does not include the self-employment tax paid through the federal estimated payments made in the tax year. However, one-half of the self-employment tax paid in the tax year is deductible in computing federal adjusted gross income pursuant to Section 164(f) of the Internal Revenue Code so this self-employment tax is also deductible in computing net income. If an estimated tax payment or portion of the payment is made for the federal net investment income tax computed under Section 1411 of the Internal Revenue Code for tax years beginning on or after January 1, 2013, see paragraph 41.3(1)“f” on how the federal net income tax should be prorated between spouses.

*c.* Any additional federal tax on a prior federal return paid during the taxable year. Where a husband and wife file separately or separately on a combined Iowa return, additional federal tax paid shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which the additional federal tax was paid. If additional federal tax paid includes federal self-employment tax, then that amount of self-employment tax shall be deducted by the spouse who earned the self-employment income. Any federal tax paid for a tax year in which an Iowa individual income tax return was not required to be filed is not allowed as a deduction in the year the federal taxes were paid. If additional federal tax paid includes the federal net investment income tax computed under Section 1411 of the Internal Revenue Code for tax years beginning on or after January 1, 2013, see paragraph 41.3(1)“f” on how the federal net income tax should be prorated between spouses.

EXAMPLE 1. Individual A earned \$8,500 in income for the 2004 tax year and paid \$200 in federal tax with the filing of the federal return in 2005. Individual A was not required to file an Iowa return for 2004 because the Iowa net income was under \$9,000. Individual A cannot claim a deduction for the \$200 in federal tax paid on the 2005 Iowa return because an Iowa return was not required to be filed for the 2004 tax year.

EXAMPLE 2. Individual B moved into Iowa on January 1, 2005, and filed an initial Iowa individual income tax return for the 2005 tax year. Individual B paid \$1,000 in additional federal income tax with

## REVENUE DEPARTMENT[701](cont'd)

the filing of the 2004 federal income tax return in 2005. Individual B cannot claim a deduction for the \$1,000 in federal tax paid on the 2005 Iowa return because an Iowa return was not filed for the 2004 tax year.

ITEM 21. Adopt the following **new** paragraph **41.3(1)“f”**:

*f.* For tax years beginning on or after January 1, 2013, the federal net investment income tax, also known as the unearned income Medicare contribution tax, computed under Section 1411 of the Internal Revenue Code. The federal net investment income tax is computed on the lesser of net investment income for the tax year or the excess of the modified adjusted gross income for the tax year over a threshold amount.

Where a married couple file separate returns or separately on a combined Iowa return, the federal net investment income tax, if computed on net investment income, shall be prorated between the spouses by the ratio of net investment income reported by each spouse to total net investment income of both spouses in the year for which the federal net investment income tax was paid. Where a married couple file separate returns or separately on a combined Iowa return, the federal net investment income tax, if computed on the excess of modified adjusted gross income over a threshold amount, shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which the federal net investment income tax was paid.

ITEM 22. Amend rule 701—42.44(422) as follows:

**701—42.44(422) Deduction of credits.** The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, and 422.110 shall be ~~deducted~~ claimed in the following sequence:

1. Personal exemption credit.
2. Tuition and textbook credit.
3. Volunteer fire fighter and volunteer emergency medical services personnel tax credit.
4. Nonresident and part-year resident credit.
5. Franchise tax credit.
6. S corporation apportionment credit.
7. Disaster recovery housing project tax credit.
8. School tuition organization tax credit.
9. Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit).
10. Endow Iowa tax credit.
11. Agricultural assets transfer tax credit.
12. ~~Film-qualified expenditure tax credit.~~ Custom farming contract tax credit.
13. ~~Film investment tax credit.~~ Film qualified expenditure tax credit.
14. ~~Redevelopment tax credit.~~ Film investment tax credit.
15. ~~Investment tax credit.~~ Redevelopment tax credit.
16. ~~Wind energy production tax credit.~~ From farm to food donation tax credit.
17. ~~Renewable energy tax credit.~~ Investment tax credit.
18. ~~Redeemed Iowa fund of funds tax credit.~~ Wind energy production tax credit.
19. ~~New jobs tax credit.~~ Renewable energy tax credit.
20. ~~Economic development region revolving fund tax credit.~~ Redeemed Iowa fund of funds tax credit.
21. ~~Geothermal heat pump tax credit.~~ New jobs tax credit.
22. ~~Solar energy system tax credit.~~ Economic development region revolving fund tax credit.
23. ~~Charitable conservation contribution tax credit.~~ Geothermal heat pump tax credit.
24. ~~Alternative minimum tax credit.~~ Solar energy system tax credit.
25. ~~Historic preservation and cultural and entertainment district tax credit.~~ Charitable conservation contribution tax credit.
26. ~~Ethanol-blended gasoline tax credit or ethanol promotion tax credit.~~ Alternative minimum tax credit.

## REVENUE DEPARTMENT[701](cont'd)

27. ~~Research activities credit.~~ Historic preservation and cultural and entertainment district tax credit.
28. ~~Out-of-state tax credit.~~ Ethanol promotion tax credit.
29. ~~Child and dependent care credit or early childhood development tax credit.~~ Research activities credit.
30. ~~Motor fuel credit.~~ Out-of-state tax credit.
31. ~~Claim of right credit (if elected in accordance with rule 701—38.18(422)).~~ Child and dependent care tax credit or early childhood development tax credit.
32. ~~Wage benefits tax credit.~~ Motor fuel tax credit.
33. ~~Refundable portion of investment tax credit, as provided in subrule 42.14(2).~~ Claim of right credit (if elected in accordance with rule 701—38.18(422)).
34. ~~E-85 gasoline promotion tax credit.~~ Wage-benefits tax credit.
35. ~~Biodiesel blended fuel tax credit.~~ Refundable portion of investment tax credit, as provided in subrule 42.14(2).
36. ~~E-15 plus gasoline promotion tax credit.~~ E-85 gasoline promotion tax credit.
37. ~~Earned income tax credit.~~ Biodiesel blended fuel tax credit.
38. ~~Estimated payments, payment with vouchers, and withholding tax.~~ E-15 plus gasoline promotion tax credit.
39. Earned income tax credit.
40. Iowa taxpayers trust fund tax credit.
41. Estimated payments, payment with vouchers, and withholding tax.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11D, 422.11F, 422.11H, 422.11I, 422.11J, 422.11L, 422.11M, 422.11N, 422.11O, 422.11P, 422.11Q, 422.11S, 422.11W, 422.11X, 422.12, 422.12B, 422.12C and 422.110 and ~~2012~~ 2013 Iowa Acts, House File ~~2337~~ 599, sections ~~38 to 40~~ and 2013 Iowa Acts, Senate Files 295 and 452.

