



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XL  
February 14, 2018

NUMBER 17  
Pages 1945 to 2088

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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

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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 2018

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
19	Friday, February 23, 2018	March 14, 2018
20	Friday, March 9, 2018	March 28, 2018
21	Friday, March 23, 2018	April 11, 2018

**PLEASE NOTE:**

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

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

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

**EDUCATION DEPARTMENT[281]**

High-quality standards for computer science, 12.11 IAB 2/14/18 <b>ARC 3613C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 27, 2018 9 to 10 a.m.
Special education—regular high school diploma, assessments, 41.102(1), 41.160 IAB 2/14/18 <b>ARC 3614C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 27, 2018 10 to 11 a.m.
Child development grants and coordinating council, amendments to ch 64 IAB 2/14/18 <b>ARC 3612C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 27, 2018 1 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Asbestos notification fee; fee adjustment process, 30.3, 30.6 IAB 2/14/18 <b>ARC 3622C</b>	Conference Room 2 North Wallace State Office Bldg. Des Moines, Iowa	March 6, 2018 1 p.m.
Initial issuance of NPDES General Permit Nos. 8 and 9, 64.3, 64.4, 64.6, 64.15, 64.16 IAB 2/14/18 <b>ARC 3625C</b>	Coralville Public Library 1401 5th St. Coralville, Iowa	March 7, 2018 4 p.m.
	Harlan Community Library 718 Court St. Harlan, Iowa	March 8, 2018 4 p.m.
	Urbandale Public Library 3520 86th St. Urbandale, Iowa	March 14, 2018 4 p.m.

**HUMAN SERVICES DEPARTMENT[441]**

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

**INSURANCE DIVISION[191]**

Investment adviser's business and continuity succession plan; merger and acquisition brokers; intrastate crowdfunding offerings; securities industry essentials exam; electronic filing depository system, amendments to ch 50  
IAB 2/14/18 **ARC 3615C**

Division Offices, Fourth Floor  
Two Ruan Center  
601 Locust St.  
Des Moines, Iowa

March 6, 2018  
10:30 a.m.

**LABOR SERVICES DIVISION[875]**

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

150 Des Moines St.  
Des Moines, Iowa

February 21, 2018  
10 a.m.  
(If requested)

**NATURAL RESOURCE COMMISSION[571]**

Storage of stand-up paddleboards, 16.1, 16.4(3)  
IAB 2/14/18 **ARC 3626C**

Conference Room 4E  
Wallace State Office Bldg.  
Des Moines, Iowa

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1 p.m.

Artificial and natural marshes; decoys; wildlife refuges, 45.5, 45.6, 51.6(3), 52.1  
IAB 2/14/18 **ARC 3627C**

Conference Room 3 E & W  
Wallace State Office Bldg.  
Des Moines, Iowa

March 6, 2018  
12 noon

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IAB 2/14/18 **ARC 3623C**

Conference Room 3 E & W  
Wallace State Office Bldg.  
Des Moines, Iowa

March 6, 2018  
12 noon

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IAB 2/14/18 **ARC 3621C**

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Wallace State Office Bldg.  
Des Moines, Iowa

March 6, 2018  
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IAB 2/14/18 **ARC 3624C**

Conference Room 3 E & W  
Wallace State Office Bldg.  
Des Moines, Iowa

March 6, 2018  
12 noon

**PROFESSIONAL LICENSURE DIVISION[645]**

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Des Moines, Iowa

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**PUBLIC SAFETY DEPARTMENT[661]**

Statewide sobriety and drug  
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IAB 2/14/18 **ARC 3628C**

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Oran Pape State Office Bldg.  
Des Moines, Iowa

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6310 SE Convenience Blvd.  
Ankeny, Iowa

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(If requested)

The following list will be updated as changes occur.

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**ARC 3613C****EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rule making related to computer science education standards and providing an opportunity for public comment**

The Department of Education hereby proposes to amend Chapter 12, “General Accreditation Standards,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 256.7(5) and 256.7(26).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2017 Iowa Acts, chapter 106 (Senate File 274).

*Purpose and Summary*

2017 Iowa Acts, chapter 106 (Senate File 274), requires that the State Board of Education adopt administrative rules for the establishment of high-quality standards for computer science for school districts and accredited nonpublic schools. These amendments to Chapter 12 implement that requirement.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board of Education for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the State Board of Education no later than 4:30 p.m. on March 27, 2018. Comments should be directed to:

Phil Wise  
Iowa Department of Education  
Grimes State Office Building  
Des Moines, Iowa 50319-0146  
Fax: 515.242.5988  
Email: [phil.wise@iowa.gov](mailto:phil.wise@iowa.gov)

*Public Hearing*

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

## EDUCATION DEPARTMENT[281](cont'd)

March 27, 2018  
9 to 10 a.m.

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

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** heading to precede rule 281—12.11(256):

DIVISION XI  
HIGH-QUALITY STANDARDS FOR COMPUTER SCIENCE

ITEM 2. Adopt the following **new** rule 281—12.11(256):

**281—12.11(256) High-quality standards for computer science.** It is the goal of the state board of education that every school district and every accredited nonpublic school shall offer instruction in high-quality computer science for elementary, middle school, and high school students by July 1, 2019.

**12.11(1) Alignment with learning framework or standards developed by a nationally recognized computer science education organization or organizations.** Beginning with the school year which begins July 1, 2018, and each school year thereafter, instruction in high-quality computer science shall reflect an alignment with a framework or learning standards developed by a nationally recognized computer science education organization or organizations. The department shall make available to school districts and accredited nonpublic schools such a framework or learning standards.

**12.11(2) Professional development incentive fund.** A computer science professional development incentive fund is established in the state treasury under the control of the department. The department may accept gifts, grants, bequests, and other private contributions, as well as state or federal moneys, for deposit in the fund. The department may disburse moneys contained in the fund for professional development activities or tuition reimbursement. Notwithstanding Iowa Code section 8.33, moneys in the computer science professional development incentive fund that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year. The department may disburse those moneys in the following ways.

*a.* A school district or accredited nonpublic school, or a collaborative of one or more school districts, accredited nonpublic schools, and area education agencies, may apply to the department, in the manner prescribed by the department, to receive moneys from the fund to provide proven professional development activities for Iowa teachers in the area of computer science education.

*b.* A school district or accredited nonpublic school may apply to the department, in the manner prescribed by the department, to receive moneys from the fund to provide tuition reimbursement for Iowa teachers seeking endorsements or authorizations for computer science under Iowa Code section 272.2(20).

EDUCATION DEPARTMENT[281](cont'd)

**12.11(3) *Applicability of rules.*** Subrule 12.11(1) shall only apply to school districts and accredited nonpublic schools receiving moneys from the computer science professional development incentive fund established in Iowa Code section 284.6A and described in subrule 12.11(2).

**ARC 3614C**

## **EDUCATION DEPARTMENT[281]**

### **Notice of Intended Action**

#### **Proposing rule making related to changes to special education as required by every student succeeds Act and providing an opportunity for public comment**

The Department of Education hereby proposes to amend Chapter 41, “Special Education,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 256.7(5).

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, the Every Student Succeeds Act, Pub.L. No. 114-95, and federal regulations published at 62 Federal Register 29755 (June 30, 2017).

#### *Purpose and Summary*

These amendments are required based on amendments to the Individuals with Disabilities Education Act (IDEA) that were made by the Every Student Succeeds Act (ESSA). On June 30, 2017, the United States Department of Education issued final regulations that incorporated the changes that the ESSA made to the IDEA.

The State Board is proposing these amendments separately from other rule making because these amendments, although required by the ESSA, represent a practice change for many Iowa educators.

Item 1 amends the definition of “regular high school diploma.” This amendment makes clear that a regular high school diploma must be fully aligned to state-required standards. In Iowa’s case, those would be the graduation requirements set forth in Iowa Code section 256.7(26).

Item 2 explains the requirement that all students with disabilities participate in statewide and districtwide assessments, including providing children with significant intellectual disabilities with alternate assessments aligned to alternate academic achievement standards.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board of Education for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

EDUCATION DEPARTMENT[281](cont'd)

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the State Board of Education no later than 4:30 p.m. on March 27, 2018. Comments should be directed to:

Thomas Mayes  
Iowa Department of Education  
Grimes State Office Building, Third Floor  
Des Moines, Iowa 50319-0146  
Fax: 515.242.5988  
Email: [thomas.mayes@iowa.gov](mailto:thomas.mayes@iowa.gov)  
Phone: 515.242.5614

*Public Hearing*

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

March 27, 2018  
10 to 11 a.m.

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

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **41.102(1)“c”** as follows:

c. Graduates with a regular high school diploma.

(1) General. Children with disabilities who have graduated from high school with a regular high school diploma.

(2) Inapplicability of exception. The exception in 41.102(1)“c”(1) does not apply to children who have graduated from high school, but have not been awarded a regular high school diploma.

(3) Graduation is a change in placement. Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with rule 281—41.503(256B,34CFR300).

(4) Rule of construction. As used in 41.102(1)“c”(1) to (3), the term “regular high school diploma” ~~does not include an alternative degree that is not fully aligned with the state’s academic standards, such as a certificate or a general educational development credential (GED)~~ means the standard high school diploma awarded to the preponderance of students in the state that is fully aligned with state standards, or

EDUCATION DEPARTMENT[281](cont'd)

a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in Section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

ITEM 2. Adopt the following new rule 281—41.160(256B,34CFR300):

**281—41.160(256B,34CFR300) Participation in assessments.**

**41.160(1) General.** The state must ensure that all children with disabilities are included in all general state and districtwide assessment programs, including assessments described under Section 1111 of the ESEA, 20 U.S.C. Section 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

**41.160(2) Accommodation guidelines.**

*a.* The state (or, in the case of a districtwide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

*b.* The state's (or, in the case of a districtwide assessment, the LEA's) guidelines must:

- (1) Identify only those accommodations for each assessment that do not invalidate the score; and
- (2) Instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

**41.160(3) Alternate assessments.**

*a.* The state (or, in the case of a districtwide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in subrule 41.160(1).

*b.* For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph 41.160(3)“*a*” must provide for alternate assessments that:

- (1) Are aligned with the state's challenging academic content standards and challenging student academic achievement standards;
- (2) If the state has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards; and
- (3) Except as provided in subparagraph 41.160(3)“*b*”(2), a state's alternate assessments, if any, must measure the achievement of children with disabilities against the state's grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

*c.* Consistent with 34 CFR 200.1(e), a state may not adopt modified academic achievement standards for any students with disabilities under Section 602(3) of the Act.

**41.160(4) Explanation to IEP teams.** The state (or, in the case of a districtwide assessment, an LEA) must provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of state or local policies on the student's education resulting from taking an alternate assessment based on alternate academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

**41.160(5) Inform parents.** The state (or, in the case of a districtwide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate academic achievement standards are informed that their child's achievement will be measured based on alternate academic achievement standards.

**41.160(6) Reports.** The state (or, in the case of a districtwide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

## EDUCATION DEPARTMENT[281](cont'd)

*a.* The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

*b.* The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

*c.* The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards in school years prior to 2015-2016.

*d.* The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

*e.* Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards (prior to 2015-2016), and alternate assessments based on alternate academic achievement standards if:

(1) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(2) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

**41.160(7) Universal design.** The state (or, in the case of a districtwide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this rule.

**ARC 3612C**

**EDUCATION DEPARTMENT[281]**

**Notice of Intended Action**

**Proposing rule making related to child development grants and coordinating council and providing an opportunity for public comment**

The Department of Education hereby proposes to amend Chapter 64, “Child Development Coordinating Council,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 256.7(5).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 256A.

*Purpose and Summary*

Items 1, 2, 5, 6, and 7 contain nonsubstantive amendments based on the suggestion of the Council to use “person first” language. Item 3 corrects the name of an organization. Item 4 contains two amendments to streamline the business operations of the Council. Item 8 contains revisions required by 2015 Iowa Acts, House File 658, which made changes to the criteria applicable to grantees. Item 8 also contains nonsubstantive amendments to use “person first” language.

*Fiscal Impact*

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

*Jobs Impact*

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

EDUCATION DEPARTMENT[281](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board of Education for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the State Board of Education no later than 4:30 p.m. on March 27, 2018. Comments should be directed to:

Nicole Proesch  
Iowa Department of Education  
Grimes State Office Building, Second Floor  
Des Moines, Iowa 50319-0146  
Fax: 515.242.5988  
Email: [nicole.proesch@iowa.gov](mailto:nicole.proesch@iowa.gov)  
Phone: 515.281.8661

*Public Hearing*

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

March 27, 2018  
1 p.m.

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

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 281—64.1(256A,279) as follows:

**281—64.1(256A,279) Purpose.** These rules structure the child development coordinating council, whose purpose is to promote the provision of services to ~~at-risk~~ three- and four-year-old children who are at risk and public school child development programs for ~~at-risk~~ three-, four-, and five-year-old children who are at risk. These rules also set forth the procedures and conditions under which state funds shall be made available to assist local child development programs for ~~at-risk~~ children who are at risk.



## EDUCATION DEPARTMENT[281](cont'd)

ITEM 2. Amend rule **281—64.2(256A,279)**, definition of “At-risk student,” as follows:

~~“At-risk student Children who are at risk”~~ means a student who meets one or more of the primary and secondary risk factors stated in rules 281—64.7(256A,279) and 281—64.8(256A,279).

ITEM 3. Amend rule 281—64.3(256A,279) as follows:

**281—64.3(256A,279) Child development coordinating council.** The council members shall be as provided in Iowa Code section 256A.2. The Iowa resident parent shall be chosen by the ~~Head Start director’s association in consultation with the Head Start parents’ association~~ Iowa Head Start Association.

ITEM 4. Amend rule 281—64.4(256A,279) as follows:

**281—64.4(256A,279) Procedures.**

**64.4(1)** A quorum shall consist of two-thirds of the voting members.

**64.4(2)** and **64.4(3)** No change.

**64.4(4)** The chairperson and vice-chair shall be elected by the council for a term of two years. After the initial two-year term as vice-chair, the vice-chair shall assume the role of chairperson for a term of two years.

ITEM 5. Amend rule 281—64.6(256A,279) as follows:

**281—64.6(256A,279) Eligibility identification procedures.** In a year in which funds are made available by the Iowa legislature, the council shall grant awards on a competitive basis to child development programs for ~~at-risk~~ three- and four-year-old children who are at risk and public school child development programs for ~~at-risk~~ three-, four-, and five-year-old children ~~on a competitive basis~~ who are at risk. Competitive grants will be awarded with a renewal option for up to five years when grantees meet program requirements. If program requirements are not met, the department may discontinue grant funding at the start of the following fiscal year.

ITEM 6. Amend subrules 64.7(1) and 64.7(2) as follows:

**64.7(1) Child development grants.** At least 80 percent of the funded available enrollment slots for ~~at-risk~~ three- and four-year-old children who are at risk shall be directed to serve children in primary eligibility categories as follows:

- a. Children reaching three or four years of age on or before September 15 of the contract year; and
- b. Members of a low-income family.

**64.7(2) Public school child development grants.** At least 80 percent of the funded available enrollment for ~~at-risk~~ three-, four-, and five-year-old children who are at risk in public school child development programs shall be directed to serve children in primary eligibility categories as follows:

- a. Children reaching three, four, or five years of age on or before September 15 of the contract year; and
- b. Members of a low-income family.

ITEM 7. Amend subrule 64.9(2) as follows:

**64.9(2) Additional grant components.** The following information shall be provided and points shall be awarded to applicants based on the following additional components.

1. Program summary.
2. Research documentation.
3. Identification and documentation of local ~~at-risk population~~ populations who are at risk.
4. Letters of community support.
5. Program budget (administrative costs not to exceed 10 percent of total award).

ITEM 8. Amend subrules 64.15(2) to 64.15(5) as follows:

**64.15(2) ~~New/expansion programs~~ Programs in year one of award.** Each program in year one of a grant awarded on or after July 1, 2015, shall ~~participate in~~ meet the program standards and accreditation process criteria of the National Association for the Education of Young Children, the

EDUCATION DEPARTMENT[281](cont'd)

~~Iowa quality preschool program standards, or other approved program standards as determined by the Iowa department of education during the programs' program's first year of funding. New/expansion programs shall be granted a waiver of accreditation during their first year of funding and must attain accreditation during their second year of funding. Programs not able to attain accreditation during their second year may apply for a waiver of accreditation by March 15 of the current fiscal year. Waivers shall be granted at the discretion of the council. Programs that do not attain accreditation or that do not receive a waiver will not be funded.~~

~~**64.15(3)** Programs in renewal years. Continuation programs shall participate in the renewal process and maintain accreditation with the National Association for the Education of Young Children. Programs unable to maintain accreditation may apply for a waiver of accreditation. Waivers shall be awarded at the discretion of the council. Programs that do not maintain accreditation or that do not receive a waiver will not be funded.~~

~~*a.* Programs awarded grants prior to July 1, 2015, shall participate in the renewal process and maintain accreditation with the National Association for the Education of Young Children until the end of the final renewal year. Programs unable to maintain accreditation may apply for a waiver of accreditation within 30 days of the change in accreditation status. Waivers shall be awarded at the discretion of the council. Programs that do not maintain accreditation or that do not receive a waiver will not be funded.~~

~~*b.* Programs awarded grants on or after July 1, 2015, shall participate in the renewal process and maintain accreditation with the National Association for the Education of Young Children, the Iowa quality preschool program standards and criteria, or other approved program standards as determined by the Iowa department of education. Programs unable to maintain accreditation may apply for a waiver of accreditation within 30 days of the change in accreditation status. Waivers shall be awarded at the discretion of the council. Programs that do not maintain accreditation or that do not receive a waiver will not be funded.~~

~~*c.* Continuation of a grantee's participation for a second or subsequent renewal year is subject to the approval of the department based upon the grantee's compliance with program requirements and the department's review of the grantee's implementation of the grant program.~~

~~*d.* Awarded grantees are to maintain the program standards identified in the awarded application throughout the five-year grant cycle, unless unforeseen circumstances occur. Such circumstances will be considered at the discretion of the council.~~

~~**64.15(4)** Grantees shall provide annual reports that include information detailing progress toward goals and objectives, expenditures and services provided on forms provided for those reports. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee until the time that the report is received. No new awards funds shall be made for continuation available to programs in renewal years when there are delinquent reports from prior grants years. No new initial awards shall be made to programs when there are delinquent reports from prior grant cycles.~~

~~**64.15(5)** Grantees may direct the use of moneys received to serve any qualifying child ranging in age from three years old to five years old, regardless of the age of population indicated on the grant request in the grantee's initial year of application. A grantee is encouraged to consider the degree to which the program complements existing local programs and services for three-year-old, four-year-old, and five-year-old at-risk children who are at risk, including other child care and preschool services, services provided through a school district, and services available through an area education agency.~~

**ARC 3622C**

## **ENVIRONMENTAL PROTECTION COMMISSION[567]**

### **Notice of Intended Action**

#### **Proposing rule making related to fee amounts and adjustment process and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 30, "Fees," Iowa Administrative Code.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 455B.133(8) and 455B.133C.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455B.133(8) and 455B.133C.

*Purpose and Summary*

The Commission is proposing to amend existing rules to increase the fee and dollar cap for asbestos notifications, to rescind an exemption to the asbestos notification fee to address confusion about whether a fee is required, and to provide a process for the Department of Natural Resources (Department) to request that the Commission adjust fees at any time during a fiscal year if the Department determines that established fees are projected to be insufficient to maintain all or part of any air quality program that is subject to fees specified in Chapter 30.

The Department established the 2017 Air Quality Program Funding Work Group and asked for participants by sending a LISTSERV message to over 7,000 members. The Department met with workgroup members in June and July 2017 to discuss projected expenses for FY 2017-2022, program elements, and anticipated revenues. The list of stakeholders who participated in the meetings is available from the Department upon request. The stakeholders recommended increased funding for the asbestos program to allow the Department to have sufficient staffing to provide oversight of proper asbestos removal and disposal and to provide additional education and outreach regarding asbestos removal for demolition and renovation projects conducted by cities, counties, schools, contractors, and others. The full list of recommendations can be found at [www.iowadnr.gov/Environmental-Protection/Air-Quality/Stakeholder-Involvement](http://www.iowadnr.gov/Environmental-Protection/Air-Quality/Stakeholder-Involvement), under Workgroups and Air Quality Program Funding Workgroup.

The proposed amendments will make the following changes to Chapter 30:

1. Provide clarification regarding when a fee is required for an asbestos notification.
2. Increase the fee and dollar cap on asbestos notifications.
3. Provide a process for the Department to request that the Commission adjust one or more fees at any time during a fiscal year if the Department determines that established fees are projected to be insufficient to maintain all or part of any air quality program that is subject to fees specified in Chapter 30.

The Commission intends to file these amendments as an Adopted and Filed Emergency After Notice rule making, to become effective on March 21, 2018, pursuant to Iowa Code section 17A.5(2)“b”(1)(b), after providing an opportunity for public comment and holding public hearings. The normal effective date should be waived and the amendments should be made effective upon filing, as the amendments confer a benefit on economic development for regulated entities by providing the Department the financial means to provide quality environmental services to Iowa business, while protecting the citizens of Iowa.

The proposed amendments are as follows:

Item 1 amends rule 567—30.3(455B) to remove an exemption to clarify the rule.

Item 2 amends rule 567—30.6(455B) to increase the dollar cap on asbestos notifications. This item also allows the Department to request a midyear fee adjustment from the Commission.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the Department. Overall, the Department has determined that most of the proposed changes will have a neutral fiscal impact on affected facilities. The fiscal impact will depend on the quantity of notifications an industry submits. State agencies, counties and other local governments will be required to submit notification fees for asbestos removal; the fiscal impacts to these agencies and local governments will be similar to the fiscal impacts to other persons affected by the proposed changes. A copy of the impact statement is available upon request from the Department.

*Jobs Impact*

After analysis and review of this rule making, the Department has determined that the proposed rule making will have a neutral impact on private sector jobs. An increased asbestos fee will allow the Department to establish sufficient staffing to provide oversight of proper asbestos removal and disposal for demolition and renovation projects conducted by cities, counties, schools, contractors, and others. Community development and renovation plans will proceed as planned, and public asbestos exposure will be reduced. In some cases, job opportunities may increase as new businesses are attracted to the revitalized community areas. A copy of the impact statement is available upon request from the Department.

*Waivers*

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written suggestions or comments concerning this proposed rule making. Written suggestions or comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

Wendy Walker  
Department of Natural Resources  
Wallace State Office Building  
502 East 9th Street  
Des Moines, Iowa 50319  
Email: [wendy.walker@dnr.iowa.gov](mailto:wendy.walker@dnr.iowa.gov)  
Fax: 515.725.9501

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk to sign in and be directed to the appropriate hearing location:

March 6, 2018	Conference Room 2 North
1 p.m.	Wallace State Office Building
	Des Moines, Iowa

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

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.725.9570.

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 567—30.3(455B) as follows:

**567—30.3(455B) Fees associated with asbestos demolition or renovation notification.**

**30.3(1) *Payment of fees established.*** Beginning on January 15, 2016, the owner or operator of a site subject to the national emission standard for hazardous air pollutants (NESHAP) for asbestos notifications, adopted by reference in 567—paragraph 23.1(3) “a,” shall submit a fee with each required original or each annual notification for each demolition or renovation, including abatement. Fees shall be paid as specified in the fee schedule approved by the commission and posted on the department’s ~~Web site~~ website. Fees shall be submitted with the notification forms provided by the department.

**30.3(2) *Fee not required.*** A fee shall not be required for the following:

- a.* ~~Notifications when the total amount of asbestos to be removed or disturbed is less than 260 linear feet, less than 160 square feet, and less than 35 cubic feet of facility components and is below the reporting thresholds as defined in 40 CFR 61.145 as amended on January 16, 1991;~~
- b.* Notifications of training fires as required in 567—paragraph 23.2(3) “g”;
- c.* Controlled burning of demolished buildings as required in 567—paragraph 23.2(3) “j”;
- d.* Revised, canceled, and courtesy notifications. A revision to a previously submitted courtesy notification due to applicability of the notification requirements in 567—paragraph 23.1(3) “a” is considered an original notification and is subject to the fee requirements of subrule 30.3(1).

ITEM 2. Amend rule 567—30.6(455B) as follows:

**567—30.6(455B) Process to establish or adjust fees and notification of fee rates.**

**30.6(1) *Setting the fees.*** Beginning on January 15, 2016, fees shall be paid as specified in the fee schedule approved by the commission and posted on the department’s ~~Web site~~ website. Following the setting of the fee schedule effective January 15, 2016, the department shall submit the proposed budget and fees for major and minor source construction permit programs, the Title V operating permit program, and the asbestos NESHAP program for the following fiscal year to the commission no later than the March commission meeting of each year, at which time the proposal will be available for public comment until such time as the commission acts on the proposal or until the May commission meeting, whichever occurs first. The department’s calculated estimate for each fee shall not produce total revenues in excess of limits specified in Iowa Code sections 455B.133B and 455B.133C during any fiscal year. If an established fee amount must be adjusted, the commission shall set the fees no later than the May commission meeting of each year.

Fees established prior to January 15, 2016, shall become effective on January 15, 2016. In subsequent years, adjusted or established fees shall become effective on July 1 or as determined by the commission pursuant to subrule 30.6(4). A fee not adjusted by the commission shall remain in effect as previously established until the fee is adjusted by the commission.

**30.6(2) *Fee types and dollar caps on fee types.*** The commission may set fees for the fee types and activities specified in this subrule and shall not set a fee in the fee schedule higher than the levels specified in this subrule without adopting the change pursuant to formal rule making:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- a. New source review applications from major sources, which may include:
  - (1) Review of each application for a construction permit: \$115 per hour;
  - (2) Review of each application for a prevention of significant deterioration permit: \$115 per hour;
  - (3) Review of each plantwide applicability limit request, renewal, or reopening: \$115 per hour;
  - (4) Review of each regulatory applicability determination: \$115 per hour; and
  - (5) Air quality modeling review: \$90 per hour, which may include:
    - 1. Reviewing air quality modeling for construction permit application submittal; prevention of significant deterioration application submittal; and nonattainment new source review project application submittal; and
    - 2. Conducting air quality modeling for construction permit application submittal.
- b. New source review applications from minor sources, which may include:
  - (1) Each application for a construction permit: \$385;
  - (2) Each application for a registration permit: \$100;
  - (3) Each application for a permit by rule: \$100; and
  - (4) Each application for a permit template: \$100.
- c. Asbestos notifications: ~~\$400~~ \$200.
- d. Review of each initial or renewal Title V operating permit application: \$100 per hour.
- e. Title V annual emissions: \$70 per ton.