ITEM 23. Amend subrule **42.48(2)**, second and third unnumbered paragraphs, as follows:

The federal residential energy efficient tax credits and the federal energy tax credits for solar energy systems are currently allowed for installations that are ~~completed~~ placed in service on or before December 31, 2016. Therefore, the Iowa tax credit will be available for the 2012 to 2016 tax years for systems placed in service on or before December 31, 2016. The solar energy system must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a \$9,000 residential energy efficient tax credit on the 2011 federal return due to an installation of a solar energy system that was ~~completed~~ placed in service in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer's 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was ~~completed~~ placed in service before January 1, 2012.

ITEM 24. Amend subrule **43.3(1)**, first unnumbered paragraph, as follows:

In addition, the claim for refund must be filed within one of the time periods specified in Iowa Code section ~~422.73(2)~~ 422.73(1) in order for the refund claim to be timely so that the claim may be considered on its merits by the department.

ITEM 25. Amend subrule 46.1(2) as follows:

**46.1(2)** *Withholding on pensions, annuities and other nonwage payments to Iowa residents.* State income tax is required to be withheld from payments of pensions, annuities, supplemental unemployment benefits and sick pay benefits and other nonwage income payments made to Iowa residents in those circumstances mentioned in the following paragraphs. This subrule covers those nonwage payments described in Sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code. This includes, but is not limited to, payments from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts, lump-sum distributions from qualified retirement

## REVENUE DEPARTMENT[701](cont'd)

plans, other retirement plans, and annuities, endowments and life insurance contracts issued by life insurance companies. These payments are subject to Iowa withholding tax if they are also subject to federal withholding tax. However, no state income tax withholding is required from nonwage payments to residents to the extent those payments are not subject to state income tax. ~~Generally, no state income tax is required to be withheld from nonwage payments to residents in circumstances where the payment amounts are less than \$250 or the taxable portions of the payments are less than \$250 in situations where the payers know the taxable amounts. In instances where a payment amount or taxable amount is \$250 or more but the payment amount or the taxable amount for the year is less than \$3,000, no state income tax is required to be withheld. See paragraph 46.1(2) "h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001.~~ In the case of some nonwage payments to residents, such as payments of pensions and annuities, no state income tax is required to be withheld if no federal income tax is being withheld from the payments of the pensions and annuities. The rate of withholding on the nonwage payments described in this subrule is 5 percent of the payment amounts or 5 percent of the taxable amounts unless specified otherwise.

For purposes of this subrule, an individual receiving nonwage payments will be considered to be an Iowa resident and subject to this subrule if the individual's permanent residence is in Iowa. The fact that a nonwage payment is deposited in a recipient's account in a financial institution located outside Iowa does not mean that the recipient's permanent residence is established in the place where the financial institution is situated.

Payers of pension and annuity benefits and other nonwage payments have the option of either withholding Iowa income tax from these payments on the basis of tables and formulas included in the Iowa withholding tax guide of the department of revenue or withholding Iowa income tax from these payments at the rate of 5 percent. State income tax is required to be withheld by payers in situations when federal income tax is being withheld from the nonwage payments.

*a. Withholding from pension and annuity payments to residents.* Withholding of state income tax is required from payments of pensions and annuities to Iowa residents to the extent that the recipients of the payments have not filed with the payers of the benefits election forms which specify that no federal income tax is to be withheld. Therefore, state income tax is to be withheld when federal income tax is being withheld from the pensions or annuities. See paragraph 46.1(2) "h" for threshold amounts for withholding from payments of pensions, annuities, and other retirement incomes which are made on or after January 1, 2001.

However, although Iowa income tax is ordinarily required to be withheld from pension and annuity payments made to Iowa residents if federal income tax is being withheld from the payments, no state income tax is required to be withheld if pension and annuity payments are not subject to Iowa income tax, as in the case of railroad retirement benefits which are exempt from Iowa income tax by a provision of federal law. ~~In addition, no Iowa income tax is required from a pension or annuity payment made to an Iowa resident to the extent that the payment amounts are less than \$250 or the taxable amounts of the payments are less than \$250 in instances where the payers know the taxable amounts of the payments.~~

*b. Withholding from payments to residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from annuities, endowments and life insurance contracts issued by life insurance companies.* Payments to Iowa residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and payments from life insurance companies for contracts for annuities, endowments or life insurance benefits are subject to withholding of state income tax if federal income tax is withheld from the benefits. However, no state income tax is to be withheld from the income tax payments described above to the extent those income tax payments are exempt from Iowa income tax. See paragraph 46.1(2) "h" for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. ~~In addition, no state income tax is to be withheld in circumstances where payment amounts are less than \$250 or the taxable portions of the payments are less than \$250 in cases when the payer knows the taxable amount of the payment. There~~

## REVENUE DEPARTMENT[701](cont'd)

~~is also no state income tax withholding in situations where the payment amount or the taxable amount is \$250 or more but the payment amount or the taxable amount for the year is less than \$3,000.~~

In cases where the recipients elect withholding of state income tax from the income payments, the payers are to withhold from the payments at a rate of 5 percent on the taxable portion of the payment, if that can be determined by the payer or on the entire income payment if the payer does not know how much of the payment is taxable. Once a recipient makes an election for state income tax withholding, that election will remain in effect until a later election is made.

*c. Withholding from payments to residents for supplemental unemployment compensation benefits and sick pay benefits.* Income payments made for supplemental unemployment compensation benefits described in Section 3402(o)(2)(a) of the Internal Revenue Code and for sick pay benefits are subject to withholding of state income tax. In the case of supplemental unemployment compensation benefits, those benefits are treated as wages for purposes of state income tax withholding. Therefore, state income tax should be withheld from these payments when federal income tax is withheld. The amount of state income tax withholding should be determined by the withholding tables provided in the Iowa employers' "Withholding Tax Guide."

In the case of state income tax withholding for sick pay benefits paid by third-party payers in accordance with Section 3402(o)(1) of the Internal Revenue Code, state income tax is to be withheld from the benefits by the payer only if state income tax withholding is requested by the payee of the benefits. However, payees of sick pay benefits should probably not request withholding from the benefits if the payees are eligible for the disability income exclusion authorized in Iowa Code section 422.7 and described in rule 701—40.22(422). If withholding is requested by the payee, the withholding should be done at a 5 percent rate on the sick pay benefits. ~~However, no withholding of state income tax should be made if the benefit payment is less than \$250.~~ Once withholding is started, it should continue until such time as the payee requests that no state income tax be withheld. For sick pay benefits not paid by third-party payers, state income tax is required to be withheld since federal income tax is required to be withheld.

*d. Voluntary state income tax withholding from unemployment benefit payments.* Recipients of unemployment benefit payments described in Section 3402(p)(2) of the Internal Revenue Code may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual's election to have state income tax withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.

*e. Withholding on lump-sum distributions from qualified retirement plans.* For lump-sum distribution payments from qualified retirement plans made to Iowa residents, state income tax is required to be withheld under the conditions described in this paragraph. No state income tax is required to be withheld from a lump-sum distribution payment to an Iowa resident in a situation where the payment is not subject to Iowa income tax. See paragraph 46.1(2) "h" for thresholds for withholding on lump-sum distributions issued on or after January 1, 2001. ~~In addition, Iowa income tax is not required to be withheld on the distribution to the extent that the amount of the distribution or the taxable amount, if known by the payer, is less than \$3,000.~~ Iowa income tax is to be withheld from a lump-sum distribution made to an Iowa resident to the extent that federal income tax is being withheld from the distribution. The rate of withholding of state income tax from the lump-sum distribution is 5 percent from the total distribution or 5 percent from the taxable amount if that amount is known by the payer. Note that in the case of a lump-sum distribution, the Iowa income tax imposed on the taxable amount of the distribution is 25 percent of the federal income tax on the distribution.

*f. Withholding of state income tax from nonwage payments to residents on the basis of tax tables and tax formulas.* State income tax from the nonwage payments made to Iowa residents may be withheld on the basis of formulas and tables included in the Iowa withholding tax guide of the department of revenue. See paragraph 46.1(2) "h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. When state income tax is being withheld based upon the formulas or tables in the withholding guide, the amounts of the nonwage payments are treated as wage payments for purposes of the tables or the formulas.

## REVENUE DEPARTMENT[701](cont'd)

The frequency of the nonwage payments determines which of the withholding tables to use or the number of pay periods in the calendar year to use in the formula. For example, if the nonwage payment is made on a monthly basis, the monthly wage bracket withholding table should be utilized for withholding or 12 should be utilized in the formula to indicate that there will be 12 nonwage payments in the year.

The payers of nonwage payments should withhold state income tax from the nonwage payments to Iowa residents when federal income tax is being withheld from the nonwage payments. The payers should withhold from the nonwage payments to Iowa residents from tables or the formulas in the Iowa withholding guide on the basis of the number of withholding exemptions claimed on Form IA W-4 which has been completed by the payees of the payments. However, if a payee of a nonwage payment has not completed an IA W-4 form (Iowa employee's withholding allowance certificate) by the time a nonwage payment is to be made by the payer of the nonwage payment, the payer is to withhold state income tax on the basis that the payee has claimed one withholding allowance or exemption.

In a situation when a payee of a nonwage payment completes Form IA W-4 and claims exemption from state income tax withholding when federal income tax is being withheld from the nonwage payment, the payer of the nonwage payment should withhold state income tax using one withholding allowance or exemption unless the payee has verified exemption from state income tax.

*g. Withholding on distributions from qualified retirement plans that are not directly rolled over.* State income tax is to be withheld at a rate of 5 percent from the gross amount or taxable amount if known by the payer of the distribution made to Iowa residents if the distributions are not transferred directly to an IRA, Section 403(a) annuity or another qualified retirement plan. The distributions that are subject to state income tax withholding are those distributions that are subject to 20 percent withholding for federal income tax purposes. ~~However, if the gross amount or taxable amount of a distribution is less than \$3,000, state income tax withholding is not required.~~ See paragraph 46.1(2) "h" for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans which are made on or after January 1, ~~1999~~ 2001.

*h. Withholding from distributions made on or after January 1, 2001, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans.* Effective for distributions made on or after January 1, 2001, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term "pensions and other retirement plans" includes all distributions of retirement benefits covered by the partial exemption described in rule 701—40.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a pension plan or other retirement plan if the amount of the distribution is \$500 per month or less or if the taxable amount is \$500 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422), if the state taxable amount can be determined by the payee of the distribution. There is also no requirement for withholding state income tax from a pension or other retirement plan if the distribution is \$1,000 per month or less or if the taxable amount is \$1,000 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422) and that person has indicated an intention to file a joint state income tax return for the year in which the distribution is made. In instances where the distribution amount or the taxable amount is more than \$500 per month but less than \$6,000 for the year, no state income tax will be required to be withheld, if the person receiving the distribution is eligible for the partial exemption of retirement benefits.

Finally, there is no requirement for withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is \$6,000 or less, the recipient is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump-sum payment is the only distribution from the retirement plan in the year.

## REVENUE DEPARTMENT[701](cont'd)

ITEM 26. Amend subrule 48.7(2), introductory paragraph, as follows:

**48.7(2)** Deduct from the computed tax one personal exemption credit of \$20 (\$40 for tax years beginning on or after January 1, 1998) for each nonresident partner, shareholder, employee, or beneficiary included in the composite return.