**30.6(3) Notification of fee schedule.** Following the initial setting of any fee by the commission, the department shall make available to the public a fee schedule at least 30 days prior to its effective date. If any established fee amount is adjusted, the department shall make available to the public a revised fee schedule at least 30 days prior to its effective date. The fee schedule shall be posted on the department's ~~Web-site~~ website.

**30.6(4) Midyear fee adjustments.** The department may request that the commission adjust one or more fees at any time during a fiscal year if the department determines that established fees are projected to be insufficient to maintain all or part of any air quality program that is subject to fees specified in this chapter. The department shall submit the revised fee, budget, and fee schedule to the commission at which time the proposal will be available for public comment until such time as the commission acts on the proposal. The department's calculated estimate for each fee shall not produce total revenues during any fiscal year in excess of amounts specified in Iowa Code sections 455B.133B and 455B.133C. The provisions of subrule 30.6(3) shall be applicable to actions taken by the commission pursuant to this subrule.

**ARC 3625C****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action****Proposing rule making related to new NPDES general permits and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 455B.173(11).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455B.173(11) and 455B.186.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*Purpose and Summary*

The purpose of the proposed rule making is to allow the use of two new National Pollutant Discharge Elimination System (NPDES) general permits known as General Permit No. 8 (GP8) and General Permit No. 9 (GP9). The discharges that will be authorized by GP8 and GP9 currently require authorization under an individual permit. Compared to general permits, individual permits have more complicated application requirements, have higher fees, and take longer to issue. Covering these discharges under general permits will protect the environment and will provide a benefit to regulated entities. The proposed general permits may be viewed online at [www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-General-Permits](http://www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-General-Permits).

GP8 will authorize the discharge of (1) hydrostatic testing water used to verify the integrity of pipes, pipelines, tanks, containers, and other vessels designed to hold liquids or gases; (2) water used as ballast during the installation of a new underground storage tank before any other liquid or gas is added to the tank; and (3) water used to disinfect, flush, or test potable water lines and associated equipment. GP8 includes eligibility criteria and best management practices to ensure that discharges will comply with water quality standards. Most discharges that meet the eligibility requirements will be automatically authorized; an electronic Notice of Intent (eNOI) will only need to be submitted in order to obtain authorization for a few higher-risk discharges. Discharges from water lines are automatically authorized, as are discharges from new or previously used containers that store or are used in the transport of water, natural gas, natural gas liquids, or refined petroleum products that contain no chemical additives (other than chlorine/dechlorination agents). Discharges to the ground surface are automatically authorized provided that no chemicals are added (other than chlorine/dechlorination agents). There are no fees associated with GP8.

GP9 will authorize discharges resulting from (1) excavation dewatering associated with construction activity where pumps, sumps, or similar tools are used within or near excavation areas to remove accumulated groundwater, surface water, and storm water; (2) groundwater dewatering through the installation of temporary dewatering wells, vacuum well points, eductors, or similar tools to cause localized lowering of the water table to facilitate construction activity; and (3) residential open-loop geothermal heating and cooling systems that use water as a heat transfer medium. GP9 includes operating requirements to ensure that discharges will comply with water quality standards. Most discharges will be automatically authorized; an eNOI will only need to be submitted for a few higher-risk discharges. Discharges from residential open-loop geothermal systems are automatically authorized, as are dewatering discharges where no site contamination is expected. There are no fees associated with GP9. The proposed amendments also clarify that a dewatering discharge from the installation, maintenance, or repair of an agricultural drainage system which does not reach a water of the state is not considered the operation of a wastewater disposal system and does not require an operation permit.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. Overall, the proposed rule making is anticipated to result in a cost savings to the permittees as they will now be able to obtain an authorization under a general permit faster than an individual permit, less paperwork will be required, and there are no fees for these permits. A copy of the impact statement is available upon request from the Department.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found because state and federal law already require permits for these discharges. However, the issuance of these general permits will likely result in cost savings to these permittees. Obtaining an individual permit requires an investment of time and effort that is disproportionate to the impact these discharges usually have on the

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

environment. GP8 and GP9 will benefit the regulated community by providing legal authorization to discharge without the time and cost of obtaining an individual permit.

*Waivers*

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 19, 2018. Comments should be directed to:

Wendy Hieb  
Iowa Department of Natural Resources  
502 East 9th Street  
Des Moines, Iowa 50319  
Fax: 515.725.8202  
Email: [wendy.hieb@dnr.iowa.gov](mailto:wendy.hieb@dnr.iowa.gov)

*Public Hearing*

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

March 7, 2018 4 p.m.	Coralville Public Library 1401 5th Street Coralville, Iowa
March 8, 2018 4 p.m.	Harlan Community Library 718 Court Street Harlan, Iowa
March 14, 2018 4 p.m.	Urbandale Public Library 3520 86th Street Urbandale, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.725.8405.

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- ITEM 1. Adopt the following **new** paragraph **64.3(1)“h”**:
- h.* Dewatering discharge from the installation, repair, or maintenance of agricultural drainage systems that does not reach a water of the state. This activity is not considered operation of a wastewater disposal system.
- ITEM 2. Adopt the following **new** subparagraph **64.3(4)“b”(7)**:
- (7) For any discharge from hydrostatic testing, tank ballasting and water lines, if required to be submitted by General Permit No. 8, on or after July 1, 2018.
- ITEM 3. Adopt the following **new** subparagraph **64.3(4)“b”(8)**:
- (8) For any discharge from dewatering or residential geothermal systems, if required to be submitted by General Permit No. 9, on or after July 1, 2018.
- ITEM 4. Adopt the following **new** subparagraph **64.4(2)“a”(6)**:
- (6) Discharges from hydrostatic testing, tank ballasting and water lines.
- ITEM 5. Adopt the following **new** subparagraph **64.4(2)“a”(7)**:
- (7) Discharges from dewatering and residential geothermal systems.
- ITEM 6. Amend subrule 64.6(1), introductory paragraph, as follows:
- 64.6(1)** *Contents of a complete Notice of Intent.* An applicant proposing to conduct activities covered by a general permit shall file a complete Notice of Intent by submitting to the department materials required in paragraphs “a” to “c” of this subrule except that a Notice of Intent is not required for discharges authorized under General Permit No. 6, for certain discharges under General Permit No. 8, or for certain discharges under General Permit No. 9.
- ITEM 7. Adopt the following **new** subparagraph **64.6(1)“a”(7)**:
- (7) General Permit No. 8 “Discharge from Hydrostatic Testing, Tank Ballasting and Water Lines.”
- ITEM 8. Adopt the following **new** subparagraph **64.6(1)“a”(8)**:
- (8) General Permit No. 9 “Discharge from Dewatering and Residential Geothermal Systems.”
- ITEM 9. Amend subparagraph **64.6(1)“c”(2)** as follows:
- (2) General Permits No. 4, No. 5, No. 6, ~~and~~ No. 7, No. 8 and No. 9. There are no public notification requirements for these permits.
- ITEM 10. Amend paragraph **64.6(3)“d”** as follows:
- d.* The department finds that discharges from biological pesticides and chemical pesticides which leave a residue are not managed in a manner consistent with the conditions specified in General Permit No. 7, or
- ITEM 11. Adopt the following **new** paragraph **64.6(3)“e”**:
- e.* The department finds that discharges from hydrostatic testing, tank ballasting or water line testing are not managed in a manner consistent with the conditions specified in General Permit No. 8, or
- ITEM 12. Adopt the following **new** paragraph **64.6(3)“f”**:
- f.* The department finds that discharges from dewatering or residential geothermal systems are not managed in a manner consistent with the conditions specified in General Permit No. 9.
- ITEM 13. Adopt the following **new** subrule 64.15(8):
- 64.15(8)** “Discharge from Hydrostatic Testing, Tank Ballasting and Water Lines,” NPDES General Permit No. 8, effective July 1, 2018, to June 30, 2023.
- ITEM 14. Adopt the following **new** subrule 64.15(9):
- 64.15(9)** “Discharge from Dewatering and Residential Geothermal Systems,” NPDES General Permit No. 9, effective July 1, 2018, to June 30, 2023.
- ITEM 15. Renumber subrule **64.16(7)** as **64.16(9)**.
- ITEM 16. Adopt the following **new** subrule 64.16(7):
- 64.16(7)** “Discharge from Hydrostatic Testing, Tank Ballasting and Water Lines,” NPDES General Permit No. 8. No fees shall be assessed.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 17. Adopt the following **new** subrule 64.16(8):  
**64.16(8)** “Discharge from Dewatering and Residential Geothermal Systems,” NPDES General Permit No. 9. No fees shall be assessed.

**ARC 3619C**

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

### **Notice of Intended Action**

#### **Proposing rule making related to eligibility to participate in autism support program and providing an opportunity for public comment**

The Department of Human Services hereby proposes to amend Chapter 22, “Autism Support Program,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 225C.6 and 2017 Iowa Acts, House File 215.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 225C.6 and 2017 Iowa Acts, House File 215.

#### *Purpose and Summary*

The proposed amendments bring the rules in Chapter 22 into alignment with 2017 legislative changes to Iowa Code chapter 225D. 2017 Iowa Acts, House File 215, requires certain health insurance policies, contracts, or plans to provide coverage of applied behavior analysis (ABA) treatment for certain individuals with autism spectrum disorder. Individuals who gain private insurance as a result of this legislation will no longer be eligible for participation in the Autism Support Program (ASP).

#### *Fiscal Impact*

This rule making does not result in any additional costs to the Department. It may result in some reduction to the costs of the ASP, which is funded with 100 percent state dollars, but savings are expected to be less than \$100,000 annually.

#### *Jobs Impact*

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

#### *Waivers*

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

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **441—22.1(225D)**, definition of “Eligible individual,” as follows:  
“*Eligible individual*” means a child less than 14 years of age who has been diagnosed with autism based on a diagnostic assessment of autism, is not otherwise eligible for coverage for applied behavioral analysis treatment or applied behavior analysis treatment under the medical assistance program, Iowa Code section 514C.28, Iowa Code section 514C.31, or private insurance coverage, and whose household income does not exceed 500 percent of the federal poverty level.

ITEM 2. Amend subrule 22.2(4) as follows:  
**22.2(4)** An individual shall be determined ineligible for coverage of applied behavioral analysis services under the medical assistance program, Iowa Code section 514C.28, Iowa Code section 514C.31, or other private insurance coverage. Proof of insurance coverage and noneligibility for coverage for applied behavioral analysis shall be provided at the time of application and shall include a written denial of coverage or a benefits summary indicating that the applied behavioral analysis treatment or applied behavior analysis treatment is not a covered benefit for which the applicant is eligible under the Medicaid program, Iowa Code section 514C.28, Iowa Code section 514C.31, or other private insurance coverage.

**ARC 3615C**

**INSURANCE DIVISION[191]**

**Notice of Intended Action**

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

The Insurance Division hereby proposes to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 502.605.

INSURANCE DIVISION[191](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 502.

*Purpose and Summary*

These amendments implement Iowa Code chapter 502, the Iowa Uniform Securities Act, which regulates the sale of securities in Iowa. The amendments do the following:

- Amend the filing procedures for an investment adviser's business continuity and succession plan from license applications to an examination procedure under Iowa Code section 502.411(4).
- Adopt the model rule of the North American Securities Administrators Association (NASAA) regarding merger and acquisition brokers.
- Adopt provisions regarding intrastate crowdfunding offerings.
- Conform to the implementation by the Financial Industry Regulatory Authority (FINRA) of the Securities Industry Essentials Exam.
- Mandate use of NASAA's electronic filing depository (EFD) system for unit investment trust notice filings by a person who is the issuer of a federal covered security under Section 18(b)(2) of the Securities Act of 1933.

The Division intends that these rule-making actions shall go into effect May 16, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

Craig Goettsch  
Insurance Division  
Two Ruan Center  
601 Locust, Fourth Floor  
Des Moines, Iowa 50309  
Fax: 515.281.3059  
Email: [craig.goettsch@iid.iowa.gov](mailto:craig.goettsch@iid.iowa.gov)

*Public Hearing*

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

## INSURANCE DIVISION[191](cont'd)

March 6, 2018  
10:30 a.m.

Insurance Division Offices  
Two Ruan Center  
601 Locust Street, Fourth Floor  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** subrule 50.10(10):

**50.10(10)** Registration exemption for merger and acquisition brokers.

*a. Definitions.* For purposes of rule 191—50.10(502), in addition to the definitions set forth in rule 191—50.1(502), the following definitions apply:

(1) “*Control*” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract or otherwise. There is a presumption of control for any person who meets at least one of the following conditions:

1. Is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or similar status or functions).

2. Has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities.

3. In the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

(2) “*Eligible privately held company*” means a company that meets both of the following conditions:

1. The company does not have any class of securities:

- Registered, or required to be registered, pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 781); or

- For which the company files, or is required to file, periodic information, documents, and reports pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(d)).

2. In the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

- The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25 million.

- The gross revenues of the company are less than \$250 million.

(3) “*Merger and acquisition broker*” means any broker-dealer and any person that is associated with a broker-dealer:

1. That is engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company; and

## INSURANCE DIVISION[191](cont'd)

- That is thus engaged regardless of whether that broker-dealer acts on behalf of a seller or buyer; and
  - That is thus engaged through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company; and
2. That meets both of the following conditions:
    - The broker-dealer reasonably believes that, upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and
    - If any person offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to both of the following:
      - o The most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations; and
      - o If the financial statements of the issuer are audited, reviewed or compiled, all of the following:
        - ◆ Any related statement by the independent accountant;
        - ◆ A balance sheet dated not more than 120 days before the date of the exchange offer;
        - ◆ Information pertaining to the management, business, and results of operations for the period covered by the foregoing financial statements; and
        - ◆ Any material loss contingencies of the issuer.
- (4) “*Public shell company*” means a company that, at the time of a transaction with an eligible privately held company, meets all three of the following conditions:
1. Has any class of securities registered, or required to be registered, with the SEC pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 781), or with respect to which the company files, or is required to file, periodic information, documents, and reports pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).
  2. Has no or nominal operations.
  3. Has assets consisting of one of the following:
    - No or nominal assets.
    - Cash and cash equivalents.
    - Any amount of cash and cash equivalents and nominal other assets.
- b. Merger and acquisition broker exemption from registration requirements.*
- (1) Exemption. Except as provided in subparagraphs 50.10(10)“b”(2) and (3), a merger and acquisition broker is exempt from the broker-dealer registration requirements and procedures of Iowa Code sections 502.401 and 502.406.
  - (2) Activities not exempt. A merger and acquisition broker is not exempt from the broker-dealer registration requirements of Iowa Code sections 502.401 and 502.406 if the merger and acquisition broker does any of the following:
    1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.
    2. Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. Section 781) or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(d)).
    3. Engages on behalf of any party in a transaction involving a public shell company.
  - (3) Disqualifications. A merger and acquisition broker is not exempt from registration under this subrule if the merger and acquisition broker is subject to any of the following:
    1. Suspension or revocation of registration under the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(b)(4));
    2. A statutory disqualification described in the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(39));

## INSURANCE DIVISION[191](cont'd)

3. A disqualification under the rules adopted by the SEC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. Section 77d note)); or

4. A final order described in the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(b)(4)(H)).

(4) Rule of construction. Nothing in this subrule shall be construed to limit any other authority of the administrator to exempt any person, or any class of persons, from Iowa Code chapter 502 or from any provision of this chapter.

*c. Inflation adjustment.* On July 1, 2023, and every five years thereafter, each dollar amount in 50.10(10)“a”(2)“2” shall be adjusted by the following calculation, and the dollar amount determined under the calculation shall be rounded to the nearest multiple of \$100,000:

(1) Dividing the annual value of the Employment Cost Index for Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor index) for the calendar year ending December 31, 2017; and

(2) Multiplying the dollar amount in 50.10(10)“a”(2)“2” by the quotient obtained under subparagraph 50.10(10)“c”(1), above.

ITEM 2. Amend paragraph **50.12(1)“b”** as follows:

*b.* Pass the appropriate qualifying examination administered by ~~the Financial Industry National Regulatory Authority (FINRA)~~ FINRA. In the event that an applicant for registration as an agent has received a waiver by FINRA of a FINRA examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement;

ITEM 3. Amend subrule 50.33(1) as follows:

**50.33(1)** Except as exempted by subrule 50.33(2), a person applying to be registered as an investment adviser representative shall provide the administrator with proof that the person has obtained ~~a passing score on one of the following examinations~~ either:

*a.* ~~The A passing score on the Series 65 examination as implemented January 1, 2000; or~~

*b.* The Passing scores on both the Series 7 examination and the Series 66 examination as implemented January 1, 2000 and, if the application is received by the administrator on or after October 1, 2018, FINRA's Securities Industry Essentials Exam. In the event that an applicant for registration as an investment adviser representative has received a waiver by FINRA of the Series 7 examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement.

ITEM 4. Amend paragraph **50.39(4)“c”** as follows:

*c.* “*Independent certified public accountant*” means a certified public accountant that meets the standards of independence described in SEC Rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

ITEM 5. Adopt the following **new** paragraph **50.42(1)“x”**:

*x.* A copy of a written business continuity and succession plan as required by rule 191—50.47(502).

ITEM 6. Amend subrule 50.42(9) as follows:

**50.42(9)** Compliance with any substantially similar record-keeping requirements of ~~Rules 17a-3 [17 CFR 240.17a-3] and 17a-4 [17 CFR 240.17a-4] of the Securities Exchange Act of 1934~~ SEC Rules 17a-3 and 17a-4 (17 CFR 240.17a-3 and 17 CFR 240.17a-4) shall be deemed to be in compliance with this rule.

ITEM 7. Amend rule 191—50.45(502) as follows:

**191—50.45(502) Registration exemption for investment advisers to private funds.**

**50.45(1) Definitions.** For purposes of this rule, the following definitions shall apply:

“*3(c)(1) fund*” means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under ~~Section 3(e)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(e)(1)~~ 1940 (15 U.S.C. Section 80a-3(c)(1)).

## INSURANCE DIVISION[191](cont'd)

“*Private fund adviser*” means an investment adviser who provides advice solely to one or more qualifying private funds.

“*Qualifying private fund*” means a private fund that meets the definition of a qualifying private fund in SEC Rule ~~203(m)-1, 17 CFR § 275.203(m)-1~~ 203(m)-1 (17 CFR 275.203(m)-1).

“*Value of primary residence*” means the fair market value of a person’s primary residence, less the amount of debt secured by the property up to its fair market value.

“*Venture capital fund*” means a private fund that meets the definition of a venture capital fund in SEC Rule ~~203(l)-1, 17 CFR § 275.203(l)-1~~ 203(l)-1 (17 CFR 275.203(l)-1).

**50.45(2) Exemption for private fund advisers.** Subject to the additional requirements of subrule 50.45(3), a private fund adviser shall be exempt from the registration requirements of Iowa Code section 502.403 if the private fund adviser satisfies each of the following conditions:

a. Neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in SEC Rule 262 of SEC Regulation A, ~~17 CFR § 230.262; A (17 CFR 230.262)~~.

b. The private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the SEC pursuant to SEC Rule ~~204-4, 17 CFR § 275.204-4; 204-4 (17 CFR 275.204-4)~~.

c. No change.

**50.45(3) Additional requirements for private fund advisers to certain 3(c)(1) funds.** In order to qualify for the exemption described in subrule 50.45(2), a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraph 50.45(3)“b,” comply with the following requirements:

a. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person’s net worth, would each meet the definition of a qualified client in SEC Rule ~~205-3, 17 CFR § 275.205-3, 205-3 (17 CFR 275.205-3)~~ at the time the securities are purchased from the issuer.

b. and c. No change.

**50.45(4) to 50.45(8)** No change.

This rule is intended to implement Iowa Code section 502.403.

ITEM 8. Amend subrule 50.47(1) as follows:

**50.47(1)** On and after July 1, 2017, every investment adviser registered in Iowa shall ~~establish, implement, and maintain~~ make and maintain records, pursuant to Iowa Code section 502.411(3)“a,” of the establishment, implementation and maintenance of a written business continuity and succession plan. The business continuity and succession plan shall be created and implemented in a manner consistent with the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers, which is available on the Iowa insurance division’s Web site, www.iid.iowa.gov website, iid.iowa.gov. In developing the procedures for the business continuity and succession plan, the investment adviser shall consider, among other things, the size of the firm, the types of services provided and the number of locations of the investment adviser. The business continuity and succession plan shall provide for, at a minimum, all of the following:

a. to e. No change.

ITEM 9. Amend subrule 50.47(2) as follows:

**50.47(2)** Every investment adviser registered in Iowa shall ~~include a copy of annually review the investment adviser’s written business continuity and succession plan with the first registration renewal required by Iowa Code section 502.402 that the investment adviser files on and after July 1, 2017 and, if it has been changed since it was submitted, or if it was not previously submitted, shall file it for examination by the administrator, pursuant to Iowa Code section 502.411(4).~~ The administrator shall review an investment adviser’s written business continuity and succession plan to determine whether it is consistent with the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers and whether it takes into account the considerations listed in subrule 50.47(1). The administrator may request the investment adviser to modify the filed business



## INSURANCE DIVISION[191](cont'd)

continuity and succession plan according to the administrator's suggestions. After the initial filing, the investment adviser shall submit to the administrator adviser's filing of any change shall identify any substantive amendment to the business continuity and succession plan with the registration renewal following the amendment. The administrator may request from the investment adviser at any time information regarding the business continuity and succession plan, ~~including but not limited to evidence that it has been implemented and maintained~~ made since the last filing of the plan.

ITEM 10. Adopt the following **new** subrule 50.60(7):

**50.60(7)** Effective January 1, 2019, when notice filings of the records and fees are required by this rule for the offer or sale of unit investment trusts (as defined in the Investment Company Act of 1940 (15 U.S.C. Section 80a-4(2)), the filings shall be submitted electronically through NASAA's electronic filing depository system at [efdnasaa.org](http://efdnasaa.org).

ITEM 11. Rescind and reserve rule **191—50.80(502)**.

ITEM 12. Amend rule 191—50.81(502) as follows:

**191—50.81(502) Notice filings for Rule 506 offerings.** An issuer offering a security that is a covered security pursuant to Section ~~18(b)(4)(E)~~ 18(b)(4)(F) of the Securities Act of 1933 shall submit no later than 15 days after the first sale of such federal covered security in Iowa an electronic filing and fees through [www.efdnasaa.org](http://www.efdnasaa.org), under "filers and issuers."

This rule is intended to implement Iowa Code section 502.302(3).

ITEM 13. Rescind rule 191—50.90(502) and adopt the following **new** rule in lieu thereof:

**191—50.90(502) Intrastate crowdfunding exemption.**

**50.90(1) Definitions.** For purposes of this rule, in addition to the definitions set forth in rule 191—50.1(502), the definitions in Iowa Code section 502.202(24) "a" and the following definitions apply:

"*Administrator's website*" means the Internet site of the Iowa Insurance Division, [iid.iowa.gov](http://iid.iowa.gov).

"*Escrow agent*" means a bank, trust company, savings bank, national banking association, building and loan association, mortgage banker, credit union, insurance company, or any other independent escrow agent acceptable to the commissioner.

"*Issuer*" means a person that is authorized to do business in Iowa and has been approved by the administrator as a crowdfunding issuer pursuant to subrule 50.90(5).

"*Management*" means an issuer's directors, executive officers, or the individuals who perform such functions for the issuer.

"*Portal website*" means the Internet site through which a registered Iowa crowdfunding portal conducts offers and sales of exempt securities under Iowa Code section 502.202(24).

"*Principal place of business*" means the state or territory from which the officers, partners, or managers of a corporation, partnership, limited liability company, trust or other form of business primarily direct, control and coordinate the activities of the business. "Principal place of business" is not related to "place of business" as defined in Iowa Code section 502.102(21).

**50.90(2) Exemption from registration.**

a. Under the authority delegated to the administrator to promulgate rules in Iowa Code sections 502.203 and 502.605(1), a transaction is exempt from the registration provisions of the Act if all of the conditions in subparagraphs (1) to (4) are met:

(1) The issuer of the securities is at the time of any offers and sales a person that is a resident and doing business within the state of Iowa. The issuer shall be deemed to be a resident of the state of Iowa if it has its principal place of business in Iowa. The issuer shall be deemed to be doing business within Iowa if the issuer satisfies at least one of the following requirements:

1. The issuer derived at least 80 percent of its consolidated gross revenues from the operation of a business or of real property located in or from the rendering of services within the state of Iowa.

## INSURANCE DIVISION[191](cont'd)

2. The issuer had, at the end of its most recent semiannual fiscal year prior to an initial offer of securities in any offering or subsequent offering pursuant to this rule, at least 80 percent of its assets and those of its subsidiaries on a consolidated basis located in the state of Iowa.

3. The issuer intends to use and uses at least 80 percent of the net proceeds to the issuer from sales made pursuant to this rule in connection with the operation of a business within, the operation of real property within, the purchase of real property located in, or the rendering of services within the state of Iowa.

4. A majority of the issuer's employees are based in the state of Iowa.

(2) Sales of securities pursuant to this rule are made only to residents of the state of Iowa or who the issuer reasonably believes, at the time of the sale, are residents of the state of Iowa. Individuals shall be deemed to be residents of the state of Iowa if such individuals have, at the time of sale, their principal residence in the state of Iowa. A trust that is not deemed by Iowa law to be a separate legal entity is deemed a resident of the state of Iowa only if all of its trustees are residents of the state of Iowa. For purposes of determining the residence of purchasers:

1. A corporation, partnership, limited liability company, trust or other form of business organization shall be deemed a resident of the state of Iowa if, at the time of sale to it, it has its principal place of business within the state of Iowa.

2. A corporation, partnership, trust or other form of business organization that is organized for the specific purpose of acquiring securities offered pursuant to this rule shall not be a resident of Iowa unless all of the beneficial owners of such organization are residents of Iowa.

(3) The issuer is not, before or as a result of the offering, any of the following:

1. An investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

2. A hedge fund, commodity pool, or similar investment vehicle.

3. A development stage company that either has no specific business plan or purpose or has indicated that the company's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

4. A company with a class of securities registered under the federal Securities Exchange Act of 1934.

(4) The offering is sold in compliance with the requirements of SEC Rule 147A (17 CFR 230.147A).

b. All offers and sales of securities made in reliance upon this rule shall be made through an intermediary's Internet site.

**50.90(3) Integration.**

a. Offers and sales made in reliance on this rule may be integrated with other offers and sales when the following factors apply:

(1) The sales are part of a single plan of financing;

(2) The sales involve the issuance of the same class of securities;

(3) The sales have been made at or about the same time;

(4) The same type of consideration is received; and

(5) The sales are made for the same general purpose.

b. Offers and sales made in reliance on this rule shall not be integrated with offers and sales made more than six months before the start of the offering or more than six months after completion of an offering, so long as during those six-month periods there are no offers or sales of securities by or for the issuer that are of the same class or of a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

**50.90(4) Bad actor disqualification.**

a. The exemption of 50.90(2) shall not be available if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such offer or sale; any investment manager of an issuer that

## INSURANCE DIVISION[191](cont'd)

is a pooled investment fund; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such offer or sale of securities; any general partner or managing member of any such investment manager or solicitor; or any director, executive officer, or other officer participating in the offering of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor:

(1) Has been convicted, within ten years before such offer or sale (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor that is any of the following:

1. In connection with the purchase or sale of any security.
2. Involving any making of any false filing with the SEC or a state securities commission or agency or state official performing like functions.
3. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before such offer or sale that, at the time of such offer or sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice that is any of the following:

1. In connection with the purchase or sale of any security.
2. Involving the making of any false filing with the SEC or a state securities commission or agency or state official performing like functions.
3. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchaser of securities;

(3) Is subject to a final order of a state securities commission or agency or state official performing like functions; a state authority that supervises or examines banks, savings associations, or credit unions, a state insurance commission or agency or state official performing like functions; an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

1. At the time of such offer or sale, bars the person from:
  - Association with an entity regulated by such commission, authority, agency, or officer;
  - Engaging in the business of securities, insurance or banking; or
  - Engaging in savings association or credit union activities; or
2. Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct, including making untrue statements of material facts or omitting to state material facts, entered within ten years before such offer or sale;

(4) Is subject to an order of the SEC entered pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(b) or 78o-4(c)) or the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3(e) or (f)) that, at the time of such offer or sale:

1. Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;
2. Places limitations on the activities, functions or operations of such person; or
3. Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(5) Is subject to any order of the SEC entered within five years before such offer or sale that, at the time of such offer or sale, orders the person to cease and desist from committing or causing a violation or future violations of:

1. Any scienter-based, antifraud provision of the federal securities laws, including without limitation the Securities Act of 1933 (15 U.S.C. Section 77q(a)(1)); the Securities Exchange Act of 1934 (15 U.S.C. Section 78j(b) and 17 CFR 240.10b-5); the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(c)(1)); the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-6(1)); or any other rule or regulation thereunder; or
2. Section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

(6) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities

## INSURANCE DIVISION[191](cont'd)

association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the SEC that, within five years before such offer or sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such offer or sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued;

(8) Is subject to a United States Postal Service false representation order entered within five years before such offer or sale, or is, at the time of such offer or sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations;

(9) Has filed a registration statement which is subject to a final stop order entered under any state's securities law within five years before such offer or sale; or

(10) Is currently subject to any final state administrative enforcement order or judgment entered by a state's securities administrator within five years prior to such offer or sale.

b. Paragraph 50.90(4) "a" shall not apply under either of the following circumstances:

(1) Upon a showing of good cause and without prejudice to any other action by the commissioner, if the commissioner determines that it is not necessary under the circumstances that the exemption be denied; or

(2) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under this subrule. An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

c. Events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(1) In control of the issuer; or

(2) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

**50.90(5) Filing requirements for issuers.**

a. An issuer may declare an offering exempt for a maximum of 12 months and rely on this intrastate sales exemption if the issuer submits at the administrator's website, and receives approval from the administrator, at least 30 days prior to the offer of any security in reliance upon Iowa Code section 502.202(24), all of the following:

(1) A properly completed Iowa Crowdfunding Notice Filing Form (available at the administrator's website).

(2) The issuer's articles of incorporation or other charter documents pursuant to which the issuer is organized.

(3) The issuer's bylaws or operating agreement and all amendments thereto.

(4) A copy of any resolutions setting forth terms and provisions of the securities being issued.

(5) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles. If the date of the most recent fiscal year end is more than 90 days prior to the date of the filing, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations, both prepared in accordance with generally accepted accounting principles for the issuer's most recent fiscal year.

(6) A copy of any agreements between the issuer and any intermediary.

(7) A copy of any subscription agreement for the purchase of securities in the offering.

(8) A copy of the escrow agreement between the issuer and an escrow agent for the deposit of offering proceeds.

(9) A specimen or copy of the security to be offered, including required legends, if the issuer will issue physical certificates.

## INSURANCE DIVISION[191](cont'd)

(10) A copy of all advertising and other materials directed to or to be furnished to investors in the offering.

(11) A copy of all disclosure documents directed to or to be furnished to investors in the offering.

(12) Any other information reasonably requested by the commissioner.

(13) A filing fee of \$100.

*b.* If an issuer will make offers and sales of an offering after the exempt offering period declared by the issuer on the Iowa Crowdfunding Notice Filing Form, the issuer must renew the offering exemption by submitting at the administrator's website, and receiving approval of the administrator, at least 30 days prior to the expiration of the original exempt offering period, all of the following:

(1) A report of sales as of the most recent practical date that includes the following information:

1. The time period in which the offering was open.

2. The number of shares or units sold in the offering.

3. The number of investors that purchased shares or units in the offering.

4. The dollar amount sold in the offering.

(2) A copy of the issuer's updated Iowa Crowdfunding Notice Filing Form.

(3) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles. If the end date of the most recent fiscal year is more than 90 days prior to the date of renewal, the issuer also shall submit an unaudited balance sheet and an unaudited statement of income or operations, both prepared in accordance with generally accepted accounting principles for the issuer's most recent fiscal quarter.

(4) A renewal filing fee of \$100.

*c.* Upon completion of an offering made in reliance upon this rule, an issuer shall file at the administrator's website, and receive the administrator's approval of, a final sales report that includes all of the following information:

(1) The time period in which the offering was open.

(2) The number of shares or units sold in the offering.

(3) The number of investors that purchased shares or units in the offering.

(4) The total dollar amount sold in the offering.

**50.90(6) *Minimum offering amount.*** The issuer shall establish a minimum offering amount that is sufficient, together with other sources of financing, to implement the business plan of the issuer, as disclosed in the submitted offering information.

**50.90(7) *Escrow agreement.*** The issuer must enter into an escrow agreement with an independent escrow agent to hold funds in an escrow account, and the escrow agreement shall include all of the following terms:

*a.* All offering proceeds shall be maintained in an account controlled by the escrow agent.

*b.* All offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers that have signed commitments to invest is equal to or greater than the minimum offering amount disclosed in the offering materials submitted to the administrator with the issuer's filing of paragraph 50.90(5) "a."

*c.* If the proceeds do not meet the minimum offering amount disclosed in the offering materials within one year of the earlier of the commencement of the offering or the first posting of the offering on the Internet, the issuer shall return all funds to investors.

*d.* None of the following shall have any claim to the escrowed proceeds:

(1) A creditor of an escrow agent.

(2) An affiliate of an escrow agent.

(3) A creditor of the issuer.

(4) An affiliate of the issuer.

(5) A creditor of an intermediary engaged by the issuer.

(6) An affiliate of an intermediary engaged by the issuer.

*e.* The escrow agent agrees to maintain its independence from the issuer, any intermediary or Iowa crowdfunding portal assisting with the offering, and the officers, directors, managing members, and affiliates of the issuer or any Iowa crowdfunding portal assisting with the offering.

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*f.* The commissioner may inspect the records of the impound account maintained by the escrow agent at any reasonable time at the location of the records and copy any record.

*g.* The escrow agreement must be signed by an officer of the issuer and an authorized representative of the escrow agent.

*h.* The escrow agent may not be affiliated with the issuer, any Iowa crowdfunding portal assisting with the offering, or any officers, director, managing member, or affiliate of the issuer or any intermediary assisting with the offering.

*i.* If the minimum offering amount is not received by the end of the offering period, the proceeds shall be returned to the purchasers within 30 days.

*j.* All purchasers shall have the right to withdraw their investments, without deduction of any kind, until such time as offering proceeds totaling at least the minimum offering amount are received.

**50.90(8)** *Disclosure requirements for issuers.*

*a.* Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the requirements of rule 191—50.90(502) and the antifraud provisions of Iowa Code chapter 502. The issuer is required to provide full and fair disclosure to investors of all material facts relating to the issuer and the securities being offered. If eligible, the issuer may use Form U-7, which may be obtained from the NASAA website at [www.nasaa.org](http://www.nasaa.org).

*b.* Among other risk disclosures, the issuer must provide the substance of all of the following disclosures to all prospective purchasers and investors:

(1) There is no ready market for the sale of the securities acquired in this offering. It may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely.

(2) No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosures provided.

(3) In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved.

(4) The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.

**50.90(9)** *Books and records.* An issuer that has filed under this rule must keep and maintain written or electronic records relating to offers and sales of securities made in reliance upon this rule for at least six years following termination of the offering. These records are subject to such reasonable audits or inspections by the administrator or a representative of the administrator as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection.

**50.90(10)** *Iowa crowdfunding portal registration.*

*a.* To register as an Iowa crowdfunding portal, a person shall submit to the administrator at the administrator's website all of the following:

(1) A completed Iowa Crowdfunding Portal Registration Form, available on the administrator's website, including all required schedules and supplemental information.

(2) A completed Form U-4, available on the administrator's website, for each agent as defined in Iowa Code section 502.102(2).

(3) Any other information requested by the administrator to determine the financial responsibility, business reputation, or qualifications of the Iowa crowdfunding portal.

(4) The registration fee of \$100.

*b.* The person must receive approval of the submission and registration by the administrator before the person may operate as an Iowa crowdfunding portal.

*c.* Registration expires at the close of the calendar year in which a registration was issued, but the registration may be renewed for the succeeding year by submission to the administrator at the

## INSURANCE DIVISION[191](cont'd)

administrator's website of both a \$100 registration fee and a written request for renewal, including any material changes to the information submitted in the prior registration submission.

**50.90(11) Duties of an Iowa crowdfunding intermediary.**

*a. Maintenance of intermediary website.* An Iowa crowdfunding intermediary shall create and maintain the intermediary website and make information and services available on or through the intermediary website in compliance with this rule.

*b. Background and regulatory checks.* Prior to offering securities to residents of Iowa, the intermediary shall conduct a reasonable investigation of the background and history of each issuer whose securities are offered on the intermediary website and of each issuer's control persons. "Control persons" for the purpose of this subrule means the issuer's officers; directors; or other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; and persons holding more than 20 percent of the outstanding equity of the issuer. The intermediary shall deny an issuer access to the intermediary website if there is a reasonable basis to believe that one or more of the following are true:

- (1) The issuer or any of its control persons is subject to disqualification under subrule 50.90(3).
- (2) The issuer has engaged in, the issuer is engaging in, or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person.
- (3) The intermediary cannot adequately or effectively assess the risk of fraud by the issuer or by the issuer's potential offering.

*c. Purchaser screening.* Before a security is sold through the intermediary, the intermediary shall ensure that the purchaser does all of the following:

- (1) Reviews the information provided in the offering documents.
- (2) Provides to the intermediary an acknowledgment in writing from the purchaser that the purchaser received and acknowledged the disclosure statement provided to the purchaser by the issuer pursuant to subrule 50.90(8).
- (3) Provides to the intermediary an affirmative representation that the purchaser is an Iowa resident.

*d. Information about the issuer and the offering.* The intermediary shall make available on the intermediary website information about the issuer and the offering. The information shall include all of the following:

- (1) A copy of the disclosure statement required by subrule 50.90(8).
- (2) A summary of the offering, including all of the following:
  1. A description of the entity; its form of business, principal office, history, and business plan; and its intended use of offering proceeds, including compensation paid to any owner, executive officer, director, or manager.
  2. The identity of the executive officers, directors, and managers, including their titles and their prior experience and the identity of all persons owning more than 20 percent of the ownership interests of any class of securities of the company.
  3. A description of the securities being offered and any outstanding securities of the company, the amount of the offering, and the percentage of ownership of the company represented by the offered securities.

*e. Intermediary website forum.* The intermediary shall maintain a forum on the intermediary website. The forum shall be available to all potential purchasers as well as to the administrator. The intermediary website shall contain a disclaimer that reflects that access to securities offered on the intermediary website is limited to Iowa residents and that sales of the securities appearing on the intermediary website are limited to persons that are Iowa residents. Potential purchasers may ask questions and receive answers concerning the terms and conditions of the offering and may obtain additional information which the crowdfunding issuer possesses or can acquire without unreasonable effort or expense necessary to verify the accuracy of or to clarify the information provided on the intermediary website.

*f. Enforcement of limits.* The intermediary shall take reasonable measures to ensure that no purchaser exceeds the limits set forth in Iowa Code section 502.202(24) "c" and "d."

INSURANCE DIVISION[191](cont'd)

*g. Administrator access.* The intermediary shall provide the administrator purchaser-level access at all times to the intermediary website, pursuant to Iowa Code section 502.202(24) “g”(8).

**50.90(12) Prohibited conduct for intermediaries.** An intermediary and individuals of the intermediary’s management:

*a.* Shall not have ownership or other financial interest greater than 20 percent in the crowdfunding issuer.

*b.* Shall not hold, manage, possess, or otherwise handle purchaser funds. Proceeds are to be held in escrow until the minimum impound amount has been met.

*c.* Shall not compensate employees, agents or other persons not registered with the administrator for soliciting offers or sales of securities displayed or referenced on the intermediary website.

**50.90(13) Commissions, fees or other remuneration.** Commissions, fees or other remuneration for soliciting any prospective purchaser in connection with the offering shall only be paid to intermediaries or any other persons who are appropriately registered or licensed with the commissioner.

**50.90(14) Advertising and communications.**

*a. Advertising.* The crowdfunding issuer shall not advertise the specific details of the offering, except for notices which direct potential purchasers to the intermediary website. Notwithstanding the foregoing, the issuer may distribute a notice within Iowa that the issuer is conducting an offering of securities, the name of the intermediary through which the offering is being conducted, and a link directing the potential investor to the intermediary. The notice shall contain a disclaimer that the sale of the security is limited to persons who are Iowa residents.

*b. Communications.* All communications between the issuer and potential purchasers taking place pursuant to Iowa Code section 502.202(24) shall occur through the intermediary website of the intermediary. During the time the securities are being offered on the intermediary website, the intermediary shall, pursuant to paragraphs 50.90(11) “d” and “e,” provide channels through which potential purchasers can communicate with one another and with the issuer about the securities being offered. These communications shall be visible to all those with access to the intermediary website.

(1) An issuer shall respond within ten days to requests for information made by potential purchasers or by the administrator through the intermediary website.

(2) If such additional information is material and not previously included on the intermediary website, the crowdfunding issuer and the Iowa crowdfunding portal shall immediately amend the information contained on the intermediary website.

**50.90(15) Offering price.** The offering price of the securities offered and sold pursuant to this exemption shall be the same for all purchasers and shall not be increased during the offering period. The offering price may be lowered, but only if all previous purchasers in the particular offering are notified of the change and allowed to rescind their previous investment and participate at the lower offering price.

**50.90(16) Resale of securities.** On the document that is to serve as evidence of ownership, the issuer shall place a prominent notice which states that the securities have not been registered and which sets forth limitations on resale contained in SEC Rule 147A(e) (17 CFR 230.147A(e)), including that, for a period of six months from the date of last sale by the issuer of the securities in the offering, resale by any person shall be made only to Iowa residents.

This rule is intended to implement Iowa Code section 502.202.

**ARC 3626C**

## **NATURAL RESOURCE COMMISSION[571]**

### **Notice of Intended Action**

#### **Proposing rule making related to storage of stand-up paddleboards and providing an opportunity for public comment**

The Natural Resource Commission hereby proposes to amend Chapter 16, “Docks and Other Structures on Public Waters,” Iowa Administrative Code.



## NATURAL RESOURCE COMMISSION[571](cont'd)

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 461A.4(1)“b.”

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 461A.4.

*Purpose and Summary*

The proposed amendments change the definition of “‘boat hoist’ or ‘lift’” to exclude certain storage of stand-up paddleboards (SUPs). Currently, storage of any object meeting the rule’s broad definition of “watercraft” counts as a boat hoist or lift. This definition includes SUPs, which are often stored on docks in a manner not traditionally considered to be a boat hoist or lift, yet storage of SUPs must be counted as a boat hoist or lift under the existing definition. Dock permit holders are limited in the number of hoists or lifts they may have on their docks; excluding storage of SUPs from the definition of “‘boat hoist’ or ‘lift’” will allow for more flexibility to store SUPs near the water where they are used and will reduce the need for storage space elsewhere.

Another proposed amendment to rule 571—16.1(461A,462A) clarifies the definition of “boat” by updating a reference to the Iowa Code regarding the definition of “watercraft.” The proposed amendment to subrule 16.4(3) removes an outdated date reference.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. A copy of the impact statement is available upon request from the Department.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the impact statement is available upon request from the Department.

*Waivers*

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 7, 2018. Comments should be directed to:

Greg Harson  
Department of Natural Resources  
122 252nd Avenue  
Spirit Lake, Iowa 51360  
Fax: 712.336.0921  
Email: [gregory.harson@dnr.iowa.gov](mailto:gregory.harson@dnr.iowa.gov)  
Phone: 712.260.1040

## NATURAL RESOURCE COMMISSION[571](cont'd)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held. Upon arrival, attendees should proceed to the fourth floor to check in at the Department's reception desk to sign in and be directed to the appropriate hearing location.

March 7, 2018  
1 p.m.

Conference Room 4E  
Wallace State Office Building  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **571—16.1(461A,462A)**, definitions of "Boat" and "Boat hoist," as follows:

"Boat" means "watercraft" as defined in Iowa Code section ~~462A.2(41)~~ 462A.2.

"Boat hoist" or "lift" means a structure placed in the water or below the ordinary high-water mark for boat storage, including platforms for storage of personal watercraft. For the purposes of this chapter, a boat hoist that is designed to store multiple small vessels such as personal watercraft or one-person sailboats shall be treated as a single hoist. For the purposes of this chapter, storage of stand-up paddleboards on racks above the platform of a dock shall not be counted as a boat hoist or lift.

ITEM 2. Amend subrule 16.4(3) as follows:

**16.4(3) Procedures for issuance of Class I dock permits.** The owner of a standard dock eligible for a Class I permit under the criteria in 16.4(1) or a dock in an area specified in 16.4(2) shall ~~have until July 1, 2008,~~ to apply for a Class I dock permit on an application form supplied by the department. The applicant shall certify that the dock meets the criteria for a Class I permit. The department shall approve the application based on the applicant's certification and shall assign a permit number which may be a series of numbers or letters, or a combination of numbers and letters. The applicant shall be responsible for obtaining stickers with the permit numbers and letters, for attaching them to the end of the dock facing opposite from the shoreline, and for displaying the 911 address as provided in 16.3(5). Class I dock permits authorized by this rule may be issued for terms up to five years and shall be issued without administrative fee. A Class I dock permit shall be valid only while dock and hoists comply with the criteria for a Class I permit.

**ARC 3627C****NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action****Proposing rule making related to artificial and natural marshes and providing an opportunity for public comment**

The Natural Resource Commission hereby proposes to amend Chapter 45, “Boat Motor Regulations,” Chapter 51, “Game Management Areas,” and Chapter 52, “Wildlife Refuges,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6)“a,” 462A.26(2)“b,” 481A.38, 481A.39 and 481A.48.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 462A.26(2)“b,” 481A.5, 481A.6 and 481A.38(1)“a.”

*Purpose and Summary*

Chapter 45 regulates the type, size, and horsepower of water vessels accessing natural and artificial lakes and marshes under the jurisdiction of the Commission. When the Shimon family donated portions of land now known as the Shimon Marsh Wetlands Complex to the State of Iowa, they did so with a deed requirement that no motorized vessels be allowed on site. This restriction was never codified in Chapter 45, which is necessary to accurately enforce the property’s use requirements. The proposed amendments will add this restriction to Chapter 45.

Chapter 51 regulates the use of hunting blinds and decoys on game management areas, among other activities. The proposed amendments clarify that the decoy regulations in subrule 51.6(3) apply to all decoys, not just to waterfowl decoys.

Chapter 52 establishes Iowa’s state game refuges. The Commission is proposing to amend the chapter to correct an error that misclassifies two state game refuges as waterfowl refuges. The Commission and the Department of Natural Resources (Department) have considered—and regulated—portions of Ventura Marsh in Cerro Gordo County and portions of Crystal Hills in Hancock County as state game refuges for years, but they are misclassified in the chapter as waterfowl refuges. This is a nonsubstantive correction to prevent confusion for anyone reviewing Chapter 52.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. A copy of the impact statement is available upon request from the Department.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the impact statement is available upon request from the Department.

*Waivers*

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

## NATURAL RESOURCE COMMISSION[571](cont'd)

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

Orrin Jones  
Department of Natural Resources  
1203 North Shore Drive  
Clear Lake, Iowa 50428  
Fax: 641.357.5523  
Email: [orrin.jones@dnr.iowa.gov](mailto:orrin.jones@dnr.iowa.gov)  
Phone: 641.357.3517

Persons may also convey their comments orally by visiting the Clear Lake Fish Hatchery during regular business hours.

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk to sign in and be directed to the appropriate hearing location:

March 6, 2018	Conference Room 3 E & W
12 noon	Wallace State Office Building
	Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 571—45.5(462A) as follows:

**571—45.5(462A) Artificial marshes.** A motorboat equipped with any power unit mounted or carried aboard the vessel may be operated on the following listed artificial marshes under the jurisdiction of the department of natural resources at a speed not greater than 5 miles per hour between January 1 and August 31 and with no speed restrictions between September 1 and December 31.

Bays Branch, Guthrie County  
Big Marsh, Butler County  
Brown's Slough, Lucas County  
Cardinal Marsh, Winneshiek County

NATURAL RESOURCE COMMISSION[571](cont'd)

- Dudgeon Lake, Benton County
- Elk Creek Marsh, Worth County
- Green Island, Jackson County
- Hendrickson Marsh, Story County
- Hooper Pond, Warren County
- North Colyn, Lucas County
- Otter Creek Marsh, Tama County
- Princeton Area, Scott County
- Riverton, Fremont County
- Round Pond, Johnson County
- South Colyn, Lucas County
- Sweet Marsh, Bremer County
- Walnut Creek Marsh, Ringgold County
- Willow Slough, Mills County
- Woodpecker Marsh, Wayne County

~~Nothing in this rule is to be construed as limiting motorboat horsepower on natural marshes under the jurisdiction of the department of natural resources.~~

ITEM 2. Adopt the following **new** rule 571—45.6(462A):

**571—45.6(462A) Natural marshes.**

**45.6(1) General use.** There shall be no horsepower limitations on vessels operated on natural marshes unless otherwise specified by subrule 45.6(2).

**45.6(2) Limitations.** The following vessel type, size, or horsepower restrictions shall apply as designated:

Shimon Marsh Wetlands Complex, Pocahontas County—nonmotorized vessels only.

ITEM 3. Amend subrule 51.6(3) as follows:

**51.6(3) Use of ~~waterfowl~~ decoys.** The use of ~~waterfowl~~ decoys on any game management area, except on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River, is restricted as follows:

Decoys are prohibited from one hour after sunset until midnight each day, and decoys cannot be left unattended for over 30 minutes between midnight and one hour after sunset. Decoys shall be considered as removed from an area when they are picked up and placed in a boat, vehicle or other container at an approved access site.

ITEM 4. Amend subrules 52.1(2) and 52.1(3) as follows:

**52.1(2) Wildlife refuges.** The following areas under the jurisdiction of the department of natural resources are established as wildlife refuges where posted. It shall be unlawful to hunt, pursue, kill, trap, or take any wild animal, bird, or game on these areas at any time, and no one shall carry firearms thereon, except where and when specifically authorized by the department of natural resources. It shall also be unlawful to trespass in any manner on the following areas, where posted, during the dates posted, both dates inclusive, except that department personnel, law enforcement officials, and other persons specifically authorized by the department of natural resources may enter the area at any time in performance of their duties, and hunters, under the supervision of department staff, may enter the area when specifically authorized by the department of natural resources.

<u>Area</u>	<u>County</u>
South Twin Lake . . . . .	Calhoun
Ventura Marsh . . . . .	Cerro Gordo
Allen Green Refuge. . . . .	Des Moines
Henderson . . . . .	Dickinson
Ingham Lake . . . . .	Emmet
Crystal Hills . . . . .	Hancock

NATURAL RESOURCE COMMISSION[571](cont'd)

Hawkeye Wildlife Area.....	Johnson
Colyn Area.....	Lucas
Gladys Black Eagle Refuge.....	Marion
Five Island Lake.....	Palo Alto
Polk City Refuge.....	Polk
Smith Area.....	Pottawattamie
Green Valley Lake.....	Union

**52.1(3) Waterfowl refuges.** The following areas under the jurisdiction of the department of natural resources are established as waterfowl refuges where posted. It shall be unlawful to hunt ducks and geese on the following areas, where posted, at any time during the year. It shall be unlawful to trespass in any manner on the following areas, where posted, during the dates posted, both dates inclusive, except that department personnel, law enforcement officials, and other persons specifically authorized by the department of natural resources may enter the area at any time in performance of their duties, and hunters, under the supervision of department staff, may enter the area when specifically authorized by the department of natural resources.

Area	County
Lake Icaria.....	Adams
Pool Slough Wildlife Area.....	Allamakee
Rathbun Area.....	Appanoose, Lucas, Wayne
Sedan Bottoms.....	Appanoose
Sweet Marsh.....	Bremer
Big Marsh.....	Butler
Union Hills.....	Cerro Gordo
<del>Ventura Marsh.....</del>	<del>Cerro Gordo</del>
Round Lake.....	Clay
Jemmeron Slough Complex.....	Dickinson
Forney Lake.....	Fremont
Riverton Area.....	Fremont
Dunbar Slough.....	Greene
Bays Branch.....	Guthrie
<del>Crystal Hills.....</del>	<del>Hancock</del>
Eagle Flats.....	Hancock
Eagle Lake.....	Hancock
Green Island Area.....	Jackson
Muskrat Slough.....	Jones
Red Rock Area.....	Marion, Polk, Warren
Badger Lake.....	Monona
Chichaqua Area.....	Polk
McCausland.....	Scott
Princeton Area.....	Scott
Otter Creek Marsh.....	Tama
Rice Lake Area.....	Winnebago
Snyder Bend Lake.....	Woodbury
Elk Creek Marsh.....	Worth

**ARC 3623C****NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action****Proposing rule making related to waterfowl and coot hunting and providing an opportunity for public comment**

The Natural Resource Commission hereby proposes to amend Chapter 91, “Waterfowl and Coot Hunting Seasons,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6), 481A.38, 481A.39 and 481A.48.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 481A.48(2).