ITEM 27. Amend paragraph **52.1(1)“d,”** introductory paragraph, as follows:

*d. Intangible property located or having a situs within Iowa.* Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988). The term “intangible property located or having a situs within Iowa” means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Kmart Properties, Inc. v. Taxation & Revenue Department of New Mexico*, 131 P. 3d 27 (N.M. Ct. App. 2001), rev'd on other issues, 131 P. 3d 22 (N.M. 2005); *Secretary, Department of Revenue v. Gap (Apparel), Inc.*, 886 So. 2d 459 (La.Ct.App. 2004); *A & F Trademark v. Tolson*, 605 S.E. 2d 187 (N.C.App. 2004), cert. denied 126 S.Ct. 353 (2005); *Lanco, Inc. v. Director, Division of Taxation*, 879 A.2d 1234 (N.J.Super.A.D. 2005), aff'd, 908 A.2d 176 (N.J. 2006) (per curiam), cert. denied 127 S.Ct. 2974 (June 18, 2007); *Geoffrey, Inc. v. Oklahoma Tax Commission*, 132 P. 3d 632 (Okla. Ct. Civ. App. 2005), cert. denied (Mar. 20, 2006), as corrected (Apr. 12, 2006); *FIA Card Services, Inc. v. Tax Comm'r*, 640 S.E.2d 226 (W. Va. 2006), cert. denied, 127 S.Ct. 2997 (June 18, 2007); *Capital One Bank v. Commissioner of Revenue*, 899 N.E.2d 76 (Mass. 2009); *Geoffrey, Inc. v. Commissioner of Revenue*, 899 N.E.2d 87 (Mass. 2009); *KFC Corporation v. Iowa Department of Revenue*, 792 N.W. 2d 308 (Iowa 2010), cert. denied 132 S. Ct. 97 (October 3, 2011). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, trademarks, trade names, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, mortgage loans, consumer loans, business loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts such as credit card debt, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

ITEM 28. Amend subrule 52.1(4), introductory paragraph, as follows:

**52.1(4)** *Taxation of corporations having only intangible property located or having a situs in Iowa.* For tax years beginning on or after January 1, 1995, corporations whose only connection with Iowa is their ownership of intangible property located or having a situs in Iowa are subject to Iowa income tax and must file an Iowa income tax return. Intangible property is located or has a situs in Iowa if the corporation's commercial domicile is in Iowa and the intangible property has not become an integral part of some business activity occurring regularly within or without Iowa. Regardless whether the corporation's commercial domicile is in or out of Iowa, intangible property is located or has a situs in Iowa if the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Arizona Tractor Company v. Arizona State Tax Commission*, 115 Ariz. 602, 566 P.2d 1348 (Ariz. App. 1977); *KFC Corporation v. Iowa Department of Revenue*, 792 N.W. 2d 308 (Iowa 2010), cert. denied 132 S. Ct. 97 (October 3, 2011). In the event that the intangible property interest is a general or limited partnership interest, the location or situs of that partnership interest is the place(s) where the partnership conducts business. *Arizona Tractor Company v. Arizona State Tax Commission*, supra.

ITEM 29. Amend rule 701—52.12(422) as follows:

**701—52.12(422) Deduction of credits.** The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be ~~deducted~~ claimed in the following sequence.

1. Franchise tax credit.

## REVENUE DEPARTMENT[701](cont'd)

2. Disaster recovery housing project tax credit.
3. School tuition organization tax credit.
4. Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit).
5. Endow Iowa tax credit.
6. Agricultural assets transfer tax credit.
7. ~~Film qualified expenditure tax credit.~~ Custom farming contract tax credit.
8. ~~Film investment tax credit.~~ Film qualified expenditure tax credit.
9. ~~Redevelopment tax credit.~~ Film investment tax credit.
10. ~~Investment tax credit.~~ Redevelopment tax credit.
11. ~~Wind energy production tax credit.~~ From farm to food donation tax credit.
12. ~~Renewable energy tax credit.~~ Investment tax credit.
13. ~~Redeemed Iowa fund of funds tax credit.~~ Wind energy production tax credit.
14. ~~New jobs tax credit.~~ Renewable energy tax credit.
15. ~~Economic development region revolving fund tax credit.~~ Redeemed Iowa fund of funds tax credit.
16. ~~Solar energy system tax credit.~~ New jobs tax credit.
17. ~~Charitable conservation contribution tax credit.~~ Economic development region revolving fund tax credit.
18. ~~Alternative minimum tax credit.~~ Solar energy system tax credit.
19. ~~Historic preservation and cultural and entertainment district tax credit.~~ Charitable conservation contribution tax credit.
20. ~~Corporate tax credit for certain sales tax paid by developer.~~ Alternative minimum tax credit.
21. ~~Ethanol-blended gasoline tax credit or ethanol promotion tax credit.~~ Historic preservation and cultural and entertainment district tax credit.
22. ~~Research activities tax credit.~~ Corporate tax credit for certain sales tax paid by developer.
23. ~~Assistive device tax credit.~~ Ethanol promotion tax credit.
24. ~~Motor fuel credit.~~ Research activities credit.
25. ~~Wage benefits tax credit.~~ Assistive device tax credit.
26. ~~Refundable portion of investment tax credit, as provided in subrule 52.10(4).~~ Motor fuel tax credit.
27. ~~E-85 gasoline promotion tax credit.~~ Wage-benefits tax credit.
28. ~~Biodiesel-blended fuel tax credit.~~ Refundable portion of investment tax credit, as provided in subrule 52.10(4).
29. ~~E-15 plus gasoline promotion tax credit.~~ E-85 gasoline promotion tax credit.
30. ~~Estimated tax and payment with vouchers.~~ Biodiesel blended fuel tax credit.
31. E-15 plus gasoline promotion tax credit.
32. Estimated tax and payment with vouchers.

This rule is intended to implement Iowa Code sections 422.33, 422.91 and 422.110.

ITEM 30. Amend subrule **52.44(2)**, second and third unnumbered paragraphs, as follows:

The federal energy tax credit for solar energy systems is currently allowed for installations that are ~~completed~~ placed in service on or before December 31, 2016. Therefore, the Iowa tax credit will be available for the 2012 to 2016 tax years for ~~installations completed~~ systems placed in service on or before December 31, 2016. The solar energy system must be ~~installed~~ placed in service on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a \$9,000 energy credit on the 2011 federal return due to an installation of a solar energy system that was ~~completed~~ placed in service in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer's 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was ~~completed~~ placed in service before January 1, 2012.