*Purpose and Summary*

Chapter 91 contains the regulations for hunting waterfowl and coot and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting. The proposed amendments adjust the season dates to comply with what the Commission anticipates the 2018-2019 federal regulations will be after meeting with the United States Fish and Wildlife Service (USFWS) this year at the Mississippi Flyway Council and reviewing the proposed regulations contained in the Federal Register (Preliminary in 82 Fed. Reg. 36308-36315 (Aug. 3, 2017) and Supplemental in 82 Fed. Reg. 46011-46014 (Oct. 3, 2017)). The proposed amendments also ensure that the regular seasons open on different weekends and implement a special September teal season (all species).

Notably, the Commission has chosen to restructure the season dates for ducks and geese from specific calendar dates that require an annual update to a narrative time frame (e.g., going from “September 1 through September 17” to “opening on the first Saturday of September and running for 16 consecutive days”). This approach will avoid mandatory annual rule making to tweak specific dates and may allow the rules to stand for several years at a time, so long as the selected narrative time frame is still acceptable under the changing regulations of the USFWS and consistent with the harvest goals of the Commission and the Iowa Department of Natural Resources (Department). This narrative time frame is used in many other hunting seasons so Iowa’s sportsmen and sportswomen are used to such an approach. It should be noted that while there are dates for the special teal season in the proposed amendments, the Commission anticipates that these specific dates will remain in place for the foreseeable future.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. A copy of the impact statement is available upon request from the Department.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the impact statement is available upon request from the Department.

*Waivers*

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

## NATURAL RESOURCE COMMISSION[571](cont'd)

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

Orrin Jones  
 Department of Natural Resources  
 1203 North Shore Drive  
 Clear Lake, Iowa 50428  
 Fax: 641.357.5523  
 Email: [orrin.jones@dnr.iowa.gov](mailto:orrin.jones@dnr.iowa.gov)  
 Phone: 641.357.3517

Persons may also convey their comments orally by visiting the Clear Lake Fish Hatchery during regular business hours.

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk to sign in and be directed to the appropriate hearing location:

March 6, 2018	Conference Room 3 E & W
12 noon	Wallace State Office Building
	Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subrules 91.1(2) to 91.1(5) as follows:

**91.1(2) Season dates - north zone.** Special September teal season: September 21 through September 16. For all ducks: ~~September 23 through October 1 and October 14 through December 3.~~ The first segment of the season will begin on the last Saturday in September and run for 7 days. The second segment of the season will open on the second Saturday in October and continue for 53 consecutive days.

**91.1(3) Season dates - south zone.** Special September teal season: September 21 through September 16. For all ducks: ~~September 30 through October 4 and October 21 through December 14.~~ The first segment of the season will begin the first Saturday in October and run for 7 days. The second segment of the season will open on the third Saturday in October and continue for 53 consecutive days.



## NATURAL RESOURCE COMMISSION[571](cont'd)

**91.1(4) Season dates - Missouri River zone.** Special September teal season: September ~~2~~ 1 through September ~~17~~ 16. For all ducks: ~~October 7 and October 8 and October 21 through December 17.~~ The first segment of the season will begin the second Saturday in October and run for 7 days. The second segment of the season will open the fourth Saturday in October and continue for 53 consecutive days.

**91.1(5) Bag limit.** Special September teal season: The daily bag limit is 6 teal of any species. For all ducks: The daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be females), 2 black ducks, 3 wood ducks, ~~1 pintail~~ 2 pintails, 1 mottled duck, 2 canvasback, 2 redheads, and 3 scaup. The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers.

ITEM 2. Amend subrules 91.3(2) to 91.3(5) as follows:

**91.3(2) Season dates - north zone.** ~~Dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese): September 23 through October 8 and October 14 through January 1, 2018. Light geese (white and blue-phase snow geese and Ross' geese): September 23 through October 8 and October 14 through January 10, 2018.~~ For all geese: The first segment of the regular goose season will begin the second to last Saturday of September and run for a 16-day period. The second segment of the goose season will open the second Saturday in October and continue for 53 consecutive days. The goose season will then close until the next closest Saturday and shall then reopen and remain continuously open until the total number of days used for goose hunting reaches 107.

**91.3(3) Season dates - south zone.** ~~Dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese): September 30 through October 8 and October 21 through January 15, 2018. Light geese (white and blue-phase snow geese and Ross' geese): September 30 through October 8 and October 21 through January 24, 2018.~~ For all geese: The first segment of the regular goose season will begin the last Saturday of September and run for a 16-day period. The second segment of the goose season will open the third Saturday in October and continue for 53 consecutive days. The goose season will then close until the next closest Saturday and shall then reopen and remain continuously open until the total number of days used for goose hunting reaches 107.

**91.3(4) Season dates - Missouri River zone.** ~~Dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese): October 7 through October 15 and October 21 through January 15, 2018. Light geese (white and blue-phase snow geese and Ross' geese): October 7 through October 15 and October 21 through January 24, 2018.~~ For all geese: The first segment of the regular goose season will begin the first Saturday in October and run for a 16-day period. The second segment of the goose season will open the fourth Saturday in October and continue for 53 consecutive days. The goose season will then close until the next closest Saturday and shall then reopen and remain continuously open until the total number of days used for goose hunting reaches 107.

**91.3(5) Bag limit.** The daily bag limit for dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese) is 5 and may include no more than 2 Canada geese from September ~~23~~ 16 through October 31 and no more than 3 Canada geese from November 1 through the end of the season. The daily bag limit for light geese (white and blue-phase snow geese and Ross' geese) is 20.

ITEM 3. Amend subrules 91.3(8) to 91.3(11) as follows:

**91.3(8) Light goose conservation order season.** Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service ~~from January 25, 2018, through~~ beginning the day after the regular goose season closes and continuing until April 15, 2018.

a. to e. No change.

**91.3(9) Cedar Rapids/Iowa City goose hunting zone.**

a. ~~Season dates. September 2 through September 10~~ The first Saturday in September for nine consecutive days.

b. to d. No change.

**91.3(10) Des Moines goose hunting zone.**

a. ~~Season dates. September 2 through September 10~~ The first Saturday in September for nine consecutive days.

## NATURAL RESOURCE COMMISSION[571](cont'd)

*b. to d.* No change.

**91.3(11) Cedar Falls/Waterloo goose hunting zone.**

*a. Season dates.* ~~September 2 through September 10~~ The first Saturday in September for nine consecutive days.

*b. to d.* No change.

ITEM 4. Amend rule 571—91.6(481A) as follows:

**571—91.6(481A) Youth waterfowl hunt.** A special youth waterfowl hunt will be held ~~on September 16 and 17 in the north duck hunting zone, September 23 and 24 in the south duck hunting zone, and September 30 and October 1 in the Missouri River~~ the weekend before the first segment of the regular duck season in each duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks, ~~geese~~ and coots. The adult may hunt for any ~~other~~ game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

**ARC 3621C**

**NATURAL RESOURCE COMMISSION[571]**

**Notice of Intended Action**

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

The Natural Resource Commission hereby proposes to amend Chapter 101, “Falconry Regulations,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6) and 481A.48(3).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 481A.48(3).

*Purpose and Summary*

Chapter 101 regulates the capture and use while hunting (as a method of take) of federally protected raptors in Iowa. Raptors are migratory and therefore subject to the international Migratory Bird Treaty Act (MBTA), which is overseen by the U.S. Fish and Wildlife Service (USFWS). The proposed amendments add five new Peregrine falconry permits for eligible falconers to obtain via a lottery and also establish special releasing and reporting requirements for any banded (e.g., tagged) raptors of any kind.

These Peregrine falconry permits provide a new recreational opportunity for Iowans. Peregrine falcons were listed as endangered on the federal endangered species list in 1970 when the species’ population plummeted due to DDT use in the 1940s, 1950s, and 1960s. The species recovered in subsequent decades and was removed from the list in 1999. The USFWS has determined that the species, particularly the northern management population, is now sufficiently stable to support a limited take and has authorized the nation’s four flyway zones to issue permits to their member states. Iowa is part of the Mississippi Flyway, whose oversight council has decided to allocate its 48 total available

## NATURAL RESOURCE COMMISSION[571](cont'd)

permits roughly equally to all ten of its member states (hence Iowa's 5 permits). If the Commission does not amend Chapter 101 to include these permits, these 5 permits will be distributed to other states.

The proposed amendments limit eligibility for the Peregrine permit lottery to either Iowa master falconers or Iowa general falconers with at least five consecutive years of field experience. This qualification is based on the anticipated (large) interest in these permits and the Peregrine's fairly recent removal from the endangered species list. All other requirements will mimic those for other allowable raptors in Iowa.

The permit will authorize the take of wild, unbanded "passage" (i.e., migratory) Peregrines under one year of age between September 20 and October 20, as authorized by the governing federal regulations (see 82 Fed. Reg. 42700-42701 (Sept. 11, 2017)). Passage Peregrines are those birds that originate from a nesting range north of Iowa extending all the way to the Arctic; USFWS, in consultation with the Canadian Wildlife Service, has determined that this population has the largest and most stable numbers.

Finally, the proposed amendments require the immediate release and reporting to the Department of Natural Resources (Department) within 48 hours of any captured raptor that is banded, whether a Peregrine or some other eligible species open to take. Banded raptors have been tagged for monitoring and should not be removed from the wild so that they can continue to serve an important part in ongoing research.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. A copy of the impact statement is available upon request from the Department.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the impact statement is available upon request from the Department.

*Waivers*

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

Karen Kinkead  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319  
Fax: 515.725.8202  
Email: [karen.kinkead@dnr.iowa.gov](mailto:karen.kinkead@dnr.iowa.gov)  
Phone: 712.330.8461

Persons may also convey their comments orally by visiting the fourth floor of the Wallace State Office Building during regular business hours.

## NATURAL RESOURCE COMMISSION[571](cont'd)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held. Upon arrival, attendees should proceed to the fourth floor to check in at the Department's reception desk to sign in and be directed to the appropriate hearing location:

March 6, 2018  
12 noon

Conference Room 3 E & W  
Wallace State Office Building  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 571—101.1(481A), introductory paragraph, as follows:

**571—101.1(481A) Falconry regulations.** No person may take, transport, or possess any raptor without having first obtained a valid state/federal falconer's permit. Falconry permit holders shall comply with the department's rules and with the current Code of Federal Regulations pertaining to falconry. Only the following raptors may be taken from the wild: American kestrel, Cooper's hawk, Ferruginous hawk, Goshawk, Great horned owl, Gyrfalcon, Harris' hawk, Merlin, Peregrine falcon, Prairie falcon, Red-tailed hawk, Rough-legged hawk, and Sharp-shinned hawk. Raptors taken from the wild shall not be sold, bartered or traded. All wild raptors legally trapped or taken by a resident or nonresident falconer must be marked with an Iowa marker band provided by the department.

ITEM 2. Amend rule 571—101.3(481A), introductory paragraph, as follows:

**571—101.3(481A) Taking and possession provision.** The taking of ~~raptors~~ American kestrel, Cooper's hawk, Ferruginous hawk, Goshawk, Great horned owl, Gyrfalcon, Harris' hawk, Merlin, Prairie falcon, Red-tailed hawk, Rough-legged hawk, and Sharp-shinned hawk from the wild by resident falconers shall be limited to the following conditions:

ITEM 3. Renumber subrule **101.3(8)** as **101.3(9)**.

ITEM 4. Adopt the following **new** subrule 101.3(8):

**101.3(8)** Previously banded birds. Any raptor captured with a federal leg band or any research band already attached shall be immediately released at the site of capture, and the band number and location of trapping site shall be reported to the department within 48 hours.

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 5. Renumber rules **571—101.4(481A)** to **571—101.6(481A)** as **571—101.5(481A)** to **571—101.7(481A)**.

ITEM 6. Adopt the following new rule 571—101.4(481A):

**571—101.4(481A) Wild Peregrine falcons.** A wild Peregrine falcon permit allows for the capture, possession and use of a wild Peregrine falcon in hunting, subject to 571—Chapter 102. In addition to the following provisions, the holder of a wild Peregrine falcon permit shall comply with 571—101.1(481A), 571—101.2(481A), and 571—101.5(481A) through 571—101.7(481A) as well as other applicable law.

**101.4(1)** The taking of Peregrine falcons from the wild shall be conducted only by resident master falconers or resident general falconers with at least five years' field experience and subject to the following conditions:

*a.* Nestling birds shall not be taken. Young birds not yet capable of flight shall not be taken. Removal of eggs from nests is prohibited.

*b.* Only wild Peregrine falcons less than one year old shall be taken, and only between September 20 and October 20.

*c.* No permittee shall employ any method of take that is injurious to the bird.

*d.* No more than one wild Peregrine falcon per person may be possessed at any given time.

**101.4(2)** Recapture. Banded Peregrine falcons that are lost to the wild through accident may be retrapped at any time provided that the department has been advised of the loss and is notified of the attempt to recapture. If the banded raptor is recaptured, the department shall be notified of the recovery within 48 hours.

**101.4(3)** Previously banded Peregrines. Any wild Peregrine falcon captured with a federal leg band or any research band already attached shall be immediately released at the site of capture, and the band number and location of trapping site shall be reported to the department within 48 hours.

**101.4(4)** Lottery. Applications for wild Peregrine falcon permits shall be received by the department no later than July 31 of each year. Permit drawing from the names of qualifying applicants will be held at the August commission meeting.

**ARC 3624C**

## NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

#### Proposing rule making related to bobcat harvest zone and providing an opportunity for public comment

The Natural Resource Commission hereby proposes to amend Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6), 481A.38, 481A.39 and 481A.87.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 481A.38, 481A.39 and 481A.87.

#### *Purpose and Summary*

The Commission proposes to add 12 counties to the bobcat harvest zone starting in 2018. These 12 counties are Cedar, Cherokee, Clinton, Jackson, Jasper, Johnson, Lyon, Plymouth, Polk, Scott, Shelby, and Sioux counties. Population data from the past ten years reveals that Iowa's bobcat population

## NATURAL RESOURCE COMMISSION[571](cont'd)

continues to grow and expand its distribution into more counties with suitable habitat. This data is compiled from a variety of sources, such as hunter surveys, harvest information, field reports, and sightings.

*Fiscal Impact*

The proposed rule making does not require any financial expenditure to implement. There is no anticipated staff time, training, or resource expenses associated with the change in the bobcat harvest zone. The Department anticipates a modest increase in the fur harvester license sales from the proposed rule making. Resident fur harvester licenses, with the wildlife habitat fee, are \$31.50 per year pursuant to Iowa Code section 483A.1(1)“p.” If the Department sold five additional fur harvester licenses per newly opened county ( $5 \times 12 = 60$ ), these license sales would generate approximately \$1,890 in new revenue ( $\$31.50 \times 60$ ) for the State Fish and Game Protection Fund. A copy of the impact statement is available upon request from the Department.

*Jobs Impact*

The proposed rule making may have a minor positive impact on jobs by increasing overall trapping and hunting activity in these added counties. This proposed rule making will enable trappers and hunters to harvest bobcats over a larger area of the state each season, which may result in more business for the private sector in the following areas: hunting and trapping gear and other related equipment, and taxidermy work, and which could also lead to increased business for restaurants, hotels, and gas stations as people move around the state participating in the sport. A copy of the impact statement is available upon request from the Department.

*Waivers*

This rule making is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

Vince Evelsizer  
Department of Natural Resources  
1203 North Shore Drive  
Clear Lake, Iowa 50428  
Email: [vince.evelsizer@dnr.iowa.gov](mailto:vince.evelsizer@dnr.iowa.gov)  
Phone: 641.357.3517

Persons may also convey their comments orally by visiting the Clear Lake Fish Hatchery during regular business hours.

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held. Upon arrival, attendees should proceed to the fourth floor to check in at the Department’s reception desk to sign in and be directed to the appropriate hearing location:

## NATURAL RESOURCE COMMISSION[571](cont'd)

March 6, 2018  
12 noon

Conference Room 3 E & W  
Wallace State Office Building  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend subrule 108.7(2) as follows:

**108.7(2) *Open area.*** River otters may be taken statewide. Bobcats may be taken in the following counties: Adair, Adams, Appanoose, Audubon, Cass, Clarke, Crawford, Cedar, Cherokee, Clinton, Dallas, Davis, Decatur, Des Moines, Fremont, Guthrie, Harrison, Henry, Iowa, Jackson, Jasper, Jefferson, Johnson, Keokuk, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Plymouth, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Shelby, Sioux, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, and Woodbury.

**ARC 3618C**

**NURSING BOARD[655]**

**Notice of Intended Action**

**Proposing rule making related to the nurse licensure compact  
and providing an opportunity for public comment**

The Board of Nursing hereby proposes to rescind Chapter 16, "Nurse Licensure Compact," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 147.73.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 152E.

*Purpose and Summary*

This rule making proposes to rescind Chapter 16 because an enhanced nurse licensure compact will be implemented in Iowa.

*Fiscal Impact*

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

NURSING BOARD[655](cont'd)

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

Kathy Weinberg  
Iowa Board of Nursing  
400 S.W. 8th Street, Suite B  
Des Moines, Iowa 50309  
Email: [rules.comments@iowa.gov](mailto:rules.comments@iowa.gov)

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Rescind and reserve **655—Chapter 16.**

**ARC 3617C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

**Proposing rule making related to practice of respiratory care and polysomnography and providing an opportunity for public comment**

The Board of Respiratory Care and Polysomnography hereby proposes to amend Chapter 261, “Licensure of Respiratory Care Practitioners, Polysomnographic Technologists, and Respiratory Care and Polysomnography Practitioners,” and Chapter 262, “Continuing Education for Respiratory Care Practitioners and Polysomnographic Technologists,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 148G.5 and 152B.6.



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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 148G.5 and 152B.6.

*Purpose and Summary*

Item 1 corrects the name of the National Board for Respiratory Care. Item 2 updates the Board's address. Items 3 and 6 clarify the required documentation for a background check. Applicants will get informational documents in a packet from the Board of Respiratory Care and Polysomnography that do not need to be submitted with a license application. This proposed rule making clarifies that for the background check the Board needs the cards and not the informational documents. Items 4 and 5 add options for respiratory care students seeking to meet the requirements for polysomnography licensure. This change in rule more closely matches options given in the Iowa Code. Item 7 changes the number of continuing education hours that a dual licensee must earn from in-person courses. This change brings the requirements in line with the other two licenses issued by the Board. Item 8 reletters paragraph 262.3(2)“e” as 262.3(2)“f” to allow for the new paragraph proposed in Item 9. Item 9 will allow licensees to earn continuing education for trainings that may not be related to a clinical process but are still in an area of education that is utilized by the practitioner in the practitioner's regular practice.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board of Respiratory Care and Polysomnography for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board of Respiratory Care and Polysomnography no later than 4:30 p.m. on March 7, 2018. Comments should be directed to:

Tony Alden  
Professional Licensure Division  
Lucas State Office Building, Fifth Floor Room 526  
321 E. 12th Street  
Des Moines, Iowa 50319  
Fax: 515.281.3121  
Email: [tony.alden@idph.iowa.gov](mailto:tony.alden@idph.iowa.gov)  
Phone: 515.281.4401

*Public Hearing*

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

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

March 7, 2018  
8:30 to 9 a.m.

Fifth Floor Conference Room 526  
Lucas State Office Building  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **645—261.1(148G,152B)**, definition of “NBRC,” as follows:  
“NBRC” means the National Board of for Respiratory Care.

ITEM 2. Amend paragraph **261.2(1)“a”** as follows:

a. The applicant shall complete a board-approved application packet. Application forms may be obtained from the board's Web site (~~http://idph.iowa.gov/Licensing~~) website (idph.iowa.gov/Licensing) or directly from the board office or may be submitted electronically at https://IBPLicense.iowa.gov IBPLicense.iowa.gov. Paper applications shall be sent to Board of Respiratory Care and Polysomnography, Professional Licensure Division, Fifth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

ITEM 3. Amend paragraph **261.2(1)“d”** as follows:

d. The applicant shall submit two completed sets of ~~the~~ fingerprnt packet cards to facilitate a national criminal history background check. The cost for the evaluation of the fingerprnt packet cards and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) criminal history background checks shall be assessed to the applicant. The board may withhold issuing a license pending receipt of a report from the DCI and FBI.

ITEM 4. Amend subrule 261.4(2) as follows:

**261.4(2)** Graduation from a respiratory care program accredited by CoARC ~~and completion of the sleep add-on program accredited by CoARC. A~~ for which a transcript shall be submitted to the board office directly from the college or university; or ~~and direct-source verification of one of the following:~~

- a. Completion of the curriculum for a polysomnographic certificate established and accredited by the CAAHEP as an extension of the respiratory care program, or  
b. Obtaining the sleep disorder specialist credential from the NBRC, or  
c. Obtaining the registered polysomnographic technologist credential from the BRPT; or

ITEM 5. Amend paragraph **261.5(2)“b”** as follows:

b. Completion of a sleep add-on program accredited by CoARC. A for which a transcript shall be submitted to the board office directly from the college or university; or ~~and direct-source verification of one of the following:~~

- (1) Completion of the curriculum for a polysomnographic certificate established and accredited by the CAAHEP as an extension of the respiratory care program, or  
(2) Obtaining the sleep disorder specialist credential from the NBRC, or

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

(3) Obtaining the registered polysomnographic technologist credential from the BRPT; or

ITEM 6. Amend subrule 261.14(3) as follows:

**261.14(3)** If the license has been inactive for two or more years, the licensee shall submit two completed ~~sets of the fingerprint packet cards~~ to facilitate a national criminal history background check. The cost for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks shall be assessed to the applicant. The board may withhold issuing a license pending receipt of a report from the DCI and FBI.

ITEM 7. Amend paragraph **262.2(1)“b”** as follows:

*b.* For respiratory care and polysomnography practitioner licensees: complete a minimum of 24 hours of continuing education. ~~Eighteen~~ Fourteen of the 24 hours of continuing education shall be earned by completing a program in which the instructor conducts the class in person or by employing an electronic technology that allows for real-time communication between the instructor and licensee. At least 8 hours but not more than 12 hours shall be on sleep-related topics.

ITEM 8. Reletter paragraph **262.3(2)“e”** as **262.3(2)“f.”**

ITEM 9. Adopt the following **new** paragraph **262.3(2)“e”**:

*e.* A maximum of 6 hours of continuing education may be obtained by completing programs which enhance a supplemental or complementary skill set directly related to the practice of respiratory care or polysomnography. Content areas include but are not limited to record keeping, electronic medical records, geriatric care, mandatory reporter training, and ethics.

**ARC 3628C**

**PUBLIC SAFETY DEPARTMENT[661]**

**Notice of Intended Action**

**Proposing rule making related to establishment of a statewide sobriety and drug monitoring program and providing an opportunity for public comment**

The Department of Public Safety hereby proposes to adopt new Chapter 159, “Statewide Sobriety and Drug Monitoring Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 901D.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 901D.

*Purpose and Summary*

2017 Iowa Acts, Senate File 444, established the statewide sobriety and drug monitoring program for the purpose of protecting the public health and welfare by reducing the number of people on the highways who operate a motor vehicle while under the influence of alcohol or a controlled substance and by reducing the number of repeat offenders who commit crimes in which the use of alcohol or a controlled substance is a contributing factor in the commission of the crime.

The legislation requires the Department to establish a statewide sobriety and drug monitoring program that is available 24 hours per day, seven days per week. The program provides that a court or authorized government entity such as a sheriff’s office or a parole or probation office may require a person who has been charged with, pled guilty to, or been convicted of an eligible offense involving the abuse of drugs or alcohol to be subject to testing to determine whether alcohol or a controlled substance is present in the person’s body.

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

The program will be available to offenders who are required to participate in the program as ordered by a court or a probation or parole officer as a condition of bond, pretrial release, sentence, probation or parole. Breath testing for alcohol must be done at least twice per day as a condition of the program, and immediate sanctions must be effectively applied if alcohol or controlled substance usage is detected. Testing for controlled substances can be done randomly as often as three times per week. The program also requires that in situations where the Department of Transportation requires a person to install an ignition interlock device as a condition of the person's license to operate noncommercial motor vehicles, a person must be eligible for a temporary restricted license and must install an ignition interlock device along with participating in the 24/7 program, in jurisdictions where the program is available. Finally, the program will allow testing by an approved alternative method, where twice-a-day testing creates a documented hardship, if such methods and devices have been approved by the commissioner of public safety.

The legislation also requires the Department to promulgate rules to provide for the nature and manner of testing, including the procedures and apparatus used for testing; to establish a fee structure to pay for the costs of the program; to provide for the acceptance of public and private grants and donations to support the program; to establish a stakeholder group to review and recommend changes to the program; and to establish an application process for jurisdictions that want to participate in the program. The legislation further requires the Department to provide a data management system to be used by the Department and all participating jurisdictions for the program.

The purposes of the program are focused on highway safety, and specifically on offenders who commit an eligible offense involving alcohol or controlled substances and driving a motor vehicle. Research shows that persons who have committed an eligible offense and who then participate in a sobriety monitoring program that requires twice-a-day testing make changes and better decisions about their use of alcohol or controlled substances before driving a motor vehicle, which results in a lower recidivism rate. These changes will also result in safer roads and healthier employees and families. The program implemented by these rules is not designed or intended as a substitute for an appropriate alcohol or drug treatment program or as a substitute for parole or probation supervision.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. The legislation provides that the program fees, including the costs of testing, are paid by the participants.