REVENUE DEPARTMENT[701](cont'd)

ITEM 31. Adopt the following **new** subrules 53.8(3) to 53.8(6):

**53.8(3)** *Charitable contributions relating to the charitable conservation contribution tax credit.*

For tax years beginning on or after January 1, 2008, a taxpayer who claims a charitable conservation contribution tax credit in accordance with rule 701—52.37(422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

**53.8(4)** *Charitable contributions relating to school tuition organizations.* For tax years beginning on or after July 1, 2009, a taxpayer who claims a school tuition organization tax credit in accordance with rule 701—52.38(422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution to the school tuition organization for which the tax credit is claimed for Iowa tax purposes.

**53.8(5)** *Charitable contributions relating to the endow Iowa tax credit.* For tax years beginning on or after January 1, 2010, a taxpayer who claims an endow Iowa tax credit in accordance with rule 701—52.23(15E,422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

**53.8(6)** *Charitable contributions related to the from farm to food donation tax credit.* For tax years beginning on or after January 1, 2014, a taxpayer who claims a from farm to food donation tax credit in accordance with rule 701—52.45(422,85GA,SF452) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

ITEM 32. Amend rule **701—53.8(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.35 as amended by and 1994 2013 Iowa Acts, Senate File 2215 452.

ITEM 33. Amend subrule 58.5(4) as follows:

**58.5(4)** Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use and the credit is based on the minimum tax paid by the taxpayer for 1987. However, only the portion of the minimum tax which is attributable to those adjustments and tax preferences which are "deferral items" qualifies for the minimum tax credit for tax years beginning prior to January 1, 1990. "Deferral items" are those tax preferences and adjustments which result in a temporary change in a taxpayer's tax liability. An example of a "deferral item" is the tax preference for accelerated depreciation of real property placed in service before 1987. On the other hand, the portion of the minimum tax which is attributable to the "exclusion item" for appreciated property charitable deduction does not qualify for the minimum tax credit. The appreciated property charitable deduction tax preference is the only state "exclusion item," although there are several "exclusion items" which are used to compute federal minimum tax. For tax years beginning on or after January 1, 1990, the entire amount of minimum tax paid qualifies for the minimum tax credit, and there is no longer any distinction between "deferral items" and "exclusion items." The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. *Computation of minimum tax credit on Form Schedule IA 8801C 8827F.* The minimum tax credit is computed on Form Schedule IA 8801C 8827F from information on Form Schedule IA 4626 4626F for the prior tax year years, Form IA 4120 1120F and Form Schedule IA 4626 4626F for the current year and from Form Schedule IA 8801C 8827F for the prior tax year years (applies in 1989 and in subsequent tax years).

Form IA 8801C is in three parts. In the first part, a calculation is made to determine the portion of the minimum tax paid in the prior year, if any, which is attributable to the exclusion item for appreciated

## REVENUE DEPARTMENT[701](cont'd)

property charitable deduction. In the second portion of Form IA 8801C, the minimum tax attributable to the appreciated property charitable deduction from Part I is subtracted from the total minimum tax paid for the prior year. The remaining amount of minimum tax is attributable to the deferral tax preference items and adjustment items. This remaining amount, if any, is added to the minimum tax carryover credit from Form IA 8801C for the prior tax year, if any. This total is compared to the regular income tax liability less nonrefundable credits, less the tentative minimum tax for the current year and the lesser amount is the allowable minimum tax credit for the current year.

The final part of Form IA 8801C is used to compute the minimum tax credit, if any, which will be carried over to the next tax year. The carryover credit is computed by subtracting the allowable credit for the current tax year from the total of the minimum tax credit attributable to deferral items and the carryover credit from the prior tax years.

*b. Example. Examples of computation of the minimum tax credit and carryover of the credit.* The taxpayer had a 1989 taxable income of \$450,000 and an accelerated depreciation tax preference of \$280,000. In 1988 the taxpayer had taxable income of \$500,000 and tax preferences of \$370,000 which consisted of \$320,000 of accelerated property charitable deduction and \$50,000 of appreciated property charitable deduction. The minimum tax credit for 1989 was computed on Form IA 8801C using data from Form IA 4626F for 1988 and from Form IA 4626F for 1989 and Form IA 1120 for 1989.

## Form IA 8801C

Part I.	Computation of Minimum Tax on Exclusion Items	
Line 11	- Gross tax on exclusion items	-0-
Line 12	- Less regular tax minus credits	\$33,900
Line 13	- Net minimum tax on exclusion items	-0-
Part II.	Computation of Allowable Credit for 1989	
Line 14	- Enter amount from line 18 IA 4626F for 1988	\$ 1,100
Line 15	- Enter amount from line 13 part I	-0-
Line 16	- Subtract line 15 from line 14	\$ 1,100
Line 17	- Enter credit carryforward from 1987	-0-
Line 18	- Add lines 16 and 17	\$ 1,100
Line 19	- Enter 1989 regular tax liability	\$22,500
Line 20	- Enter 1989 tentative minimum tax	\$21,600
Line 21	- Subtract line 20 from line 19	\$ 900
Line 22	- Allowable minimum tax credit for 1989. Enter smaller of line 18 or line 21	\$ 900
Part III.	Computation of Minimum Tax Credit Carryovers	
Line 23	- Enter amount from line 18 part II	\$ 1,100
Line 24	- Enter amount from line 22 part II	900
Line 25	- Carryforward of minimum tax credit to 1990. Subtract line 24 from line 23	\$ 200

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2011. For 2012, taxpayer reported regular tax less credits of \$8,000, and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2012 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2011 was used, there is a \$2,000 minimum tax carryover credit to 2013.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2011. For 2012, taxpayer reported regular tax less credits of \$8,000, and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2012 because, although the regular tax less credits exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2013.

REVENUE DEPARTMENT[701](cont'd)

c. *Minimum tax credit after merger.* When two or more financial institutions merge or consolidate into one financial organization, the minimum tax credit of the merged or consolidated operation is available for use by the survivor of the merger or consolidation.

ITEM 34. Adopt the following new rule 701—59.17(15E,422):

**701—59.17(15E,422) Charitable contributions relating to the endow Iowa tax credit.** For tax years beginning on or after January 1, 2010, a taxpayer who claims an endow Iowa tax credit in accordance with rule 701—58.13(15E,422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

This rule is intended to implement Iowa Code section 15E.305.