*Jobs Impact*

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

*Waivers*

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any. Pursuant to the provisions of rule 661—10.222(17A), the Department has the authority to grant waivers from the rules.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

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

Barb Edmondson  
Department of Public Safety  
Oran Pape State Office Building  
215 East 7th Street  
Des Moines, Iowa 50319  
Email: [edmondso@dps.state.ia.us](mailto:edmondso@dps.state.ia.us)  
Phone: 515.725.6188

*Public Hearing*

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

March 6, 2018	First Floor Public Conference Room 125
10 to 11 a.m.	Oran Pape State Office Building
	215 East 7th Street
	Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following **new** 661—Chapter 159:

CHAPTER 159  
STATEWIDE SOBRIETY AND DRUG MONITORING PROGRAM

**661—159.1(901D) Program created.** The statewide sobriety and drug monitoring program, also referred to as the “24/7 program,” is established in the department of public safety for use by participating jurisdictions. The program shall be available 24 hours per day, seven days per week in the participating jurisdictions. Participation in or use of the 24/7 program is a voluntary decision of a participating jurisdiction. A participating jurisdiction cannot be required to participate in or to continue to participate in the 24/7 program.

**661—159.2 to 159.9** Reserved.

**661—159.10(901D) Definitions.** The following definitions apply to this chapter:

“*Alcohol*” means an alcoholic beverage as defined in Iowa Code section 321J.1.

“*Commissioner*” means the commissioner of public safety as defined in Iowa Code section 80.1A.

“*Controlled substance*” means the same as defined in Iowa Code section 124.101.

“*Department*” means the department of public safety.

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

*“Eligible offense”* means a criminal offense in which the abuse of alcohol or a controlled substance was a contributing factor in the commission of the offense, as determined by the court or a governmental entity of the participating jurisdiction. For purposes of operating while intoxicated offenses committed in violation of Iowa Code section 321J.2, “eligible offense” includes only the following offenses:

1. A first offense in which the person’s alcohol concentration exceeded .15.
2. A first offense in which an accident resulting in personal injury or property damage occurred.
3. A first offense in which the person refused to submit to a chemical test requested pursuant to Iowa Code section 321J.6.
4. A second or subsequent offense.

*“Failed test”* means any of the following:

1. A test or combination of tests that shows the presence of alcohol, a controlled substance, a combination of alcohol and one or more controlled substances, or a combination of two or more controlled substances, if any of the controlled substances are not prescribed by a health care provider or are not used in accordance with the health care provider’s written instructions.
2. A failure or refusal to submit to testing, including but not limited to the nonpayment of the required fee.
3. Incomplete testing or results that indicate efforts to tamper with or interfere with the test or with valid test results, whether or not those efforts are successful.
4. Failure to appear to submit to testing.

*“Immediate sanction”* means a sanction that is applied within minutes of a failed test result.

*“Law enforcement agency”* means a sheriff’s office, city police department or parole or probation office of the Iowa department of corrections that has been approved to administer, implement and enforce the statewide sobriety and drug monitoring program established in Iowa Code chapter 901D for the participating jurisdiction.

*“Participating jurisdiction”* means a county or a city that chooses to participate in the statewide sobriety and drug monitoring program and that has been approved for participation by the department.

*“Sobriety and drug monitoring program”* or *“24/7 program”* means the statewide sobriety and drug monitoring program established in Iowa Code chapter 901D.

*“Test”* or *“testing”* means a procedure or set of procedures performed using equipment, devices and methods approved by the commissioner to determine the presence of alcohol or a controlled substance in a person’s breath or bodily fluid, including blood, urine, saliva, and perspiration, and includes any combination of breath testing, drug patch testing, urine analysis testing, saliva testing, and continuous or transdermal alcohol monitoring.

*“Timely sanction”* means a sanction that is applied within hours or days after a failed test result. A timely sanction shall be applied as soon as possible, but the period between the failed test result and the application of the timely sanction shall not exceed five days.

**661—159.11(901D) Participating jurisdiction requirements.**

**159.11(1) Program requirements.** As a participating jurisdiction of the 24/7 program, the participating jurisdiction shall:

- a. Designate the law enforcement agency or third-party provider that will administer, implement and enforce the 24/7 program. More than one law enforcement agency or third-party provider may be designated.
- b. Provide one or more locations for testing persons who are participating in the 24/7 program for the presence of alcohol or a controlled substance.
- c. Ensure that each designated location is available 24 hours per day, seven days per week for persons to be tested.
- d. Ensure that personnel who administer tests and collect bodily specimens for testing at the location have all required training and certifications to use or operate the testing equipment or devices.
- e. Provide testing equipment and devices.

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

- f.* Collect program fees from persons subject to testing and use program fees to pay for the participating jurisdiction's costs to administer the program and purchase or maintain testing equipment and devices.
- g.* Provide for and apply immediate sanctions for failed tests.
- h.* Provide for and apply timely sanctions for failed tests.
- i.* Provide test results to the court, prosecutor, and person's attorney and also provide test results and other required program information to the program data management system.
- j.* Provide for one or more alternative testing methods, if such methods have been approved by the commissioner, in cases of persons for whom testing at least twice per day creates a documented hardship or is geographically impractical.
- k.* Establish and maintain a 24/7 program account, place all program fees collected into the account and use the funds in the account only for the purposes of administering and operating the 24/7 program, including but not limited to paying for the services of a third-party provider. The funds in the account shall be considered public funds and shall be subject to the rules and policies of the state auditor's office.
- l.* Establish a program to accept public or private grant funds, gifts, or donations and use the funds received to support program activities, including but not limited to the payment of fees for indigent persons. The funds collected under this program may be deposited and held in the 24/7 program account.
- m.* Provide reports to the department as required.
- n.* Ensure that an audit of the 24/7 program account is conducted at least annually and make the audit available to the department upon request.
- o.* Maintain sufficient security protocols to protect the personal information of persons subject to testing from unauthorized use.
- p.* Be approved by the department as a participating jurisdiction.

**159.11(2) *Third-party provider.*** A participating jurisdiction may designate a third-party provider to provide testing services and any other action or requirement of the participating jurisdiction, including but not limited to the requirements in subrule 159.11(1). The department shall review any third-party provider designated by the participating jurisdiction as a part of the application process. A third-party provider must be approved by the department before providing any service of the 24/7 program.

**159.11(3) *Application.*** A county or city that desires to become a participating jurisdiction shall submit an application to the department. The application shall be made on a form provided by the department, which is available at [www.dps.state.ia.us/commis/gtsb/index.shtml](http://www.dps.state.ia.us/commis/gtsb/index.shtml). The department shall notify the participating jurisdiction whether it has been approved to participate in the 24/7 program. Approval shall be in the sole discretion of the department.

**661—159.12(901D) Participant requirements.**

**159.12(1) *Requirements.*** A person subject to testing in the 24/7 program is required to do all of the following:

- a.* Abstain from all alcohol and controlled substances while enrolled in the program. If a person has been issued a prescription for a controlled substance, the person may participate in the 24/7 program and continue to take the prescribed controlled substance only with the health care provider's approval and in accordance with the health care provider's written instructions.
- b.* Submit to testing as required to determine whether alcohol or a controlled substance is present in the person's body.
- c.* Participate in the 24/7 program when ordered as a condition of bond, pretrial release, sentence, probation, parole, or a temporary restricted license.
- d.* Sign all forms, waivers and releases and provide all required information that is necessary for participation in the program to enable the testing to occur and the test results to be reported, disseminated and used as required by the 24/7 program, including but not limited to providing testing information to the county attorney, person's attorney, court or parole or probation officer as appropriate.
- e.* Obtain a temporary restricted license when eligible, if the person's driver's license is suspended or revoked.

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

*f.* Install an approved ignition interlock device on all motor vehicles owned or operated by the person if the person's driver's license is suspended or revoked or as is otherwise required by Iowa Code section 321J.17.

*g.* Pay all program fees, including but not limited to the enrollment fee; the costs of tests, test equipment or test devices; and the costs of installing, activating, monitoring, and deactivating any testing equipment or devices.

*h.* Agree to be subject to immediate sanctions or timely sanctions, as applicable, for noncompliance with the 24/7 program requirements.

**159.12(2)** Reserved.

**661—159.13 to 159.19** Reserved.

**661—159.20(901D) Testing.**

**159.20(1) Methods.** The following methods and procedures shall be used to collect samples or perform testing to determine the presence of alcohol or a controlled substance in the person's breath or bodily fluid.

*a.* Evidentiary breath testing devices and methods as described in rule 661—157.2(321J).

*b.* Preliminary breath screening test devices and methods as described in rule 661—157.5(321J).

*c.* Urine collection methods and equipment as described in rule 661—157.3(321J).

*d.* Saliva testing methods and equipment, as approved by the commissioner and posted on the website of the department.

*e.* Perspiration testing methods and equipment, as approved by the commissioner and posted on the website of the department.

*f.* Continuous or transdermal alcohol monitoring, as approved by the commissioner and posted on the website of the department.

*g.* Any other methods, equipment or devices approved by the commissioner and posted on the website of the department.

**159.20(2) Other devices and methods.** Scientifically established tests or methods appropriate to a particular device shall be used in determining whether an alternative device or method meets an acceptable standard for operation, including accuracy. The department may, in its discretion, accept test results from another laboratory. The commissioner may consider all other factors in addition to scientific testing and accuracy, including but not limited to cost, availability, and training in determining whether or not to approve a method or device. Approval of other devices or methods is in the sole discretion of the commissioner.

**661—159.21 to 159.29** Reserved.

**661—159.30(901D) Program fees.**

**159.30(1) Enrollment fee.** A person subject to testing shall pay an enrollment fee of \$30 for each enrollment in the program. A person may be ordered or required to enroll in the program more than once, and the enrollment fee is required for each enrollment.

**159.30(2) Fees for tests.** A person subject to testing shall pay all fees associated with the testing. The fee for each test shall be maintained on a list approved by the commissioner and posted on the website of the department. The law enforcement agency shall inform a person subject to testing of each applicable test fee.

**159.30(3) Payment of fees.** A person subject to testing shall pay the fee for each test before taking the test. The law enforcement agency shall not be required to administer the test if the person subject to testing does not pay the fee for the test. Failure to pay the required test fee may subject the person to immediate sanctions or timely sanctions. Community service or other in-kind payment is not authorized as a substitute for payment of the required fees.

**661—159.31 to 159.39** Reserved.



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

**661—159.40(901D) Fees—indigent participants.** A person subject to testing is required to pay the full fee for each test. The fees are established at the minimum level needed to purchase supplies and equipment and to cover the costs of administering the program.

**159.40(1) Determination of indigency.** A person subject to testing who requests a determination of indigency for purposes of the 24/7 program shall provide all requested financial information to the law enforcement agency or designated third-party provider so the agency or provider can determine whether or not the person is indigent for purposes of the 24/7 program. A finding of indigency by the court for purposes of determining whether a person should receive court-appointed counsel is not binding on the agency or provider and does not constitute a final determination of indigency for purposes of the 24/7 program. In determining indigency, the agency or provider may consider all relevant financial information, including but not limited to income, assets, other sources of support, barter or in-kind payments, and expenditures including but not limited to expenditures for nonessential or luxury items.

**159.40(2) Payment of indigent fees.**

*a.* If the law enforcement agency or designated third-party provider determines that a person subject to testing is indigent and is able to pay a portion of the required fee for testing but is not able to pay the full fee amount, the agency or provider shall require the person to pay only the portion which the person is able to pay. The agency or provider shall authorize payment of the remaining fee out of the 24/7 program funds, including but not limited to funds received from public or private grants, gifts or donations, if such funds have been received.

*b.* If the law enforcement agency or designated third-party provider determines that a person subject to testing is indigent and is not able to pay any part of the required fee for testing, the agency or provider shall authorize the payment of the fee out of the 24/7 program funds, including but not limited to funds received from public or private grants, gifts or donations, if such funds have been received.

*c.* The law enforcement agency or third-party provider shall make a written determination of whether a person subject to testing is indigent and the amount of the fee the person is able to pay, if any. A copy of the written determination shall be provided to the person requesting a determination of indigency.

*d.* The participating jurisdiction, including the designated law enforcement agency or third-party provider, is not required to provide unpaid or free testing at the jurisdiction's, agency's or provider's expense if there are not sufficient funds in the 24/7 program account. The participating jurisdiction shall first use the funds in the 24/7 program account to pay for the participating jurisdiction's costs to administer the program and purchase or maintain testing equipment and devices and then use any remaining funds to pay fees for indigent participants.

**661—159.41 to 159.49** Reserved.

**661—159.50(901D) Stakeholder group.** The department hereby establishes a stakeholder group for the 24/7 program. The designated stakeholder group for the 24/7 program shall be the Iowa impaired driving coalition. Representatives of other public or private groups may request to be added to the 24/7 program stakeholder group.

**159.50(1) Duties.** The 24/7 program stakeholder group shall act as an advisory group to the department and the governor's traffic safety bureau. The stakeholder group shall review the 24/7 program and recommend changes to the governor's traffic safety bureau.

**159.50(2) Meetings.** The 24/7 program stakeholder group shall meet as requested by the bureau chief of the governor's traffic safety bureau. Notice of the stakeholder meetings shall be provided as required by Iowa Code chapter 21. Records of the stakeholder group shall be subject to the provisions of Iowa Code chapter 22.

**661—159.51 to 159.59** Reserved.

**661—159.60(901D) Grant program established.** The department authorizes each participating jurisdiction to create a grant program account for the purpose of accepting public and private grant

PUBLIC SAFETY DEPARTMENT[661](cont'd)

funds, gifts and donations to support the 24/7 program of the participating jurisdiction. The funds in the account shall be considered public funds and shall be subject to the rules and policies of the state auditor's office.

These rules are intended to implement Iowa Code chapter 901D.

**ARC 3620C**

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to grounds for protest of property tax assessment and providing an opportunity for public comment**

The Department of Revenue hereby proposes to amend Chapter 71, "Assessment Practices and Equalization," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 421.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2017 Iowa Acts, chapter 151.

*Purpose and Summary*

This rule making updates the grounds for protests of property tax assessments to reflect the changes made in 2017 Iowa Acts, House File 478. House File 478 removed requirements for the various grounds for protest, required that the Director of Revenue prescribe forms for the filing of a protest, and added misconduct as a ground for protest.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

REVENUE DEPARTMENT[701](cont'd)

Legal Services  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306  
Email: [tim.reilly@iowa.gov](mailto:tim.reilly@iowa.gov)  
Phone: 515.725.2294

Persons who want to convey their views orally should contact Legal Services, Department of Revenue, at 515.281.8003 or the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

#### *Public Hearing*

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

#### *Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 71.20(4) as follows:

**71.20(4)** *Appeals to boards of review.*

*a. Jurisdiction.* A board of review may act only upon written protests which have been filed with the board of review in compliance with Iowa Code section 441.37(1)“a.”

(1) Protests must be filed between April 2 and April 30, inclusive. In the event April 30 falls on a Saturday or Sunday, protests filed the following Monday shall be considered to have been timely filed. Protests postmarked by April 30 or the following Monday if April 30 falls on a Saturday or Sunday shall also be considered to have been timely filed.

(2) The protest must identify one or more grounds for protest under Iowa Code section 441.37.

(3) All protests must be in writing, on forms prescribed by the director of revenue, and signed by the taxpayer protester or the taxpayer's protester's authorized agent. A protest shall not be rejected for the sole reason that the protest was not filed using the prescribed form if the protest otherwise complies with Iowa Code section 441.37(1)“a.” A written request for an oral hearing must be made at the time of filing the protest ~~and may be made by checking the appropriate box on the form prescribed by the department of revenue.~~ Protests may be filed for previous years if the taxpayer discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged. The protester may combine on one form assessment protests on parcels separately assessed if the same grounds are relied upon as the basis for protesting each separate assessment. If an oral hearing is requested on more than one of the protests, the person making the combined protests may request that the oral hearings be held consecutively.

(4) A board of review may allow protests to be filed in electronic format. Protests transmitted electronically are subject to the same deadlines as written protests.

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

b. Grounds for protest. Taxpayers may protest to a board of review on one or more of the grounds specified in Iowa Code section 441.37. The grounds for protest and procedures for considering protests are as follows:

(1) ~~The assessment is not equitable when compared with those of similar properties in the same assessing taxing district. If this ground is a basis for the protest, the protest must contain the legal descriptions and assessments of the comparable properties. The comparable properties selected by the taxpayer must be located within the same assessing district as the property for which the protest has been filed (*Maytag Co. v. Partridge*, 210 N.W.2d 584 (Iowa 1973)). If this ground is a basis for the protest, the protester may identify comparable properties to support the claim. In considering a protest based upon this ground, the board of review should examine carefully all information used to determine the assessment of the subject property and the, consider any comparable properties, and determine that those properties are indeed comparable to the subject property whether the evidence demonstrates the subject property is inequitably assessed. It is the responsibility of the taxpayer to establish that the other properties submitted are comparable to the subject property and that inequalities exist in the assessments (*Chicago & N. W. Ry. Co. v. Iowa State Tax Commission*, 257 Iowa 1359, 137 N.W.2d 246 (1965)).~~

(2) ~~The property is assessed at more than its actual value as defined in Iowa Code section 441.21 the value authorized by law. If this ground is used, the taxpayer must state both the amount by which the property is overassessed and the amount considered to be the actual value of the property. If this ground is the basis for a protest, the protester may indicate the amount considered to be the actual value of the property.~~

(3) ~~The property is not assessable and should be exempt from taxation. If using this ground, taxpayers must state the reasons why it is felt the property is not assessable, is exempt from taxes, or is misclassified. If this ground is the basis for a protest, the protester may indicate why the property is exempt, misclassified, or not assessable.~~

(4) ~~There is an error in the assessment. An error in the assessment would most probably involve erroneous mathematical computations or errors in listing the property may include, but is not limited to, listing errors, assessment of subject property for less than authorized by law, or erroneous mathematical calculations. The improper classification of property also constitutes an error in the assessment. If this ground is used, the taxpayer's protest must state the specific error alleged. If this ground is the basis for a protest, the protester must indicate the alleged error.~~

A board of review must determine:

1. If an error exists, and
2. How the error might be corrected.

(5) ~~There is fraud or misconduct in the assessment. If this ground of protest is used, the taxpayer's protest protester must state the specific fraud or misconduct alleged, and the board of review must first determine if there is validity to the taxpayer's protester's allegation. If it is determined that there is fraud in the assessment or that there has been misconduct by the assessor, the board of review shall take action to correct the assessment and report the matter to the director of revenue. For purposes of this subrule, "misconduct" means the same as defined in 2017 Iowa Code section 441.9.~~

(6) ~~There has been a change of value of real estate since the last assessment. The board of review must determine that the value of the property as of January 1 of the current year has changed since January 1 of the previous reassessment year. This is the only ground upon which a protest pertaining to the valuation of a property can be filed in a year in which the assessor has not assessed or reassessed the property pursuant to Iowa Code section 428.4. In a year subsequent to a year in which a property has been assessed or reassessed pursuant to Iowa Code section 428.4, a taxpayer cannot protest to the board of review based upon actions taken in the year in which the property was assessed or reassessed (*James Black Dry Goods Co. v. Board of Review for City of Waterloo*, 260 Iowa 1269, 151 N.W.2d 534 (1967); *Commercial Merchants Nat'l Bank and Trust Co. v. Board of Review of Sioux City*, 229 Iowa 1081, 296 N.W. 203 (1941)).~~

(6) Protests may be filed for previous years if the protester discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged.

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

c. Disposition of protests. After reaching a decision on a protest, the board of review shall give the taxpayer written notice of its decision. The decision shall be mailed no later than three days after the board of review's adjournment. The notice shall contain the following information:

- (1) The valuation and classification of the property as determined by the board of review.
- (2) If the protest was based on the ground the property was not assessable, the notice shall state whether the exemption is allowed and the value at which the property would be assessed in the absence of the exemption.
- (3) The specific reasons for the board's decision with respect to the protest.
- (4) That the board of review's decision may be appealed to either the property assessment appeal board or district court within 20 days of the board's adjournment or May 31, whichever date is later. If the adjournment date is known, the date shall be stated on the notice. If the adjournment date is not known, the notice shall state the date will be no earlier than May 31. ~~Notice of the appeal shall be served on the chairperson, presiding officer, or clerk of the board of review after the written notice of appeal has been filed with the clerk of district court.~~

1. Appeal to property assessment appeal board. An appeal from the board of review to the property assessment appeal board may be made pursuant to the provisions of Iowa Code section 441.37A and rule 701—126.1(421,441).

2. Appeal to district court. An appeal from the board of review to the district court may be made pursuant to the provisions of Iowa Code section 441.38. The appeal shall be filed in the county where the property is located. Notice of the appeal shall be served on the chairperson, presiding officer, or clerk of the board of review after the written notice of appeal has been filed with the clerk of district court.

ITEM 2. Amend subrule 71.21(8) as follows:

**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. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. ~~The~~

a. For assessment years prior to January 1, 2018, 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.

b. For assessment years beginning on or after January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold the valuation.

**ARC 3629C****ATTORNEY GENERAL[61]****Adopted and Filed****Rule making related to increase in late charge**

The Attorney General (the Department) hereby amends Chapter 22, "Notification and Fees," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 537.6117 and 537.6203(4).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 537.6203(4).

*Purpose and Summary*

This amendment increases the amount of the late charge assessed by the Department from \$25 to \$75. The amendment corresponds with Iowa Code section 537.6203(4) as amended by 2017 Iowa Acts, Senate File 502. The General Assembly increased the maximum amount that may be assessed as a late charge from \$25 to \$75, effective July 1, 2017. The amendment to subrule 22.6(1) increases the late charge assessed by the Department accordingly.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 13, 2017, as **ARC 3308C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on January 24, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

ATTORNEY GENERAL[61](cont'd)

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making action is adopted:

Amend subrule 22.6(1) as follows:

**22.6(1) Late charge.** The administrator may collect a late charge of ~~\$25~~ \$75 from any party subject to Iowa Code sections 537.6201 to 537.6203 who has failed to pay the required fees in full within 30 days after their due date.

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3633C**

**EDUCATIONAL EXAMINERS BOARD[282]**

**Adopted and Filed**

**Rule making related to rules review**

The Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Chapter 15, "Special Education Support Personnel Authorizations," Chapter 16, "Statements of Professional Recognition (SPR)," and Chapter 18, "Issuance of Administrator Licenses and Endorsements"; rescinds Chapter 21, "Conversion Information"; and amends Chapter 22, "Authorizations," and Chapter 27, "Issuance of Professional Service Licenses," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 272.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 272.2(1)"a" and 272.28.

*Purpose and Summary*

The amendments address inconsistencies and unnecessary language identified during a review of the Board's rules. These amendments clarify language regarding temporary permits and conditional licensure, eliminate redundant language regarding endorsements, and make other minor corrections.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 6, 2017, as **ARC 3471C**. A public hearing was held on December 27, 2017. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on January 11, 2018.

*Fiscal Impact*

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

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—Chapter 6.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 13.1(2) as follows:

**13.1(2) *Temporary permits.*** The executive director may issue a temporary permit to an applicant for any type of license, certification, or authorization issued by the board, after receipt of a fully completed application; determination that the applicant meets all applicable prerequisites for issuance of the license, certification, or authorization; and satisfactory evaluation of the Iowa criminal history background check-and registries and records check set forth in 13.1(1)“b” and “c.” The temporary permit shall serve as evidence of the applicant's authorization to hold a position in Iowa schools, pending the satisfactory completion of the national criminal history background check. The temporary permit shall expire upon issuance of the requested license, certification, or authorization or 90 days from the date of issuance of the permit, whichever occurs first, unless the temporary permit is extended upon a finding of good cause by the executive director.

ITEM 2. Amend rule 282—13.11(272) as follows:

**282—13.11(272) *Specific requirements for a Class B license.*** A Class B license, which is valid for two years and which is nonrenewable, may be issued to an individual under the following conditions:

**13.11(1)** No change.

**13.11(2) *Program of study for ~~special education endorsement~~.*** The college or university must outline the program of study necessary to meet the ~~special education~~ endorsement requirements for specified areas. This program of study must be attached to the application.

**13.11(3) and 13.11(4)** No change.

ITEM 3. Adopt the following **new** rule 282—13.20(272):

**282—13.20(272) *Permanent professional certificates.*** Effective October 1, 1988, the permanent professional certificate will no longer be issued. Any permanent professional certificate issued prior to October 1, 1988, will continue in force with the endorsements and approvals appearing thereon, unless revoked or suspended for cause. If a permanent professional certificate is revoked and if the holder is able at a later date to overcome or remediate the reasons for the revocation, the holder may apply for the appropriate new class of license set forth in this chapter.



## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

ITEM 4. Amend rule 282—15.1(272) as follows:

**282—15.1(272) Authorizations requiring a license.**

**15.1(1)** The following licenses are based on teaching endorsements.

- a. Special education consultant.
- ~~b. Itinerant hospital services or home services teacher.~~
- ~~c. Special education media specialist.~~
- ~~d. b.~~ Supervisor of special education—instructional.
- ~~e. c.~~ Work experience coordinator.

**15.1(2)** The following licenses are orientation and mobility specialist license is based on school-centered preparation, but the sequence of coursework does not permit service as a teacher.

- ~~a. School psychologist.~~
- ~~b. Speech-language pathologist.~~
- ~~c. School audiologist.~~
- ~~d. School social worker.~~
- ~~e. Orientation and mobility specialist.~~
- ~~f. Supervisor of special education—support.~~

ITEM 5. Rescind and reserve rule **282—15.3(272)**.

ITEM 6. Rescind and reserve rule **282—15.4(272)**.

ITEM 7. Amend rule 282—15.6(272) as follows:

**282—15.6(272) Work experience coordinator.**

**15.6(1)** No change.

**15.6(2) Program requirements.**

- a. An applicant must hold a baccalaureate degree.
- b. Content. The coursework must include:
  - (1) A course in career-vocational programming for special education students (if not included in the program for 5-12 endorsement).
  - (2) A course in coordination of cooperative occupational education programs.
  - (3) A course in career-vocational assessment and guidance of the handicapped for those with disabilities.

**15.6(3) Other.** An applicant must hold a special education endorsement—grades 5-12.

ITEM 8. Amend rule 282—16.1(272) as follows:

**282—16.1(272) Statement of professional recognition (SPR).**

**16.1(1)** The following are authorizations requiring or permitting that require or permit statements of professional recognition and licenses obtained from the professional licensure division, department of public health, or the board of nursing and that do not permit service as a teacher:

- a. School audiologist.
- b. School nurse.
- c. School occupational therapist.
- d. School physical therapist.
- e. School social worker.
- f. Special education nurse.
- g. Speech-language pathologist.

**16.1(2)** No change.

ITEM 9. Amend rule 282—16.2(272) as follows:

**282—16.2(272) School audiologist.** If an applicant has completed a master's degree in audiology but has not completed the education sequence or chooses not to be certified, the applicant must obtain a license from the Iowa board of speech pathology and audiology, department of public health.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Additionally, the person is required to obtain an SPR from the board of educational examiners. ~~Alternatively, a person may meet the requirements for an endorsement in this area as set forth in 282—Chapter 15.~~

**16.2(1) Authorization.** The holder of this statement of professional recognition (~~or endorsement~~) is authorized to serve as a school audiologist to pupils from birth to age 21 who have hearing impairments (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

**16.2(2) to 16.2(4)** No change.

ITEM 10. Amend rule 282—16.6(272) as follows:

**282—16.6(272) School social worker.** A person who meets the requirements set forth below may be issued a statement of professional recognition (SPR) by the board of educational examiners. ~~Alternatively, a person may meet the requirements for an endorsement in this area as set forth in 282—Chapter 15.~~

**16.6(1) Authorization.** ~~An individual who meets the requirements of 282—subrule 15.7(4) or 16.6(2)~~ The holder of this statement of professional recognition is authorized to serve as a school social worker to pupils from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

**16.6(2) to 16.6(4)** No change.

ITEM 11. Amend rule 282—16.8(272) as follows:

**282—16.8(272) Speech-language pathologist.** If an applicant has completed a master's degree in speech pathology but has not completed the education sequence or chooses not to be certified, the applicant must obtain a license from the Iowa board of speech pathology and audiology, department of public health. Additionally, the person is required to obtain an SPR from the board of educational examiners. ~~Alternatively, a person may meet the requirements for an endorsement in this area as set forth in 282—Chapter 21.~~

**16.8(1) Authorization.** The holder of this statement of professional recognition (~~or endorsement—see requirements set forth in 282—subrule 15.7(2))~~) is authorized to serve as a speech-language pathologist to pupils from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

**16.8(2) to 16.8(4)** No change.

ITEM 12. Amend rule 282—18.1(272) as follows:

**282—18.1(272) All applicants desiring an Iowa administrator license.**

**18.1(1)** No change.

**18.1(2) Temporary permits.** The executive director may issue a temporary permit to an applicant for any type of license, certification, or authorization issued by the board, after receipt of a fully completed application; determination that the applicant meets all applicable prerequisites for issuance of the license, certification, or authorization; and satisfactory evaluation of the Iowa criminal history background check and registries and records check set forth in 282—paragraphs 13.1(1)“b” and “c.” The temporary permit shall serve as evidence of the applicant's authorization to hold a position in Iowa schools, pending the satisfactory completion of the national criminal history background check. The temporary permit shall expire upon issuance of the requested license, certification, or authorization or 90 days from the date of issuance of the permit, whichever occurs first, unless the temporary permit is extended upon a finding of good cause by the executive director.

ITEM 13. Amend rule 282—18.14(272) as follows:

**282—18.14(272) Endorsements.**

**18.14(1)** No change.

**18.14(2)** The applicant must follow one of these options:

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- a. Identify with a recognized Iowa administrator preparing institution, meet that institution's current requirements for the endorsement desired, and receive that institution's recommendation; or
- b. Identify with a recognized non-Iowa administrator preparation institution and receive a statement that the applicant has completed the equivalent of the institution's approved program for the endorsement sought. A transcript evaluation will also be required.

ITEM 14. Rescind and reserve **282—Chapter 21.**

ITEM 15. Amend rule 282—22.2(272) as follows:

**282—22.2(272) Substitute authorization.** A substitute authorization allows an individual to substitute in grades PK-12 for no more than 5 consecutive days and no more than 10 days in a 30-day period in one job assignment for a regularly assigned teacher who is absent, except in the driver's education classroom. A school district administrator may file a written request with the board for an extension of the 10-day limit in one job assignment on the basis of documented need and benefit to the instructional program. The licensure committee will review the request and provide a written decision either approving or denying the request. An individual who holds a paraeducator certificate without a bachelor's degree and completes the substitute authorization program is authorized to substitute only in the special education classroom in which the individual paraeducator is employed. For these individuals, the authorization will appear on the paraeducator certificate and will not include separate renewal requirements.

**22.2(1) Application process.** Any person interested in the substitute authorization shall submit records of credit to the board of educational examiners for an evaluation in terms of the required courses or contact hours. Application materials are available from the office of the board of educational examiners, online at <http://www.boee.iowa.gov/> or from institutions or agencies offering approved courses or contact hours.

a. *Requirements.* Applicants for the substitute authorization shall meet the following requirements:

- (1) No change.
- (2) Degree or certificate. Applicants must have achieved at least one of the following:
  - 1. Hold a baccalaureate degree or higher from a regionally accredited institution.
  - 2. Completed an approved paraeducator certification program and hold a paraeducator certificate.
- (3) and (4) No change.

b. *Validity.* The substitute authorization shall be valid for five years.

c. *Renewal.* The authorization may be renewed upon application and verification of successful completion of:

(1) Renewal units. Applicants for renewal of the substitute authorization must provide verification of a minimum of two licensure renewal units or semester hours of renewal credits.

(2) No change.

**22.2(2) and 22.2(3)** No change.

ITEM 16. Amend rule 282—22.9(272) as follows:

**282—22.9(272) Requirements for the career and technical secondary authorization.**

**22.9(1) and 22.9(2)** No change.

**22.9(3) Specific requirements for the initial career and technical secondary authorization.**

a. to d. No change.

e. Coursework requirements.

(1) Applicants must commit to complete the following requirements within the term of the initial authorization. Coursework must be completed for college credit from a regionally accredited institution.

~~1. A new teachers' workshop of a minimum of 30 clock hours and specified competencies, to be completed during the term of the initial authorization.~~

~~2.~~ 1. Coursework in the methods and techniques of career and technical education.

~~3.~~ 2. Coursework in course and curriculum development.

~~4.~~ 3. Coursework in the measurement and evaluation of programs and students.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- ~~5.~~ 4. An approved human relations course.
- ~~6.~~ 5. Coursework in the instruction of exceptional learners to include the education of individuals with disabilities and the gifted and talented.
- (2) No change.
- 22.9(4) to 22.9(8)** No change.

ITEM 17. Amend rule 282—27.1(272) as follows:

**282—27.1(272) Professional service license.** A professional service licensee is an individual prepared to provide professional services in Iowa schools but whose preparation has not required completion of the teacher preparation coursework set forth in rule 281—79.15(256). The professional service license may be issued in the following areas but does not permit service as a teacher:

1. School counselor.
2. School psychologist.
3. Speech-language pathologist.
4. Supervisor of special education (support).
5. Director of special education of an area education agency.
6. School social worker.
7. School audiologist.

[Filed 1/22/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3634C**

**EDUCATIONAL EXAMINERS BOARD[282]**

**Adopted and Filed**

**Rule making related to new teacher mentoring model and computer science endorsement**

The Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 272.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 272.2 and 272.28.

*Purpose and Summary*

The first amendment aligns with 2017 Iowa Acts, House File 642, which amended Iowa Code section 272.28 to include the Teacher Leadership and Compensation model as an option for new teacher mentoring. The second amendment aligns with 2017 Iowa Acts, Senate File 274, which amended Iowa Code section 272.2 to direct the Board to establish a computer science endorsement.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 6, 2017, as **ARC 3470C**. A public hearing was held on December 27, 2017. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

*Adoption of Rule Making*

This rule making was adopted by the Board on January 11, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—Chapter 6.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 282—13.7(272) as follows:

**282—13.7(272) Specific requirements for a standard license.** A standard license valid for five years may be issued to an applicant who:

1. Meets the general requirements set forth in rule 282—13.5(272), and
2. Shows evidence of successful completion of a state-approved mentoring and induction program or mentoring through a state-approved career, leadership, and compensation framework by meeting the Iowa teaching standards as determined by a comprehensive evaluation and two years' successful teaching experience within the applicant's approved endorsement area(s). In lieu of completion of an Iowa state-approved mentoring ~~and induction~~ program, the applicant must provide evidence of three years' successful teaching experience within the applicant's approved endorsement area(s) at any of the following:
  - An accredited nonpublic school in this state.
  - A preschool program approved by the United States Department of Health and Human Services.
  - Preschool programs at school districts approved to participate in the preschool program under Iowa Code chapter 256C.
  - Shared visions programs receiving grants from the child development coordinating council under Iowa Code section 256A.3.
  - Preschool programs receiving moneys from the school ready children grants account of the early childhood Iowa fund created in Iowa Code section 256I.11.
  - An out-of-state PK-12 educational setting.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

ITEM 2. Amend rule 282—13.28(272) as follows:

**282—13.28(272) Minimum content requirements for teaching endorsements.**

**13.28(1) to 13.28(34)** No change.

**13.28(35) Computer science.** K-8 and 5-12.

a. Authorization. The holder of this endorsement is authorized to teach selected computer science and computer programming courses.

b. Program requirements. Applicants must hold a valid Iowa teaching license with at least one additional teaching endorsement.

c. Content. A minimum of 12 semester hours of computer science to include coursework in the following:

(1) Data representation and abstraction to include primitive data types, static and dynamic data structures, and data types and stores.

(2) Designing, developing, testing and refining algorithms to include proficiency in two or more programming paradigms.

(3) Systems and networks to include operating systems, networks, mobile devices, and machine-level data representation.

d. Methods course. A content area methods course is required pursuant to 13.29(1). The course should include the following effective teaching and learning strategies for information technology:

(1) Curriculum development including recognizing and defining real-world computational problems; computing concepts and constructs; developing and using abstractions; creating, testing, and refining computational artifacts; and problem-solving strategies in computer science.

(2) Project-based methodologies that support active and authentic learning, fostering an inclusive computing culture, collaborative groupings, and opportunities for creative and innovative thinking.

(3) Communication about computing including multiple forms of media.

(4) Digital citizenship including the social, legal, ethical, safe and effective use of computer hardware, software, peripherals, and networks.

e. Computer science specialist. If the requirements in 13.28(35)“c” and “d” are met and the applicant achieves a minimum of 24 semester hours of computer science content, a computer science specialist endorsement will be granted and the additional teaching endorsement set forth in 13.28(35)“b” will not be required.

f. Waiver of coursework requirements. During the first year of implementation, the coursework requirements may be waived if the practitioner demonstrates relevant content knowledge mastery and successful teaching experience in this endorsement area through criteria established by the board of educational examiners.

[Filed 1/22/18, effective 3/21/18]

[Published 2/14/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3630C**

**EDUCATION DEPARTMENT[281]**

**Adopted and Filed**

**Rule making related to high school equivalency diploma**

The State Board of Education hereby rescinds Chapter 32, “High School Equivalency Diploma,” Iowa Administrative Code, and adopts a new Chapter 32 with the same title.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

EDUCATION DEPARTMENT[281](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 259A.

*Purpose and Summary*

Iowa Code chapter 259A was substantially amended by 2017 Iowa Acts, chapter 85 (House File 473), which grants the Department of Education the authority to establish frameworks for additional pathways for completion of the high school equivalency diploma. This rule making establishes those new pathways.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 11, 2017, as **ARC 3365C**. A public hearing was held on October 31, 2017. One person attended the public hearing and provided comments, and one written comment was received. Both public comments were from individuals with United Way of Central Iowa and were highly supportive of this rule making. Since publication of the Notice, references to 2017 Iowa Acts, House File 473, have been updated to reflect the codification of that legislation in Iowa Code chapter 259A.

*Adoption of Rule Making*

This rule making was adopted by the State Board of Education on January 25, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board of Education for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making action is adopted:

Rescind 281—Chapter 32 and adopt the following **new** chapter in lieu thereof:

CHAPTER 32  
HIGH SCHOOL EQUIVALENCY DIPLOMA

EDUCATION DEPARTMENT[281](cont'd)

**281—32.1(259A) Purpose.** The department may issue a high school equivalency diploma to a person who presents satisfactory evidence of having completed an approved high school course of study aligned with standards established by the state board of education by which high school graduation equivalency may be determined. The purpose of the high school equivalency diploma is to provide a credential to adults who have not graduated from high school and are unable to receive a high school diploma through traditional means but who are able to demonstrate attainment of knowledge, skills, and abilities that are equivalent to those that would be attained in a high school program of study.

This chapter is intended to implement the provisions of Iowa Code chapter 259A.

**281—32.2(259A) Definitions.** As used in this chapter:

*“Adult education and literacy program”* means the same as defined in rule 281—23.1(260C).

*“Approved program”* means any defined option established under this chapter for the completion of a high school equivalency diploma that has been approved by the department.

*“Approved test”* means the entire battery of subtests given under a high school equivalency test adopted by the department and administered at department-approved testing sites.

*“Contact hour”* means the same as defined in 281—subrule 21.2(12).

*“Continuous enrollment”* means a participant has not exited from the approved program as defined in the federal Workforce Innovation and Opportunity Act (WIOA 34 CFR 361.150(c)) or subsequent federal workforce training and adult education legislation.

*“Demonstrated competence”* means the ability to apply the knowledge and skills required to perform critical functions specific to a program of study. Competencies that measure the attainment of the knowledge, skills, and abilities equivalent to a high school program of study shall be aligned with content standards for adult education as referenced in 281—paragraph 23.7(1) “c” and twenty-first century learning skills.

*“Department”* means the Iowa department of education.

*“Eligible institution”* means an entity as defined in 281—subrule 23.3(1).

*“High school credit”* means credit awarded for the successful completion of a secondary course or demonstrated competence equivalent to one-half Carnegie unit as defined in 281—subrule 12.5(14).

*“High school equivalency diploma”* means the credential granted by the department to adults who did not graduate from high school and are unable to receive a high school diploma through traditional means but who are able to demonstrate attainment of the knowledge, skills, and abilities that are equivalent to those that would be attained in a high school program of study.

*“Resident”* means an individual who satisfies the requirements of 281—subrule 21.2(11).

*“Twenty-first century learning skills”* means the same as defined in 281—subrule 12.5(17).

*“Work-site learning”* means a planned and supervised work experience, equivalent to the training services defined in the federal Workforce Innovation and Opportunity Act, Section 134(c)(3)(D), or subsequent federal workforce training and adult education legislation, that is in compliance with workplace laws and regulations, including the minimum wage requirements prescribed by Iowa law or the federal Fair Labor Standards Act, if applicable.

**281—32.3(259A) Eligibility to participate.**

**32.3(1)** Minimum age. No one under 16 years and 9 months of age is allowed to participate in an approved program, with the exception of a person who is at least 16 years of age and satisfies one or more of the following conditions:

- a. Is a resident of an Iowa juvenile institution;
- b. Is an active participant in Job Corps; or
- c. Is under the supervision of a probation office.

**32.3(2)** Anyone 16 years and 9 months of age or older who is not enrolled in a secondary school nor is a high school graduate is permitted to apply for enrollment in an approved program. The requirements for admission into an approved program are:

- a. Proof of age and, for an applicant under 18 years of age, consent of the applicant’s parent or guardian.



## EDUCATION DEPARTMENT[281](cont'd)

b. For an applicant under 19 years of age, verification of nonenrolled status from the last high school attended.

c. Completion of a comprehensive intake by an eligible institution. For purposes of this chapter, the intake must include all of the following:

- (1) Assessment of the applicant's reading level and career interests and aptitudes.
- (2) Discussion of program options available to the applicant regarding completion of a high school equivalency diploma, to include the requirements, expectations, benefits, and limitations of each option.
- (3) Development of a plan for the completion of one of the options discussed and subsequent activities necessary to work toward an identified goal, career pathway, occupation, or further education.

**32.3(3)** An eligible participant who successfully completes an approved program will not be awarded a high school equivalency diploma until the participant reaches 18 years of age and the participant's ninth grade class has graduated from high school.

**281—32.4(259A) By whom administered.** An approved program shall be administered by an eligible institution. An eligible institution may provide one or more approved programs. The department shall maintain a process by which an eligible institution may submit an application to offer an approved program.

**281—32.5(259A) Diploma, transcript, verification fees.** Upon payment to the department or its designee of a fee for the actual cost of production and distribution of a high school equivalency diploma, transcript, or verification letter not to exceed \$10 per document, the department shall issue a high school equivalency diploma, transcript, or verification letter to an applicant who has achieved the minimum standards established in this chapter. Upon payment to the department or its designee of a fee for the actual cost of verification and issuance of a duplicate diploma, transcript, and verification letter not to exceed \$15, the department or its designee shall issue a duplicate diploma, transcript, or provide verification to the applicant or person authorized by the applicant to request these documents. Approved providers must track and submit to the department evidence of the applicant's completion of the program requirements for the issuance of a high school equivalency diploma.

**281—32.6(259A) Application, course, and testing fees.** The applicant or the applicant's supporting agency shall pay an application, course, or testing fee to cover only necessary and reasonable testing or program costs. Fees paid directly to an approved program are considered program income and shall adhere to the federal Office for Management and Budget Uniform Guidance cost principles, as codified in 2 CFR Section 200.80.

**281—32.7(259A) High school equivalency diploma program based on a department-approved test.** The department shall award a high school equivalency diploma to an applicant who achieves the appropriate minimum standard scores on an approved test.

**32.7(1) Validity of test scores.** Scores on an approved test shall remain valid for a period of five years from the date of the first subtest taken. If an applicant has not earned a high school equivalency diploma within this five-year period, the applicant must retake any expired subtest. The only exception is for test series that expire prior to the five-year period, in which case all previously taken subtests are void and must be retaken.

**32.7(2) Retest.** Any applicant not achieving the minimum standard test score on any subtest in effect at the time of testing shall be permitted to apply for retest. Applicants may retest twice per calendar year, provided one of the following conditions is met:

- a. A period of three months from the date of initial testing has elapsed; or
- b. The applicant completes instruction in an adult education and literacy program in each subject area to be retested. This instruction shall be certified by an official of the adult education and literacy program provider to the test administrator authorized to release the retest.

**281—32.8(259A) High school equivalency diploma program based on attainment of high school credits.** The department shall award a high school equivalency diploma to an applicant who

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demonstrates completion of an approved program consisting of at least 36 high school credits. The approved program shall be inclusive of the graduation requirements established under 281—subrule 12.5(5) and consist of at least eight high school credits in English or communications; six credits in mathematics; six credits in science; six credits in social studies, including government; and ten elective credits that meet the requirements of subrule 32.8(4).

**32.8(1) *Award of prior credit.*** The applicant shall provide certified, translated transcripts from any Iowa school district, accredited public or nonpublic high school, or regionally accredited college or university to document completion of credits earned that are equivalent to those required in an approved program established under this rule. Additional documentation may be requested to validate credits earned.

**32.8(2) *Minimum participation requirement.*** An eligible applicant must demonstrate competence through continuous enrollment in an approved program for a minimum of two high school credits.

**32.8(3) *Minimum graduation requirements.*** If the applicant is not continuously enrolled in an approved program, the applicant will become subject to the minimum graduation requirements applicable to the date of reenrollment.

**32.8(4) *Electives.***

*a.* Coursework for electives shall align with twenty-first century learning skills and be classified in one of the following five areas:

- (1) Civic literacy;
- (2) Health literacy;
- (3) Technology literacy;
- (4) Financial literacy;
- (5) Employability skills.

*b.* Work-site learning may be counted toward an elective, under the following conditions:

(1) Evidence of prior work-site learning shall be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for prior work-site learning shall not be counted toward the minimum participation requirement, as described in subrule 32.8(2).

(2) Current work-site learning shall be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for current work-site learning may be counted toward the minimum participation requirement, as described in subrule 32.8(2).

**32.8(5) *Postsecondary credit.*** Credit awarded by a regionally accredited postsecondary institution for the successful completion of a course that applies toward the requirements of a postsecondary credential, including but not limited to a certificate, diploma, or associate, bachelor, or graduate-level degree program, shall be accepted to fulfill the requirements for the satisfactory completion of a program as follows:

*a.* One postsecondary semester credit or its equivalent shall be equal to one-third high school credit. The resulting high school credit can be used to satisfy either a core or elective credit requirement of an approved program.

*b.* Twenty contact hours of noncredit postsecondary coursework shall be equal to one-third high school credit provided the coursework is aligned to regional career pathways and occupational needs. This credit can be used to satisfy an elective credit requirement of an approved program.

**281—32.9(259A) High school equivalency diploma program based on postsecondary degree.** The department shall award a high school equivalency diploma to a resident applicant who presents an associate degree or higher that includes general education coursework and is awarded by a regionally accredited postsecondary institution. The applicant must provide official transcripts to an adult education and literacy program to document completion of program requirements.

**281—32.10(259A) High school equivalency diploma program based on foreign postsecondary degree.** The department shall award a high school equivalency diploma to a resident applicant who presents a postsecondary degree equivalent to an associate degree or higher, provided that the following conditions are met:

## EDUCATION DEPARTMENT[281](cont'd)

**32.10(1)** The applicant presents to an adult education and literacy program an official transcript from an institution of higher education attesting to the completion of the program of study required for the postsecondary degree. If the transcript is not in English, the applicant shall also provide a certified translation.

**32.10(2)** The applicant shall be a United States citizen or shall meet both of the following requirements:

*a.* Demonstrates proficiency in speaking, listening, reading, and writing as defined by the department's approved English language proficiency standards; and

*b.* Has successfully completed a course in government or civics education as a component of an approved program.

These rules are intended to implement Iowa Code chapter 259A.

[Filed 1/25/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3631C**

**EDUCATION DEPARTMENT[281]**

**Adopted and Filed**

**Rule making related to teacher quality program**

The State Board of Education hereby amends Chapter 83, "Teacher and Administrator Quality Programs," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2017 Iowa Acts, chapter 172 (House File 642), sections 32, 33, and 34, and 2017 Iowa Acts, chapter 2 (House File 291).

*Purpose and Summary*

Chapter 83 implements teacher and school administrator quality programs. These amendments conform to 2017 Iowa Acts, chapter 172, which amended Iowa Code sections 284.1, 284.4, and 284.5 to make the beginning teacher mentoring and induction program under those Iowa Code sections voluntary for school districts and to allow school districts to utilize the provisions of the teacher leadership and compensation framework specified in Iowa Code sections 284.15 through 284.17 as a means of providing beginning teacher mentoring and induction. These amendments also reflect the changes that 2017 Iowa Acts, chapter 2, made to Iowa Code chapter 20, which relates to collective bargaining. A more detailed explanation of these amendments follows:

Item 1 amends the purpose statement of Chapter 83 to provide that the statute now expands the choices available to districts to provide mentoring to beginning teachers, not necessarily the mentoring and induction program required by prior law.

Item 2 revises the definition of "beginning teacher" to account for an additional pathway for converting an initial license to a standard license.

Item 3 restructures current rule 281—83.3(284) into two subrules. Subrule 83.3(1) makes clear that the beginning teacher mentoring and induction program previously required by current law is now one of two options. Subrule 83.3(2) describes the second option available to school districts for providing

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mentoring to beginning teachers. This second option is based on the teacher leadership and compensation framework contained in Iowa Code sections 284.15 through 284.17.

Items 4 through 6 and 8 make changes required by 2017 Iowa Acts, chapter 2, which, as part of changes to public employee collective bargaining under Iowa Code chapter 20, made changes to Iowa Code chapter 284.

Item 7 updates paragraph 83.6(1)“e,” regarding professional development for teachers, to account for the new option for mentoring beginning teachers.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3271C**. A public hearing was held on September 19, 2017. No one attended the public hearing. No public comments were received. References to 2017 Iowa Acts, House File 291, have been removed because the legislation has been codified in the Iowa Code. No other changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the State Board of Education on January 25, 2018.

#### *Fiscal Impact*

The State of Iowa no longer appropriates funds specifically for beginning teacher mentoring and induction under Iowa Code chapter 284. There will therefore be a savings to the State of Iowa.

#### *Jobs Impact*

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

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board of Education for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

#### *Review by Administrative Rules Review Committee*

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

#### *Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 281—83.1(284,284A), introductory paragraph, as follows:

**281—83.1(284,284A) Purposes.** The goal of the teacher quality program is to enhance the learning, achievement, and performance of all students through the recruitment, support, and retention of quality Iowa teachers. The program shall contain specific strategies that include a mentoring ~~and induction program~~ for beginning teachers as described in rule 281—83.3(284), either in subrule 83.3(1) or 83.3(2),

EDUCATION DEPARTMENT[281](cont'd)

teacher evaluations, and district and building support for professional development that includes best practice aimed at increasing student achievement.

ITEM 2. Amend rule 281—83.2(284,284A), definition of “Beginning teacher,” as follows:

“*Beginning teacher*” means an individual serving under an initial, Class A, exchange, or intern license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a teacher. For purposes of the beginning teacher mentoring and induction program created pursuant to Iowa Code section 284.5 or in an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15, “beginning teacher” also includes preschool teachers who are licensed by the board of educational examiners under Iowa Code chapter 272 and are employed by a school district or area education agency.

ITEM 3. Amend rule 281—83.3(284) as follows:

**281—83.3(284) Mentoring and induction program for beginning teachers.**

**83.3(1) Option one: *beginning teacher mentoring and induction program.***

**83.3(1) a. Purpose.** The beginning teacher mentoring and induction program is created to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Completion of a beginning teacher mentoring and induction program is one manner in which a beginning teacher may meet the requirement of Iowa Code section 272.28(1).

**83.3(2) b. Participation.** ~~All school~~ School districts and area education agencies ~~shall~~ may provide a beginning teacher mentoring and induction program for all beginning teachers. A beginning teacher, as defined in this chapter, shall be informed by the school district or area education agency, prior to the beginning teacher’s participation in a mentoring and induction program, of the Iowa teaching standards and criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district or area education agency. The beginning teacher shall be comprehensively evaluated by the end of the beginning teacher’s second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district or area education agency shall recommend for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.

(1) If a beginning teacher who is participating in a mentoring and induction program leaves the employ of a school district or area education agency prior to completion of the program, the school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in a program prior to the subsequent hiring. If the general assembly appropriates moneys for purposes of Iowa Code section 284.5, a school district or area education agency is eligible to receive state assistance for up to two years for each beginning teacher the school district or area education agency employs who was formerly employed in an accredited nonpublic school or in another state as a first-year teacher. The school district or area education agency employing the teacher shall determine the conditions and requirements of a teacher participating in a mentoring and induction program.

(2) A school district or area education agency may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district or area education agency determines that the teacher is likely to successfully complete the mentoring and induction program by meeting the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district’s or area education agency’s expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher’s evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district’s or area education agency’s mentoring and induction program. The school district or area education agency shall notify the board of educational examiners that the teacher will participate in a third year of the school district’s program. The teacher shall undergo a comprehensive evaluation at the end of the third year.