[Filed 1/15/14, effective 3/12/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.

**ARC 1306C**

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.4 and 421.1A(4)“e,” the Property Assessment Appeal Board hereby amends Chapter 71, “Assessment Practices and Equalization,” Iowa Administrative Code.

The amendment to rule 701—71.21(421,17A) provides for corrections to subrules to bring them into compliance with 2013 Iowa Acts, Senate File 295, division VI, and makes other identified changes.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1238C** on December 11, 2013. No public comments were received. This amendment is identical to the one published under Notice of Intended Action.

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

This amendment is intended to implement Iowa Code sections 421.1A and 441.37A as amended by 2013 Iowa Acts, Senate File 295, division VI, and chapter 17A.

This amendment will become effective March 12, 2014.

The following amendment is adopted.

Amend rule 701—71.21(421,17A) as follows:

### **701—71.21(421,17A) Property assessment appeal board.**

**71.21(1)** *Establishment, membership, and location of the property assessment appeal board.*

a. No change.

b. The property assessment appeal board shall consist of three members appointed by the governor and subject to confirmation by the senate. The members shall be appointed to staggered six-year terms beginning initially on January 1, 2007, and ending as provided in Iowa Code section 69.19. Members' subsequent terms shall begin and end as provided in Iowa Code section 69.19. The governor shall appoint from the members a chairperson, subject to confirmation by the senate, of the board to a two-year term. Vacancies on the board shall be filled for the unexpired portion of the term in the same manner as regular appointments are made.

Each member of the property assessment appeal board shall be qualified by virtue of at least two years' experience in the area of government, corporate, or private practice relating to property appraisal and property tax administration. ~~One member~~ Two members of the board shall be a certified real estate appraiser ~~or hold a professional appraisal designation,~~ property appraisers and one member shall be an attorney practicing in the area of state and local taxation or property tax appraisals, ~~and one member shall be a professional with experience in the field of accounting or finance and with experience in state and~~

## REVENUE DEPARTMENT[701](cont'd)

~~local taxation matters.~~ No more than two members of the board may be from the same political party as that term is defined in Iowa Code section 43.2.

c. No change.

**71.21(2)** and **71.21(3)** No change.

**71.21(4)** *Compensation.* The members of the property assessment appeal board shall receive ~~compensation from the state commensurate with the salary of a district judge~~ a salary set by the governor within a range established by the general assembly. The members of the board shall be considered state employees for purposes of salary and benefits and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV. Members of the board and any employees of the board, when required to travel in the discharge of official duties, shall be paid their actual and necessary expenses incurred in the performance of their duties.

~~**71.21(5)** *Appeal board review committee.* Effective January 1, 2012, a property assessment appeal board review committee is established. Staffing assistance to the committee shall be provided by the department of revenue. The committee shall consist of six members of the general assembly, two appointed by the majority leader of the senate, one appointed by the minority leader of the senate, two appointed by the speaker of the house of representatives, and one appointed by the minority leader of the house of representatives; the director of revenue or the director's designee; a county assessor appointed by the Iowa state association of counties; and a city assessor appointed by the Iowa league of cities.~~

The property assessment appeal board review committee shall review the activities of the property assessment appeal board since its inception. The review committee may recommend the revision of any rules, regulations, directives, or forms relating to the activities of the property assessment appeal board.

The review committee shall report to the general assembly by January 15, 2013. The report shall include any recommended changes in laws relating to the property assessment appeal board, the reasons for the committee's recommendations, and any other information the committee deems advisable.

~~**71.21(6)**~~ **71.21(5)** *Applicability and scope.* These subrules set forth herein govern the proceedings for all cases in which the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review. For the purpose of these subrules, the following definitions shall apply:

"*Appellant*" means the party filing the notice of appeal with the secretary of the property assessment appeal board.

"*Board*" means the property assessment appeal board as created by ~~chapter 150 of the Acts of the Eighty-first General Assembly~~ Iowa Code section 421.1A and governed by Iowa Code chapter 17A and sections ~~421.1A and section 441.37A.~~

"*Department*" means the Iowa department of revenue.

"*Local board of review*" means the board of review as defined by Iowa Code section 441.31.

"*Party*" means ~~a property owner, an aggrieved taxpayer, an assessor, an appellant or an appellee in an appeals process before the board~~ each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"*Presiding officer*" means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the property assessment appeal board.

"*Secretary*" means the secretary for the property assessment appeal board.

~~**71.21(7)**~~ **71.21(6)** *Appeal and jurisdiction.* Notice of appeal confers jurisdiction for the board. The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by written notice of appeal given to the secretary. The written notice of appeal shall include a petition setting forth the basis of the appeal and the relief sought. The written notice of appeal shall be filed with the secretary within 20 calendar days after the ~~postmarked~~ date of the disposition of the protest by adjournment of the local board of review. Appeals ~~postmarked within 20 days after the postmarked date of the disposition of the protest by the local board of review~~ this time period shall also be considered to have been timely filed. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. ~~A party may request to participate by telephone in any hearing before the board.~~ No new grounds

REVENUE DEPARTMENT[701](cont'd)

in addition to those set out in the protest to the local board of review can be pleaded, but additional evidence to sustain those grounds may be introduced. The appeal is a contested case.

~~b. The notice of appeal must be proper in format and content as set forth in subrule 71.21(9), which governs the notice of appeal. Notice of appeal may be delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery to the secretary of the board, or e-mailed to the board at paab@iowa.gov.~~

~~c. For an appeal filed by e-mail to be timely, it must be received by the board by 11:59 p.m. on the last day for filing as established within the time period set forth in paragraph 71.21(6) "a."~~

71.21(7) Form of appeal. The notice of appeal shall include:

- a. The appellant's name, mailing address, e-mail address, and telephone number;
- b. The address of the property being appealed and its parcel number;
- c. A copy of the letter of disposition by the local board of review;
- d. A short and plain statement of the claim showing that the appellant is entitled to relief;
- e. The relief sought; and
- f. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, e-mail address, and telephone number.

71.21(8) Scope of review. The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof. ~~The board will consider only those grounds set out in the protest to the local board of review. However, additional evidence may be introduced in the board proceedings relevant to the grounds set out in the protest. The board shall afford each party an opportunity to present briefs and oral arguments. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. The burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.~~

71.21(9) Form of appeal. The written notice of appeal shall contain a caption in the following form:

THE PROPERTY ASSESSMENT APPEAL BOARD		
(Appellant's name and address) v. (Board of Review)	}	NOTICE OF APPEAL and PETITION DOCKET NO. _____ (Docket No. assigned by board)

- The notice of appeal shall include:
- ~~a. The appellant's name and mailing address;~~
  - ~~b. A copy of the petition to the local board of review;~~
  - ~~c. Copies of all evidence submitted to the local board of review in support of the petition to the local board of review;~~
  - ~~d. A copy of the postmarked envelope and a copy of the letter of disposition by the local board of review;~~
  - ~~e. A short and plain statement of the claim showing that the appellant is entitled to relief;~~
  - ~~f. The relief sought; and~~
  - ~~g. The signature of the appealing party or the party's legal representative.~~

~~To have legal representation before the board, a party must file a valid and complete power of attorney form as provided by the board or in compliance with the power of attorney form provided by the board.~~

71.21(10) 71.21(9) Notice to local board of review. The secretary shall mail a copy of the appellant's written notice of appeal and petition to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is provided to the local board of review.

71.21(11) 71.21(10) Certification by local board of review.

a. Initial certification. Within 14 21 days after notice of appeal is given, the local board of review shall certify to the board all records, documents, or reports, or disposition order or directive from which

## REVENUE DEPARTMENT[701](cont'd)

an appeal is taken, the complete property record card for the subject property, the protest hearing minutes of the local board of review kept pursuant to Iowa Code chapter 21, and all other pertinent information the original notice of assessment if any, the petition to the board of review, and a copy of the board of review's letter of disposition.

The local board of review shall also submit to the board in writing the name, address, and telephone number, and e-mail address of the attorney representing the local board of review before the board. The local board of review may make a written request for additional time to certify a copy of its record to the board by submitting a request in writing or by e-mail to the board at paab@iowa.gov.

b. Full record certification prior to hearing. At least 21 calendar days prior to the contested case hearing, the local board of review shall certify to the board the complete property record card for the subject property, the protest hearing minutes of the local board of review kept pursuant to Iowa Code chapter 21, and any information provided to or considered by the local board of review as part of the protest. The local board of review shall also send a copy of the full record to the opposing party.

~~71.21(12)~~ **71.21(11)** *Docketing.* Appeals shall be assigned consecutive docket numbers. Records consisting of the case name and the corresponding docket number assigned to the case ~~must~~ shall be maintained by the secretary. The records of each case shall also include each action and each act done, with the proper dates as follows:

a. to g. No change.

~~71.21(13)~~ **71.21(12)** *Appearances.* A party may appear in person, by legal representative or through an attorney. In order to be considered the legal representative before the board, a valid power of attorney form as provided by the board or in compliance with the power of attorney form provided by the board must be properly completed and filed with the board. An attorney shall file an appearance. All orders, correspondence, or other documents shall be served on the designated individual. Any party may appear and be heard on its own behalf, or by its designated representative. A designated representative shall file a notice of appearance with the board for each case in which the representative appears for a party. Filing a motion or pleadings on behalf of a party shall be equivalent to filing a notice of appearance. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

~~71.21(14)~~ **71.21(13)** *Filing Service and filing of papers.* After the notice of appeal and petition have been filed, either in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery, all motions, pleadings, briefs, and other papers to be filed shall be filed with the secretary of the board served upon each of the parties of record contemporaneously with their filing with the board. Motions, pleadings, briefs, and other papers to be filed with the board shall be delivered in person, mailed by first-class mail, or delivered to an established courier service. Parties shall also send copies to all other parties of record, unless represented by counsel of record, and then to such counsel.

a. Service on a party—how and when made. The parties may agree to exchange the certified record, motions, pleadings, briefs, exhibits, and any other papers with each other electronically or via any other means. All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or sent electronically if the parties have agreed to service by such means.

b. Filing with the board—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or sent by e-mail as permitted by the applicable subrules of this rule.

~~a.~~ (1) For most filings in a docket made with the board, only an original is required.

~~b.~~ (2) For exhibits and other documents to be introduced at hearing, ~~an original plus two~~ three copies are required. For a nonoral submission, only one copy is required.

~~c.~~ (3) The board or presiding officer may request additional copies.

c. Proof of mailing. Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

REVENUE DEPARTMENT[701](cont'd)

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).

(Date)

(Signature)

~~71.21(15)~~ **71.21(14)** *Motions.* No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the secretary and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least 10 days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board or presiding officer.

b. Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served no later than 90 days after service of the notice of appeal, unless good cause is shown for a later filing. Good cause may include, but is not limited to, information the moving party obtains through discovery. Any party resisting the motion shall file and serve a resistance within 20 days, unless otherwise ordered by the board or presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 30 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to subrule 71.21(34).

~~71.21(16)~~ **71.21(15)** *Authority of board to issue procedural orders.* The board may issue preliminary orders regarding procedural matters. The secretary shall mail copies of all procedural orders to the parties.

~~71.21(17)~~ **71.21(16)** *Members participating.* Each appeal may be reviewed and considered by less than a majority of the one or more members of the board, and the chairperson of the board may assign members to consider appeals. Orders and decisions shall be signed by one member of the board and shall name participating members. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.

~~71.21(18)~~ **71.21(17)** *Notice of hearing.* Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. If a hearing is requested, the secretary shall mail a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 71.21(18). The notice of hearing shall contain the following information:

a. to j. No change.

**71.21(18)** *Waiver of 30-day notice.* The parties to the appeal may jointly waive the 30-day written notice requirement for a hearing. The waiver must be in writing or by e-mail to paab@iowa.gov and signed by the parties or their designated representatives. By waiving notice, the parties acknowledge they are ready to proceed with the hearing. The parties will be contacted when a hearing date is available but notice for said date may be less than 30 days. The parties will have the right to accept or reject the hearing date.