## EDUCATION DEPARTMENT[281](cont'd)

(3) For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria shall be as described in rule 281—83.4(284). A school district or area education agency shall participate in state program evaluations.

~~83.3(3)~~ *c. Plan.* Each school district or area education agency that offers a beginning teacher mentoring and induction program shall develop a sequential two-year beginning teacher mentoring and induction plan based on the Iowa teaching standards. The plan shall be included in the school district's comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7, subsection 21. A school district or area education agency shall have the board adopt a beginning teacher mentoring and induction program plan and written procedures for the program. At the board's discretion, the district or area education agency may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district's or area education agency's beginning teacher mentoring and induction program shall include, but are not limited to, the following:

- ~~a.~~ (1) Goals for the program.
- ~~b.~~ (2) A process for the selection of mentors.
- ~~c.~~ (3) A mentor training process which shall:
  - (1) 1. Be consistent with effective staff development practices and adult professional needs to include skills needed for teaching, demonstration, and coaching.
  - (2) 2. Address mentor needs, indicating a clear understanding of the role of the mentor.
  - (3) 3. Result in the mentor's understanding of the personal and professional needs of new teachers.
  - (4) 4. Provide the mentor with an understanding of the district expectations for beginning teacher competencies based on the Iowa teaching standards.
  - (5) 5. Facilitate the mentor's ability to provide guidance and support to new teachers.
- ~~d.~~ (4) A supportive organizational structure for beginning teachers which shall include:
  - (1) 1. Activities that provide access and opportunities for interaction between mentor and beginning teacher that at a minimum provide:
    - 1. • Released time for mentors and beginning teachers to plan;
    - 2. • The demonstration of classroom practices;
    - 3. • The observation of teaching; and
    - 4. • Feedback.
  - (2) 2. ~~Selection~~ A selection process for who will be in the mentor/beginning teacher partnership.
  - (3) 3. Roles and responsibilities of the mentor.
- ~~e.~~ (5) ~~Evaluation~~ An evaluation process for the program, which shall include:
  - (1) 1. An evaluation of the district and area education agency program goals,
  - (2) 2. An evaluation process that provides for the minor and major program revisions, and
  - (3) 3. A process for how information about the program will be provided to interested stakeholders.
- ~~f.~~ (6) The process for dissolving mentor and beginning teacher partnerships.
- ~~g.~~ (7) A plan that reflects the needs of the beginning teacher employed by the district or area education agency.
- ~~h.~~ (8) Activities designed to support beginning teachers by:
  - (1) 1. Developing and enhancing competencies for the Iowa teaching standards, and
  - (2) 2. Providing research-based instructional strategies.

~~83.3(4)~~ *d. Budget.* Funds, if appropriated by the general assembly, received by a school district or area education agency from the beginning teacher mentoring and induction program shall be used for any or all of the following purposes:

- ~~a.~~ (1) To pay mentors as they implement the plan. A mentor in a beginning teacher induction program approved under this chapter shall be eligible for an award of \$500 per semester for full participation in the program. A district or area education agency may use local dollars to increase the mentor award.

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~~b. (2)~~ To pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district or area education agency.

These funds are miscellaneous funds or are considered encumbered. A school district or area education agency shall maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert, but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.

**83.3(2) Option two: teacher leadership and compensation system.**

a. Purpose. One purpose of Iowa's teacher leadership and compensation system is to attract able and promising new teachers by offering short-term and long-term professional development and leadership opportunities. Two years of successful teaching experience in a school district with an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15 ("framework for beginning teachers" for purposes of this rule) is one manner in which a beginning teacher may meet the requirement of Iowa Code section 272.28(1).

b. Participation. School districts may provide an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15. A beginning teacher, as defined in this chapter, shall be informed by the school district, prior to the beginning teacher's participation in a framework for beginning teachers, of the Iowa teaching standards and criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district. The beginning teacher shall be comprehensively evaluated by the end of the beginning teacher's second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district shall recommend for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.

(1) If a beginning teacher who is participating in a framework for beginning teachers leaves the employ of a school district prior to completion of the framework, the school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in such a framework prior to the subsequent hiring.

(2) A school district may offer a teacher a third year of participation in a framework for beginning teachers if, after conducting a comprehensive evaluation, the school district determines that the teacher is likely to successfully meet the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district's expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's framework for beginning teachers. The school district shall notify the board of educational examiners that the teacher will participate in a third year of the school district's framework for beginning teachers. The teacher shall undergo a comprehensive evaluation at the end of the third year.

(3) For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria shall be as described in rule 281—83.4(284). A school district shall participate in state program evaluations.

c. Plan assurances. Each school district that offers a framework under Iowa Code sections 284.15 through 284.17 and uses it for purposes of meeting the school district's obligations to beginning teachers shall provide assurances to the department that the district's framework for beginning teachers meets the requirements of those Iowa Code sections and attends to the Iowa teaching standards and criteria described in rule 281—83.4(284).

d. Inapplicability to area education agencies. This subrule and the option created by it are not available to area education agencies. Only subrule 83.3(1) is available to area education agencies; however, a teacher employed by an area education agency may be included in a framework or

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comparable system established by a school district if the area education agency and the school district enter into a contract for such purpose.

ITEM 4. Amend subrule 83.4(9) as follows:

**83.4(9)** The school board shall provide comprehensive evaluations for beginning teachers using the Iowa teaching standards and criteria listed in rule 281—83.4(284). The school board, for the purposes of performance reviews for teachers other than beginning teachers, shall provide evaluations that contain, at a minimum, the Iowa teaching standards and criteria listed in rule 281—83.4(284). ~~A local school board and its certified bargaining representative may negotiate, pursuant to Iowa Code chapter 20, additional teaching standards and criteria for use in a performance review. In any school district or area education agency where there is no certified bargaining unit, additional standards and criteria may be determined by the board.~~

ITEM 5. Amend paragraph **83.5(3)“e”** as follows:

*e.* Provisions for an intensive assistance program as provided in Iowa Code section 284.8 that addresses the remediation defined under subrules 83.4(1) through 83.4(8) ~~or any other standards or criteria established by a collective bargaining agreement.~~

(1) ~~A local school board and its certified bargaining representative shall negotiate, pursuant to Iowa Code chapter 20, evaluation and grievance procedures for beginning teachers and for teachers other than beginning teachers that are not in conflict with Iowa Code chapter 284. If a supervisor or an evaluator determines, at any time, as a result of a teacher’s performance that the teacher is not meeting district expectations under subrules 83.4(1) through 83.4(8) or any other standards or criteria established in the collective bargaining agreement, the evaluator shall, at the direction of the teacher’s supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are not subject to negotiation or grievance procedures established pursuant to Iowa Code chapter 20.~~

(2) A teacher who is not meeting the applicable standards and criteria based on a determination made pursuant to paragraph 83.5(3)“e” shall participate in an intensive assistance program. However, a teacher who has previously participated in an intensive assistance program relating to particular Iowa teaching standards or criteria shall not be entitled to participate in another intensive assistance program relating to the same standards or criteria and shall be subject to the provisions of paragraph 83.5(3)“f.”

ITEM 6. Adopt the following **new** paragraph **83.5(3)“f”**:

*f.* Following a teacher’s participation in an intensive assistance program, the teacher shall be reevaluated to determine whether the teacher successfully completed the intensive assistance program and is meeting district expectations under the applicable Iowa teaching standards or criteria. If the teacher did not successfully complete the intensive assistance program or continues not to meet the applicable Iowa teaching standards or criteria, the board may do any of the following:

- (1) Terminate the teacher’s contract immediately pursuant to Iowa Code section 279.27.
- (2) Terminate the teacher’s contract at the end of the school year pursuant to Iowa Code section 279.15.
- (3) Continue the teacher’s contract for a period not to exceed one year. However, the contract shall not be renewed and shall not be subject to Iowa Code section 279.15.

ITEM 7. Amend paragraph **83.6(1)“e”** as follows:

*e. Beginning teacher mentoring and induction.* ~~The~~ A school district shall develop and implement a beginning teacher mentoring and induction plan as outlined in subrule ~~83.3(3)~~ 83.3(1) or a framework for beginning teachers as outlined in subrule 83.3(2). ~~The district district’s beginning teacher mentoring and induction plan or framework for beginning teachers shall be included in the comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7(21)“a” and shall align with the district professional development plan described in paragraph 83.6(1)“b.”~~ An area education agency shall develop and implement a beginning teacher mentoring and induction plan as outlined in subrule 83.3(1), which shall align with the area education agency’s professional development plan described in paragraph 83.6(1)“b.”



## EDUCATION DEPARTMENT[281](cont'd)

ITEM 8. Amend rule 281—83.7(284) as follows:

**281—83.7(284) Teacher quality committees.** Each school district and area education agency shall create a teacher quality committee pursuant to 2007 Iowa Code Supplement section 284.4. The committee is subject to the requirements of the Iowa open meetings law (Iowa Code chapter 21). To the extent possible, committee membership shall have balanced representation with regard to gender. The committee shall do all of the following:

1. Monitor the implementation of the requirements of statutes and administrative code provisions relating to this chapter, including requirements that affect any agreement negotiated pursuant to Iowa Code chapter 20.

2. Monitor the evaluation requirements of this chapter to ensure evaluations are conducted in a fair and consistent manner throughout the school district or agency. ~~In addition to any negotiated evaluation procedures,~~ The committee shall develop model evidence for the Iowa teaching standards and criteria. The model evidence will minimize paperwork and focus on teacher improvement. The model evidence will determine which standards and criteria can be met through observation and which evidence meets multiple standards and criteria.

3. Determine, following the adoption of the Iowa professional development model by the state board of education, the use and distribution of the professional development funds distributed to the school district or agency as provided in 2007 Iowa Code Supplement section 284.13, subsection 1, paragraph “d,” based upon school district or agency, attendance center, and individual teacher professional development plans.

4. Monitor the professional development in each attendance center to ensure that the professional development meets school district or agency, attendance center, and individual teacher professional development plans.

5. ~~Ensure the agreement negotiated pursuant to Iowa Code chapter 20 determines~~ Determine the compensation for teachers on the committee for work responsibilities required beyond the normal workday.

6. Make recommendations to the school board and the certified bargaining representative regarding the expenditures of market factor incentives.

[Filed 1/25/18, effective 3/21/18]

[Published 2/14/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3632C**

**EDUCATION DEPARTMENT[281]**

**Adopted and Filed**

**Rule making related to financial management of categorical funding**

The State Board of Education hereby amends Chapter 98, “Financial Management of Categorical Funding,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 256C, 257, 279, 284 and 298A.

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*Purpose and Summary*

Chapter 98 outlines the financial management of categorical funding. The amendments to Chapter 98 reflect significant legislative changes to categorical funding for Iowa school districts brought about during the 2017 Legislative Session. Those changes include greater flexibility for school districts with some categorical funds; the ability of a school district to establish a flexibility account within the general fund that can be used for certain purposes, including any general fund purpose, upon approved school board resolution; major changes to beginning teacher mentoring and induction programs; the ability to transfer from the general fund to the school district's student activity account an amount necessary for the purchase of protective and safety equipment; and programmatic changes for students who are persistently at risk in reading. A more detailed explanation of these amendments follows:

Item 1: 2017 Iowa Acts, chapter 154 (House File 565), amended Iowa Code section 298A.2 to allow a school corporation to establish a flexibility account into which it might transfer unexpended and unobligated funds in any school district fund or school district general fund account if the program, purpose, or requirements for the expenditure of such moneys have been repealed or are no longer in effect. The amendment to rule 281—98.2(256,257) implements that policy change.

Item 2: 2017 Iowa Acts, chapter 154, amended Iowa Code section 298A.2 to allow a school corporation to establish a flexibility account into which it might transfer unexpended and unobligated funds from its home school assistance program. The amendment to rule 281—98.12(257,299A) implements that policy change.

Item 3: 2017 Iowa Acts, chapter 153 (House File 564), amended Iowa Code chapter 256C, which relates to the allowable uses of preschool categorical funding. 2017 Iowa Acts, chapter 153, amended Iowa Code chapter 256C to allow the transfer of unexpended and unobligated funds from a school district's preschool foundation aid funding for deposit in the school district's flexibility account established under Iowa Code section 298A.2(2). The amendment to rule 281—98.13(256C,257) is consistent with these changes in the Iowa Code.

Item 4: 2017 Iowa Acts, chapter 154, amended Iowa Code chapter 257, which relates to the appropriate uses of categorical funding for at-risk students, alternative programs and alternative schools, and returning dropout and dropout prevention programs. The amendment to rule 281—98.18(257) implements those policy changes and also makes technical corrections.

Item 5: 2017 Iowa Acts, chapter 154, designated gifted and talented programs under Iowa Code section 257.46(1) as one of the uses of the flexibility account created in Iowa Code section 298A.2. The amendment to rule 281—98.20(257) reflects that new funding source for gifted and talented programs.

Item 6: 2017 Iowa Acts, chapter 153 and chapter 154, amended Iowa Code chapter 257, designating the appropriate uses of categorical funding for at-risk programs, alternative programs or alternative schools, and potential or returning dropout prevention programs. The amendment to rule 281—98.21(257) implements those policy changes and also makes technical corrections.

Item 7: This amendment makes a technical correction to rule 281—98.22(257), which relates to the use of unexpended general fund balances.

Item 8: 2017 Iowa Acts, chapter 153, amended Iowa Code section 257.10 to provide school districts with deference with respect to their financing of school programs. New subrule 98.23(3) implements that deference to school district decision making.

Item 9: 2017 Iowa Acts, chapter 153, amended Iowa Code chapter 257, which relates to the teacher salary supplement, to provide school districts deference with respect to the financing of that program. This amendment implements that change and also makes a technical correction to rule 281—98.24(257,284) dealing with the teacher salary supplement.

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Item 10: 2017 Iowa Acts, chapter 153, chapter 154, and chapter 172 (House File 642), amended Iowa Code chapters 257 and 284 with respect to educator quality professional development and beginning teacher mentoring and induction. The amendment to rule 281—98.26(257,284) reflects those policy changes and also makes a technical correction.

Item 11: 2017 Iowa Acts, chapter 154, amended Iowa Code section 298A.2 to allow a school corporation to establish a flexibility account into which it may transfer unexpended and unobligated funds from any of the following sources: the statewide voluntary preschool program, the professional development supplement, and the home school assistance program. Iowa Code section 298A.2 as amended by 2017 Iowa Acts, chapter 154, establishes requirements for the transfer of funds to the flexibility account and the appropriate uses of those funds in the flexibility account. Those uses include “any other general fund purpose.” Deference is given to a school district in the use of such funds. The adoption of new rule 281—98.27(257,298A) reflects those changes.

Item 12: 2017 Iowa Acts, chapter 172, amended Iowa Code sections 284.1, 284.4, and 284.5 to make the beginning teacher mentoring and induction program under those sections voluntary for school districts and to allow school districts to utilize the provisions of the teacher career paths and leadership roles specified in Iowa Code section 284.15 as a means of providing beginning teacher mentoring and induction. 2017 Iowa Acts, chapter 172, also eliminated categorical funding for beginning teacher mentoring and induction programs. The amendment to rule 281—98.42(257,284) reflects those statutory changes.

Item 13: 2017 Iowa Acts, chapter 172, amended Iowa Code section 279.68(1)“a” to require a school district to provide intensive supplemental reading instruction to any student who has been identified as persistently at risk in reading, beyond grade three if necessary, until the student is reading at grade level. The amendment to rule 281—98.45(279) reflects that statutory change and also makes a technical correction.

Item 14: 2017 Iowa Acts, chapter 153, amended Iowa Code section 298A.8 to allow school districts, by board resolution, to transfer moneys from the general fund to the student activity fund to purchase protective and safety equipment. This policy change was made retroactively effective to July 1, 2016. The amendment to subrule 98.61(2) reflects those changes.

Item 15: 2017 Iowa Acts, chapter 153, amended Iowa Code section 298A.8 to allow the student activity fund to receive funds transferred from a school district’s general fund. The amendment to subrule 98.70(1) reflects that statutory change.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3270C**. A public hearing was held on September 19, 2017. No one attended the public hearing. Two comments were received. A clarifying change was made to paragraph 98.13(1)“j” based upon the comments received from the representatives of the Urban Education Network and the Rural School Advocates of Iowa. Also, references to 2017 Iowa Acts, House File 564 and House File 565, have been removed because the legislation has been codified in the Iowa Code.

*Adoption of Rule Making*

This rule making was adopted by the State Board of Education on January 25, 2018.

*Fiscal Impact*

There is no fiscal impact to the State of Iowa. School districts will have more flexibility in utilization of certain categorical funds.

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*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board of Education for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 281—98.2(256,257) as follows:

**281—98.2(256,257) General finance.** The categorical funding provided for various purposes to school districts and area education agencies includes general financial characteristics that are detailed in the following subrules.

**98.2(1)** and **98.2(2)** No change.

**98.2(3) Mandatory carryforward.** ~~Any~~ Notwithstanding the flexibility account as described in rule 281—98.27(257,298A), any portion of categorical funding provided by the state that is not expended by the end of the fiscal year in which it was received by or for which it was allocated to the school district or area education agency shall be carried forward as a reserved fund balance and added to the subsequent year's budget for that purpose. The funding can only be expended for the purposes permitted for that categorical funding. Where a local match is required for categorical funding, the amount unexpended at the end of the fiscal year that is carried forward shall not be used as part of the required local match.

**98.2(4) Discontinued funding.** ~~In the event that a categorical funding source is discontinued and an unexpended balance remains, the school district or area education agency shall carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes which were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period. This subrule does not apply to market factor incentive pay funding, which may be carried forward until expended, but any expenditures from the market factor incentive pay funding must be appropriate under Iowa Code section 284.11 (2007 and 2007 Supplement).~~ may do one of, or a combination of, the following:

a. Carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes which were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period. This option does not apply to market factor incentive pay funding, which may be carried forward until expended, but any expenditures from the market factor incentive pay funding must be appropriate under Iowa Code section 284.11 (2007 Iowa Code and 2007 Iowa Code Supplement).

b. Transfer the unexpended balance to the flexibility account as described in rule 281—98.27(257,298A).

**98.2(5)** and **98.2(6)** No change.

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**98.2(7) *Excess expenditures.*** The school district or area education agency shall not charge to categorical funding more expenditures than the total of the current year's funding or allocation, plus any carryforward balance from the previous year, plus any moneys designated from the flexibility account as described in rule 281—98.27(257,298A).

**98.2(8)** No change.

ITEM 2. Amend rule 281—98.12(257,299A) as follows:

**281—98.12(257,299A) Home school assistance program.** The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program provided to regularly enrolled students by the school district. If a district offers a home school assistance program, the state foundation aid that the district receives pursuant to Iowa Code section 257.6(1) "a"(5), and any amount designated for this purpose from the flexibility account as described in rule 281—98.27(257,298A), shall be expended for purposes of providing the home school assistance program.

**98.12(1) and 98.12(2)** No change.

**98.12(3) *Flexibility account.*** All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2, provided all statutory requirements of the home school assistance program have been met, including funding all requests for services and materials from parents or guardians of students eligible to access the program.

ITEM 3. Amend rule 281—98.13(256C,257) as follows:

**281—98.13(256C,257) Statewide voluntary four-year-old preschool program.** The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for the program is for the purpose of providing a high-quality early learning environment for four-year-old children whose families choose to access such programs.

**98.13(1) *Appropriate uses of categorical funding.*** ~~Because the program is specifically instructional, expenditures generally are limited to the functions of instruction, student support services and staff support services, but up to 5 percent of the allocation can be used for actual documented costs of program administration, outreach activities, and rent for facilities not owned by the school district. Foundation aid funding provided for the program may be used by approved local programs and community providers for any purpose designated by the board of directors of the school district to meet standards for high-quality preschool instruction and for purposes that directly or indirectly benefit students enrolled in the approved local program. These purposes include, but are not limited to, the following:~~

a. Functions of instruction, including instructional equipment and supplies and material and equipment designed to develop students' large and small motor skills.

b. Functions of student support services, including translation services.

c. Functions of staff support services, including professional development for preschool teachers.

d. Up to 5 percent of the allocation can be used for actual documented costs of program administration, outreach activities, and rent for facilities not owned by the school district.

e. Food and beverages used by enrolled students.

f. Safety equipment.

g. Playground equipment and repair costs.

h. Costs of transportation involving children participating in the approved program. The costs of transporting other children associated with the preschool program or transporting as provided in Iowa Code section 256C.3(3) "h" may be prorated by the school district.

i. Other direct costs that enhance the approved local program, including contracting with community providers for such services.

j. Costs of attendance for a child who is younger or older than four years old and is enrolled in the program may be paid from these funds, or from another school district account or fund from which

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preschool program expenditures are authorized by law, if space and funding are available; however, the child shall not be counted for statewide voluntary preschool program funding purposes.

**98.13(2)** *Pass-through funding to community-based providers.* The school district shall pass through to a community-based provider for each eligible pupil enrolled in the district's approved local program not less than 95 percent of the per-pupil amount.

a. The community-based provider may use up to 10 percent of the 95 percent portion for documented allowable administrative and operational costs of providing the district's approved local program. The costs of outreach activities, rent for facilities not owned by the school district, and transportation for children participating in the preschool program are also permissive costs allowed as part of the 10 percent under this paragraph.

b. Any portion of the 95 percent not documented as expended for direct instruction or administrative and operational costs as allowed by this rule shall be refunded to the district annually on or before July 1.

c. Any portion refunded to the district shall be added to the total amount available for the district's approved local program for the subsequent school year, excluding the portion of such unexpended and unobligated funding that the school district authorizes to be transferred to the district's flexibility account described in rule 281—98.27(257,298A).

**98.13(3)** No change.

**98.13(4)** *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2 and described in rule 281—98.27(257,298A), provided the board of directors of the school district has determined all statutory requirements for the use of such funding have been met.

In order to transfer funds to the flexibility account, the district must have provided preschool programming during the fiscal year for which funding remained unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

ITEM 4. Amend rule 281—98.18(257) as follows:

**281—98.18(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program formula supplementary weighting.** Formula supplementary weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to students identified as at-risk, potential or returning dropouts, and secondary students attending an alternative program or alternative school pursuant to Iowa Code section 257.11(4) "a." ~~as amended by 2015 Iowa Acts, House File 658, section 37.~~

**98.18(1)** *Appropriate uses of categorical funding.* Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain programs for at-risk pupils, alternative programs and alternative schools for secondary students, and returning dropout and dropout prevention programs. Appropriate uses include, but are not limited to:

a. Salary and benefits for the teacher(s) and guidance counselor(s) of identified students participating in the approved programs when the teacher ~~(or counselor)~~ or guidance counselor is dedicated to providing services directly and exclusively to the identified students beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. If the teacher ~~(or counselor)~~ or guidance counselor is part-time serving the program and part-time regular classroom teacher ~~(or counselor)~~ or guidance counselor, then the portion of time that is related to these programs may be charged to the program funding, but the portion of time that is related to the regular classroom or regular guidance counseling program shall not.

b. Professional development for all teachers, guidance counselors, and staff working with identified students under an approved program or in an alternative school setting.

c. Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through 12 identified students,

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- (2) Are beyond those provided by the regular school program,
- (3) Are necessary to provide the services listed in the school district's approved at-risk or returning dropout and dropout prevention program plan, and
- (4) Will remain with the K through 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

*d.* Instructional costs necessary to address the behavior of a child during instructional time when those services are not otherwise provided to students who do not require special education and when the costs exceed the costs of instruction of pupils in a regular curriculum, the costs exceed the maximum tuition rate prescribed in Iowa Code section 282.24, the child has not been placed in a facility operated by the state, and all of the following apply:

- (1) The child does not require special education.
- (2) The child is not placed by the department of human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.
- (3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.
- (4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

*e.* Costs incurred for a program intended to address high rates of absenteeism, truancy, or frequent tardiness.

*e. f.* ~~Up to 5 percent of the total amount~~ Amounts that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4) "*a*" ~~as amended by 2015 Iowa Acts, House File 658,~~ or as a modified supplemental amount received under Iowa Code section 257.41 ~~as amended by 2015 Iowa Acts, House File 658,~~ may be used in the budget year for purposes of providing districtwide, ~~or buildingwide,~~ or grade-specific at-risk and dropout prevention programming targeted to nonidentified students.

**98.18(2)** No change.

ITEM 5. Amend rule 281—98.20(257), introductory paragraph, as follows:

**281—98.20(257) Gifted and talented program.** Gifted and talented program funding is included in the school district cost per pupil calculated for each school district under the school foundation formula. The per-pupil amount increases each year by the supplemental state aid percentage. This amount must account for not more than 75 percent of the school district's total gifted and talented program budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total gifted and talented program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the gifted and talented program. The 75 percent portion, the local match, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

ITEM 6. Amend rule 281—98.21(257) as follows:

**281—98.21(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount.** A modified supplemental amount is available through a school district-initiated request to the school budget review committee pursuant to Iowa Code section ~~257.38 as amended by 2015 Iowa Acts, House File 658; section 257.39; and sections 257.40 and 257.41 as amended by 2015 Iowa Acts, House File 658~~ sections 257.38, 257.39, 257.40, and 257.41. This amount must account for no more than 75 percent of the school district's total at-risk program, alternative program or alternative school, and potential or returning dropout budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total program

EDUCATION DEPARTMENT[281](cont'd)

budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, local match, previous year carryforward, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

**98.21(1) Purpose of categorical funding.** The purpose of the modified supplemental amount is to provide funding to meet the needs of identified students for costs in excess of the amount received under rule 281—98.18(257) pursuant to Iowa Code section 257.11(4) ~~as amended by 2015 Iowa Acts, House File 658~~. The funding shall be used only for expenditures that are directly related to the district's approved program plan established pursuant to Iowa Code sections 257.38 through 257.41.

*a.* Returning dropouts are resident pupils who have been enrolled in a school district in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

*b.* Potential dropouts are resident pupils who are enrolled in a school district who demonstrate poor school adjustment as indicated by two or more of the following:

- (1) High rate of absenteeism, truancy, or frequent tardiness.
- (2) Limited or no extracurricular participation or lack of identification with school, including but not limited to expressed feelings of not belonging.
- (3) Poor grades, including but not limited to failing in one or more school subjects or grade levels.
- (4) Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.
- (5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

**98.21(2) Appropriate uses of categorical funding.** Appropriate uses of the funding for an approved program include, but are not limited to:

*a.* Salary and benefits for instructional staff, instructional support staff, guidance counselors, and school-based youth services staff dedicated to providing services directly and exclusively to the identified students participating in the approved program beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. However, if the staff person or guidance counselor works part-time with students who are participating in the approved program and has another unrelated staff assignment, only the portion of the staff person's or guidance counselor's time that is related to the program may be charged to the program funding. The school district shall have the authority to designate and submit in the program plan the portion of the staff member's or guidance counselor's time and related salary and benefits dedicated to this purpose.