## REVENUE DEPARTMENT[701](cont'd)

**71.21(19)** No change.

**71.21(20)** *Continuance.* Any hearing may be continued for “good cause.” Requests for continuance prior to the hearing shall be in writing or by e-mail to [paab@iowa.gov](mailto:paab@iowa.gov) and promptly filed with the secretary of the board immediately upon “the cause” becoming known. An emergency oral continuance may be obtained from the board or presiding officer based on “good cause” and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

*a.* to *h.* No change.

*i.* Other relevant factors, including the existence of a scheduling order.

**71.21(21)** *Telephone proceedings.* ~~The board, at its discretion and based on “good cause,” or presiding officer~~ may conduct a telephone conference in which all parties have an opportunity to participate to resolve preliminary procedural motions. Other proceedings, including contested case hearings, may be held by telephone. The board will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

**71.21(22)** No change.

**71.21(23)** *Consolidation and severance.* ~~A majority of the board may determine, in its discretion,~~ The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

*a.* and *b.* No change.

**71.21(24)** *Withdrawal.* An appellant may withdraw the appeal prior to the hearing. Such a withdrawal of an appeal must be in writing or by e-mail to [paab@iowa.gov](mailto:paab@iowa.gov) and signed by the appellant or the appellant’s legal designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board granting a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

**71.21(25)** No change.

**71.21(26)** *Scheduling orders.*

*a.* When required. For appeals involving properties classified commercial or industrial and assessed at \$2 million or more, a scheduling order shall be sent to the parties to set dates for discovery, designation of witnesses, filing of motions, exchange of evidence, and a contested case hearing. In any other appeal, the parties may jointly enter a scheduling order or the board may, on its own motion, issue a scheduling order. The dates established in a scheduling order under this subrule shall supersede any dates set forth in other subrules of this rule.

*b.* Prehearing conference. A party may request a prehearing conference to resolve scheduling issues.

*c.* Modification. The parties may jointly agree to modify a scheduling order. If one party seeks to modify a scheduling order, the party must show good cause for the modification.

*d.* Failure to comply. A party that fails to comply with a scheduling order shall be required to show good cause for failing to comply with the order and that the other party is not substantially prejudiced. Failing to comply with a scheduling order may result in sanctions including, but not limited to, the exclusion of evidence or dismissal of the appeal.

~~**71.21(26)**~~ **71.21(27)** *Hearing procedures.* A party to the appeal may request a hearing, or the appeal may proceed without a hearing. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members.

*a.* No change.

*b.* *Representation.* Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or ~~another person authorized by law by a designated representative.~~ To have legal representation before the board, a party must complete a power of attorney form as provided by the board or in compliance with the power of attorney form provided by the board.

*c.* to *e.* No change.

REVENUE DEPARTMENT[701](cont'd)

~~71.21(27)~~ **71.21(28)** *Discovery.*

*a. Discovery procedure.* Discovery procedures applicable in civil actions under the Iowa Rules of Civil Procedure are available to parties in cases before the board. Unless lengthened or shortened by these rules, the board or presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

*b. and c.* No change.

~~71.21(28)~~ **71.21(29)** *Subpoenas.*

*a. and b.* No change.

*c. Motion to quash or modify.* Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure.

~~71.21(29)~~ **71.21(30)** *Evidence.*

*a. to c.* No change.

*d. Exhibits, exhibit and witness lists, and briefs.* The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be provided to served on the opposing party at least 10 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have entered a scheduling order under subrule 71.21(26). All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark exhibits with consecutive numbers. The appellee shall mark exhibits with consecutive letters.

*e. and f.* No change.

~~71.21(30)~~ **71.21(31)** *Settlements.* Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed in writing or by an electronic copy e-mailed to paab@iowa.gov. The board ~~or presiding officer~~ will not approve settlements unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

~~71.21(31)~~ **71.21(32)** *Appeals records Records access.* ~~The record of the appeal is maintained at the office of the board. Unless the record is held confidential, parties and members of the public may examine the record and obtain copies of documents.~~

*a. Location of record.* A request for access to a record should be directed to the custodian.

*b. Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

*c. Request for access.* Requests for access to open records may be made in writing, in person, by e-mail, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, e-mail, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

*d. Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court or board order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the applicable provisions of law.

*e. Security of record.* No person may, without permission from the secretary, search or remove any record from board files. Examination and copying of board records shall be supervised by the secretary. Records shall be protected from damage and disorganization.

## REVENUE DEPARTMENT[701](cont'd)

f. Copying. A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

g. Fees.

(1) When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

(2) Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and made available by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

(3) Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

(4) Advance deposits.

1. When the estimated total fee chargeable under this paragraph exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

2. When a requester has previously failed to pay a fee chargeable under this paragraph, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

~~71.21(32)~~ **71.21(33)** *Motion to reopen records.* The board or presiding officer, on the board's or presiding officer's own motion or on the motion of a party, may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to the issuance of a final decision.

~~71.21(33)~~ **71.21(34)** *Rehearing Rehearing and reconsideration.*

a. to e. No change.

~~71.21(34)~~ **71.21(35)** *Dismissal.* If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

~~71.21(35)~~ **71.21(36)** *Waivers.*

a. to c. No change.

~~71.21(36)~~ **71.21(37)** *Appeals of board decisions.* A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the letter of disposition of the appeal by the board is mailed to the appellant. Iowa Code chapter 17A applies to judicial review of the board's final decision. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

**71.21(38)** *Stays of agency actions.* Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. In determining whether to grant a stay, the board or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) "c." A stay may be vacated by the board upon application of any other party.

~~71.21(37)~~ **71.21(39)** *Time requirements.* Time shall be computed as provided in Iowa Code section 4.1(34).

REVENUE DEPARTMENT[701](cont'd)

~~71.21(38)~~ **71.21(40)** *Judgment of the board.* Nothing ~~stated~~ in this rule should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

This rule is intended to implement Iowa Code sections 421.1, 421.1A as amended by 2013 Iowa Acts, Senate File 295, division VI, 421.2, 441.37A as amended by 2013 Iowa Acts, Senate File 295, division VI, 441.38 and 441.49 and chapter 17A.

[Filed 1/15/14, effective 3/12/14]

[Published 2/5/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/14.