For purposes of this paragraph, an alternative setting may be necessary to provide for a program which is offered at a location off school grounds and which is intended to serve student needs by improving relationships and connections to school, decreasing truancy and tardiness, providing opportunities for course credit recovery, or helping students identified as at risk to accelerate through multiple grade levels of achievement within a shortened time frame.

*b.* Professional development for all teachers, guidance counselors, and staff working with identified students under an approved program.

*c.* to *g.* No change.

*h.* Costs incurred for a program intended to address high rates of absenteeism, truancy, or frequent tardiness.

~~*h. i.* Up to 5 percent of the total amount~~ Amounts that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4) "a" as amended by 2015 Iowa Acts, House File 658, or as a modified supplemental amount received under Iowa Code section 257.41 may be used in the budget year for purposes of providing districtwide, or buildingwide, or grade-specific at-risk and dropout prevention programming targeted to nonidentified students.

**98.21(3)** No change.



EDUCATION DEPARTMENT[281](cont'd)

ITEM 7. Amend rule 281—98.22(257), introductory paragraph, as follows:

**281—98.22(257) Use of the unexpended general fund balance.** The unexpended general fund balance is ~~commonly called the secretary's balance and~~ refers to the fund balance remaining in the general fund at the end of the fiscal year.

ITEM 8. Adopt the following **new** subrule 98.23(3):

**98.23(3) Deference.** Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

ITEM 9. Amend rule 281—98.24(257,284) as follows:

**281—98.24(257,284) Teacher salary supplement.** ~~Beginning with the fiscal year 2009-2010, the educational excellence Phase II program and the educator quality basic salary program were combined. Remaining balances in the educational excellence Phase II program and the educator quality basic salary program shall be expended for the same purposes as the teacher salary supplement.~~ A teacher may be employed in both an administrative and a nonadministrative position by a board of directors of a school district and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

**98.24(1) and 98.24(2)** No change.

**98.24(3) Deference.** Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

ITEM 10. Amend rule 281—98.26(257,284) as follows:

**281—98.26(257,284) Educator quality professional development, also known as professional development supplement.** The purpose of the funding is to implement the professional development provisions of the teacher career paths and leadership roles specified in Iowa Code section ~~284.7~~ ~~or~~ 284.15.

**98.26(1) Appropriate uses of categorical funding.** Appropriate uses of the educator quality professional development funding, and any amount designated for professional development purposes from the flexibility account as described in rule 281—98.27(257,298A), are limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; activities and pay to support a beginning teacher mentoring and induction program that meets the requirements of Iowa Code section 284.5; pay for substitute teachers, professional development materials, speakers, and professional development content; textbooks and curriculum materials used for classroom purposes if such textbooks and curriculum materials include professional development; administering assessments pursuant to Iowa Code sections 256.7(21) "b"(1) and 256.7(21) "b"(2) if such assessments include professional development; costs associated with implementing the individual professional development plans; and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code subsection 282.10(4). The use of the funds shall be balanced between school district, attendance center, and individual professional development plans, and every reasonable effort to provide equal access to all teachers shall be made.

**98.26(2)** No change.

**98.26(3) Deference.** Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

**98.26(4) Transfer to flexibility account.** All or a portion of the moneys received as professional development supplement that remain unexpended and unobligated at the end of a fiscal year may be transferred for deposit to the flexibility account as described in rule 281—98.27(257,298A).

In order to transfer funds to the flexibility account, all requirements of Iowa Code chapter 284 must be met.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 11. Adopt the following new rule 281—98.27(257,298A):

**281—98.27(257,298A) Flexibility account.** Beginning with the budget year beginning July 1, 2017, in accordance with Iowa Code section 298A.2, a flexibility account shall be established in the general fund of each school corporation if the school corporation has authorized a transfer of all or a portion of its unexpended and unappropriated funds from any of the following sources: the statewide voluntary preschool program, the professional development supplement, and the home school assistance program. Additionally, moneys from any other school district fund or general fund account can be transferred to the flexibility account if the program, purpose, or requirements for expenditure of such moneys have been repealed or are no longer in effect.

**98.27(1) Requirements for transfer to the flexibility account.** In order to transfer funds to the flexibility account, the board of directors of the school corporation must determine that the statutory requirements for the source funds have been met.

*a.* To transfer funds from the statewide voluntary preschool program, the school district must have provided preschool programming during the fiscal year for which funding remains unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

*b.* To transfer funds from the home school assistance program, the school district must have funded all requests for services and materials from parents and guardians of students eligible to access the program.

**98.27(2) Requirements for use of funds deposited to the flexibility account.** Expenditures from the flexibility account shall be approved by a resolution of the board of directors of the school corporation which meets all requirements stipulated in Iowa Code section 298A.2.

**98.27(3) Appropriate uses of categorical funding.** Appropriate uses of funds transferred to the flexibility account are limited to the following:

*a.* Start-up costs for an approved local program under the statewide voluntary preschool program.  
*b.* Support of the approved statewide voluntary preschool program.  
*c.* Professional development requirements under the professional development supplement.  
*d.* Support of the home school assistance program.  
*e.* Support of the at-risk program, alternative program or alternative school, and potential or returning dropout prevention program.

*f.* Support of the approved gifted and talented program.

*g.* Any other general fund purpose.

**98.27(4) Inappropriate uses of categorical funding.** Inappropriate uses of funds within the flexibility account include any expenditures for purposes not specified in Iowa Code section 298A.2.

**98.27(5) Deference.** Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

ITEM 12. Amend rule 281—98.42(257,284) as follows:

**281—98.42(257,284) Beginning teacher mentoring and induction program.** The purpose of the beginning teacher mentoring and induction program is to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Effective July 1, 2017, as established by 2017 Iowa Acts, chapter 172, this program is addressed within educator quality professional development as described in rule 281—98.26(257,284).

~~**98.42(1) Appropriate uses of categorical funding.** Appropriate uses of the beginning teacher mentoring and induction program funding include costs to provide each mentor of a beginning teacher with the statutory award for participation in the school district's or area education agency's beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district or area education agency.~~

EDUCATION DEPARTMENT[281](cont'd)

~~98.42(2) *Inappropriate uses of categorical funding.* Inappropriate uses of beginning teacher mentoring and induction program funding include any costs not listed in subrule 98.42(1) as appropriate uses.~~

ITEM 13. Amend rule 281—98.45(279) as follows:

**281—98.45(279) Early literacy.** School districts shall provide intensive supplemental reading instruction to any student who has been identified as ~~exhibiting a substantial deficiency persistently at risk~~ in reading, based upon an assessment or through teacher observations. The student's reading proficiency shall be reassessed by locally determined or statewide assessments. The student shall continue to be provided with intensive reading instruction, at grade levels beyond grade three if necessary, until the reading deficiency is remedied student is reading at grade level. ~~The district shall promote effective evidence-based programming, instruction and assessment practices across schools to support all students in becoming proficient readers by the end of the third grade. Programs and services may extend beyond third grade.~~

**98.45(1) *Appropriate uses of categorical funding.*** Appropriate uses of early literacy program funding include, but are not limited to:

- a. Intensive supplemental instructional programs, instructional support, and assessment for identified students;
- b. Professional development for staff regarding early literacy program requirements, instructional materials, and assessments;
- c. Purchase of supplemental or specialized curriculum or instructional materials and assessments that are scientific, research-based and meet the standards of Iowa Code section 279.68 for identified students;
- d. If not already being provided with other sources of funding or general program funding, tutoring, mentoring, and extended school day, week, or year programs for identified students;
- e. Intensive summer literacy programs at the ~~K-3~~ level for identified students;
- f. Transportation services for identified students participating in intensive summer literacy programs;
- g. The fee charged by the department for implementation of the early warning assessment for literacy provided in accordance with Iowa Code sections 256.7(31) and 279.68, effective with the budget year beginning July 1, 2017, pursuant to 2017 Iowa Acts, chapter 172.

**98.45(2)** No change.

ITEM 14. Amend subrule 98.61(2) as follows:

**98.61(2) *Appropriate uses of the general fund.*** Appropriate expenditures in the general fund include, but are not limited to, the following:

- a. to r. No change.
- s. Beginning with the budget year beginning July 1, 2016, transferring, by board resolution, to the student activity fund an amount necessary to purchase protective and safety equipment required for any extracurricular interscholastic athletic contest or competition that is sponsored or administered by an organization as defined in Iowa Code section 280.13, as allowed under Iowa Code section 298A.2 pursuant to Iowa Code section 298A.8(2).

~~s. t.~~ Paying any other costs not required to be accounted for in another fund.

ITEM 15. Amend subrule 98.70(1) as follows:

**98.70(1) *Sources of revenue in the student activity fund.*** Sources of revenue in the student activity fund include income derived from student activities such as gate receipts, ticket sales, admissions, student club dues, donations, fund-raising events, ~~and~~ any other receipts derived from student body cocurricular or extracurricular activities, contests, and exhibitions as well as interest on the investment of those

EDUCATION DEPARTMENT[281](cont'd)

moneys-, and amounts transferred from the general fund under Iowa Code section 298A.2 as described in paragraph 98.61(2) "s."

[Filed 1/25/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3635C**

## **LABOR SERVICES DIVISION[875]**

**Adopted and Filed**

### **Rule making related to boilers and pressure vessels**

The Boiler and Pressure Vessel Board hereby amends Chapter 81, "Waivers or Variances from Administrative Rules by the Boiler and Pressure Vessel Board," Chapter 82, "Boiler and Pressure Vessel Board Petitions for Rule Making," Chapter 83, "Declaratory Orders by the Boiler and Pressure Vessel Board," Chapter 84, "Contested Cases Before the Boiler and Pressure Vessel Board," Chapter 85, "Public Records and Fair Information Practices of the Boiler and Pressure Vessel Board," Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Chapter 91, "General Requirements for All Objects," and Chapter 93, "Miniature Power Boilers Installed Prior to September 20, 2006," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 89.14.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 89.

#### *Purpose and Summary*

Pursuant to Iowa Code subsection 89.14(7), the Boiler and Pressure Vessel Board is required to review all administrative rules adopted by the Board every three years. The amendments in this rule making are a result of that review. Several of the amendments update contact information. The amendment in Item 9 more clearly sets forth the applicable code for miniature power boilers installed prior to September 20, 2006.

The purposes of these amendments are to update obsolete provisions, make the rules more clear, protect the safety of the public, and implement legislative intent.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 20, 2017, as **ARC 3504C**. One comment was received that was supportive of the proposed amendments. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Boiler and Pressure Vessel Board on January 25, 2018.

#### *Fiscal Impact*

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

LABOR SERVICES DIVISION[875](cont'd)

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 81.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 875—81.5(17A,89), introductory paragraph, as follows:

**875—81.5(17A,89) Content of petition.** The required form for a petition for waiver or variance is available on the board's ~~Web site~~ website at <http://www.iowaworkforce.org/labor/boilerboard.htm> iowaboilers.gov. A petition for waiver shall include the following information where applicable and known to the petitioner:

ITEM 2. Amend rule 875—82.1(17A,89), introductory paragraph, as follows:

**875—82.1(17A,89) Petitions for rule making.** Any person or agency may file a petition for rule making with the board requesting the adoption, amendment or repeal of a rule. The required form for a petition for rule making is available on the board's ~~Web site~~ website at <http://www.iowaworkforce.org/labor/boilerboard.htm> iowaboilers.gov. The petition shall be filed at the location specified in rule 875—80.5(89). A petition is deemed filed when it is received by the board office. The board office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be in writing and provide the following information where applicable and known to the petitioner:

ITEM 3. Amend subrule 83.1(1), introductory paragraph, as follows:

**83.1(1)** The required form for a petition for declaratory order is available on the board's ~~Web site~~ website at <http://www.iowaworkforce.org/labor/boilerboard.htm> iowaboilers.gov. The petition must be in writing and provide the following information where applicable and known to the petitioner:

ITEM 4. Amend subrule 84.1(1), introductory paragraph, as follows:

**84.1(1)** A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's ~~Web site~~ website at <http://www.iowaworkforce.org/labor/boilerboard.htm> iowaboilers.gov. A petition for reconsideration shall specify:

ITEM 5. Amend subrule 85.3(1) as follows:

**85.3(1) Location of record Address.** ~~A request for access to a record should be directed to the board at the~~ The board's mailing address is Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The board's staff is located at 150 Des Moines Street, Des Moines, Iowa.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 6. Amend paragraph **90.15(1)“a,”** introductory paragraph, as follows:

*a.* The owner shall provide to the labor commissioner written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available at <http://www.iowaworkforce.org/labor/boiler-inspection.htm> ~~http://www.iowaworkforce.org/labor/boiler-inspection.htm~~ [iowaboilers.gov](http://www.iowaboilers.gov). At a minimum the notice shall contain the following:

ITEM 7. Rescind and reserve subrule **91.1(2)**.

ITEM 8. Amend paragraph **91.13(3)“b”** as follows:

*b. Existing objects.* An adequate supply of combustion air shall be maintained for all objects while in operation. Compliance with the current edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC as adopted at rule 875—91.1(89) or with subrule 91.13(4) constitutes compliance with this rule. Compliance with an earlier edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC constitutes compliance with this rule. However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA. Compliance with an earlier version of Iowa’s combustion air rule constitutes compliance with this rule. Earlier versions of Iowa’s combustion air rule are available ~~for reference at~~ <http://www.iowaworkforce.org/labor/boiler-inspection.htm> from the board’s staff upon request.

ITEM 9. Amend rule 875—93.2(89) as follows:

**875—93.2(89) Codes Code adopted by reference.** ~~The codes listed in 875—Chapter 91~~ current edition of the National Board Inspection Code adopted by reference in rule 875—91.1(89) shall apply to objects covered by this chapter.

[Filed 1/26/18, effective 3/21/18]

[Published 2/14/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3636C**

## **PHARMACY BOARD[657]**

**Adopted and Filed**

### **Rule making related to pharmacist licenses**

The Board of Pharmacy hereby amends Chapter 2, “Pharmacist Licenses,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

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

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 147.2, 147.36, 155A.7, 155A.8 and 155A.9.

#### *Purpose and Summary*

The amendment permits an applicant who is not eligible for a social security number but who has an individual tax identification number (ITIN) to provide that ITIN on the application for licensure by examination. Such applicant shall also be required to provide proof of presence such as a permanent resident card, employment authorization document issued by the federal government, or certain types of visas.

PHARMACY BOARD[657](cont'd)

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 11, 2017, as **ARC 3369C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on January 17, 2018.

*Fiscal Impact*

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

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. Amending the application requirements in this manner may make it a bit easier for foreign applicants who do not yet qualify for a social security number to obtain employment in their profession in a more timely manner, but the amendment is not expected to impact many individuals.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making action is adopted:

Amend subrule 2.2(1) as follows:

**2.2(1) Required information.** The application for examination shall require that the applicant provide, at a minimum, the following: name; address; telephone number; date of birth; social security number or individual tax identification number (ITIN); name and location of college of pharmacy and date of graduation; one current photograph of a quality at least similar to a passport photograph; and internship experience. If the applicant provides an ITIN in lieu of a social security number, the applicant shall also provide acceptable proof of lawful presence. Each applicant shall also declare the following: history of prior pharmacist licensure examinations and record of offenses including but not limited to charges, convictions, and fines which relate to the profession or that may affect the licensee's ability to practice pharmacy.

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3637C****PHARMACY BOARD[657]****Adopted and Filed****Rule making related to registration of service programs**

The Board of Pharmacy hereby amends Chapter 5, “Pharmacy Support Persons,” and Chapter 11, “Drugs in Emergency Medical Service Programs,” Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 147A and Iowa Code sections 124.301 and 124.302.

*Purpose and Summary*

The amendments provide clarification for registration of service programs that are owned by and based at the same physical address of a hospital that is already registered with the Board for controlled substances. Also, the amendments provide updated references to and consistency with 657—Chapter 10 as a result of recent rule making by the Board.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 11, 2017, as **ARC 3370C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on January 17, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. This exception is expected to impact very few service programs, none of which are currently registered, therefore not increasing or decreasing any Board revenues.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

*Review by Administrative Rules Review Committee*

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



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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 657—5.17(155A) as follows:

**657—5.17(155A) Tasks a pharmacy support person shall not perform.** A pharmacy support person shall not perform any of the following judgmental or technical functions. Performance of any of these tasks by a pharmacy support person shall constitute the practice of pharmacy without a license in violation of Iowa Code section 155A.7. A pharmacy support person shall not:

1. to 13. No change.

14. Assist with or witness the destruction or wastage of controlled substances pursuant to ~~657—subrule 10.18(2)~~ 657—subrule 10.22(2).

15. No change.

ITEM 2. Amend rule 657—11.3(124,147A,155A) as follows:

**657—11.3(124,147A,155A) Registration required.** In any service program which intends to provide services in or into Iowa that include the administration of controlled substances, the responsible individual shall ensure that each primary program site, regardless of location, is registered with the board pursuant to this rule. The current registration certificate shall be available at the primary program site for inspection and copying by the board, its representative, or any other authorized individual.

**11.3(1)** No change.

**11.3(2) Pharmacy-based service program.** In a pharmacy-based service program, the CSA registration shall be issued in the name of the service program and shall secondarily name the provider pharmacy. The CSA registration shall be issued for the address of the service program's primary program site and shall identify the pharmacist in charge of the provider pharmacy as the individual responsible for the controlled substances at the service program. A pharmacy-based service program that is owned by and physically located at the same address as an Iowa-licensed and -registered hospital may, but is not required to, obtain a separate registration.

**11.3(3)** No change.

**11.3(4) Change of address of registered primary program site.** A registrant ~~may~~ shall apply to change the address of the registered primary program site by submitting a written request completed application and fee as provided in ~~657—subrule 10.11(2)~~ 657—subrule 10.9(2). ~~The board and the DEA shall be notified in writing prior to a change of address of a registered primary program site.~~

**11.3(5)** No change.

ITEM 3. Amend subrule 11.26(2) as follows:

**11.26(2) Receipt and disbursement records in medical director-based service programs.** Any pharmacy or other authorized registrant that provides controlled substances for a medical director-based service program shall provide to the service program a record of the disbursement and maintain a record of the disbursement pursuant to rule ~~657—10.34(124,155A)~~ 657—10.16(124). The service program shall retain the record on which an authorized individual shall sign and record the actual date of receipt. The record shall include the following:

*a. to e.* No change.

ITEM 4. Amend rule 657—11.27(124,147A,155A) as follows:

**657—11.27(124,147A,155A) Ordering Schedule II controlled substances—medical director-based service programs.** Except as otherwise provided by ~~657—subrule 10.34(7)~~ 657—subrule 10.17(2) and under federal law, a DEA Form 222, preprinted with the address of the primary program site, is required to be maintained at the primary program site for the acquisition of each supply of a Schedule II controlled substance. The order form shall be executed only by the medical director named on the order form or by

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

an authorized signer designated pursuant to a properly executed power of attorney. A DEA Form 222 shall be dated and signed as of the date the order is submitted for filling. A medical director or authorized signer shall not pre-sign a DEA Form 222 for subsequent completion. All Schedule II order forms shall be maintained at the primary program site and shall be available for inspection and copying by the board, its representative, or any other authorized individual for a period of two years from the date of the record.

ITEM 5. Amend rule 657—11.33(124,147A,155A) as follows:

**657—11.33(124,147A,155A) Report of loss or theft of controlled substance.** Upon suspicion of any loss or theft of a controlled substance, the service director shall immediately notify the responsible individual. The responsible individual shall provide notice and reporting as required in rule 657—10.16(124) 657—10.21(124).

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3638C**

**PHARMACY BOARD[657]**

**Adopted and Filed**

**Rule making related to general pharmacy practices**

The Board of Pharmacy hereby amends Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 124.301, 124.303, 124.306, 126.10, 126.11, 155A.6, 155A.13, 155A.27, 155A.28, 155A.31, and 155A.33 to 155A.36 and 2017 Iowa Acts, House File 305.

*Purpose and Summary*

Pursuant to Iowa Code section 17A.7(2), this rule making is, in part, the result of an overall review of administrative rules. The amendments clarify and rearrange content of rules in a more efficient manner, incorporate language from 2017 Iowa Acts, House File 305, signed into law during the 2017 Legislative Session of the 87th General Assembly, and provide for remote storage of records in certain circumstances.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 27, 2017, as **ARC 3330C**. The Board received a written comment from the National Association of Chain Drug Stores (NACDS) regarding the proposed amendments. The commenter suggested amending rule 657—6.8(124,155A) to reduce administrative record-keeping burdens and provide greater flexibility. The Board acted upon the recommendation and further amended the rule. Rule 657—6.8(124,155A) was changed from that published under Notice to read as follows:

"All prescriptions shall be dated and assigned a unique identification number that shall be recorded on the original prescription, except as provided in 657—subrule 21.5(1). The original prescription shall be retained by the pharmacy filling the prescription and shall be maintained in the original format as

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

received by the pharmacy. Dispensing documentation shall include the date of fill or refill; the name, strength, and National Drug Code (NDC) of the actual drug product dispensed; and the initials or other unique identification of the pharmacist, pharmacist-intern, or technician in an approved tech-check-tech program. Dispensing documentation shall be maintained and be readily available.”

No other changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on January 17, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions 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.* No change.

*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, and documentation of such review shall be maintained for two years from the date of entry.

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

ITEM 2. Amend rule 657—6.8(124,155A) as follows:

**657—6.8(124,155A) Prescription processing documentation.** All prescriptions shall be dated and assigned a unique identification number that shall be recorded on the original prescription, ~~except as provided in 657—subrule 21.5(1). The original prescription, whether transmitted orally, electronically, or in writing,~~ shall be retained by the pharmacy filling the prescription and shall be maintained in the original format as received by the pharmacy. Refill Dispensing documentation shall include the date of fill or refill; the name, strength, and National Drug Code (NDC) of the actual drug product dispensed; and the initials or other unique identification of the pharmacist, pharmacist-intern, or technician in an approved tech-check-tech program. ~~The name, strength, and either the manufacturer's name or the National Drug Code (NDC) of the actual drug product dispensed~~ Dispensing documentation shall be maintained and be readily retrievable available.

ITEM 3. Amend rule 657—6.9(124,155A) as follows:

**657—6.9(124,155A) Transfer of prescription.** The transmission of a prescription drug order from a pharmacy to a pharmacy engaged in centralized prescription filling or processing on behalf of the originating pharmacy pursuant to the requirements of 657—Chapter 18 shall not constitute the transfer of a prescription. Upon the request of a patient or the patient's caregiver, a pharmacy shall transfer original prescription drug order information and prescription refill information to a pharmacy designated by the patient or the patient's caregiver, central fill or processing pharmacies excepted, subject to the following requirements:

**6.9(1) Schedule III, IV, or V prescriptions.** The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis except as provided in subrule ~~6.9(9)~~ 6.9(8).

**6.9(2)** No change.

**6.9(3) Communication.** The transfer is communicated directly between pharmacists, directly between pharmacist-interns under the direct supervision of pharmacists at the respective pharmacies, directly between a pharmacist and a pharmacist-intern under the direct supervision of a pharmacist, or as authorized in subrule ~~6.9(9)~~ 6.9(8). Following direct communication between authorized individuals as provided herein, the transferring pharmacist or pharmacist-intern may transmit the prescription and transfer information required under subrule 6.9(5) from the transferring pharmacy via facsimile. The receiving pharmacist or pharmacist-intern shall ensure the prescription transfer record maintained in the receiving pharmacy contains all of the information required under subrule ~~6.9(8)~~ 6.9(7).

**6.9(4) Prescriptions maintained.** Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last ~~refill~~ activity.

**6.9(5) and 6.9(6)** No change.

~~**6.9(7) Controlled substance prescription status.** The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred.~~

~~**6.9(8)**~~ **6.9(7) Record of transfer received.** The pharmacist or pharmacist-intern receiving the transferred prescription drug order information shall:

a. No change.

b. Record on or with the transferred prescription drug order the following information:

(1) to (7) No change.

(8) If transferring a controlled substance prescription from a pharmacy utilizing a shared electronic database system as described in subrule ~~6.9(9)~~ 6.9(8) to a pharmacy outside that shared system, the pharmacy name, location, DEA registration number, and prescription number from which the prescription was originally filled.

~~**6.9(9)**~~ **6.9(8) Electronic transfer between pharmacies.** Pharmacies electronically accessing the same prescription drug order records via a real-time, on-line database may electronically transfer prescription information, including controlled substance prescription information, up to the maximum refills permitted by law and the prescriber's authorization, if the following requirements are met.

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

a. and b. No change.

c. For transfers of controlled substance prescriptions, all information requirements included in subrules 6.9(1) and 6.9(3) through ~~6.9(8)~~ 6.9(7) shall be satisfied in the electronic system. Transfers of controlled substance prescriptions shall also identify the pharmacy name, address, DEA registration number, and prescription number from which the prescription was originally filled.

ITEM 4. Amend subrule 6.10(1) as follows:

**6.10(1) Required information.** The label affixed to or on the dispensing container of any prescription drug or device dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

a. and b. No change.

c. Except as provided in 657—subrule 8.19(7) for epinephrine auto-injectors or ~~657—subrule 8.19(8) for opioid antagonists~~, the name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner;

d. to f. No change.

g. Unless otherwise directed by the prescriber, the label shall bear the name, strength, and quantity of the drug dispensed.

(1) If a pharmacist selects an equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label shall identify the generic drug and may identify the brand name drug for which the selection is made, such as “(generic name) Generic for (brand name product)”;

(2) If a pharmacist selects a brand name drug product for a generic drug product prescribed by a practitioner, the prescription container label shall identify the brand name drug product dispensed and may identify the generic drug product ordered by the prescriber, such as “(brand name product) for (generic name)”;

(3) If a pharmacist selects an interchangeable biological product for the biological product prescribed by a practitioner, the prescription container label shall identify the interchangeable biological product dispensed and may identify the biological product prescribed by the practitioner, such as “(interchangeable biological product) for (biological product)”;

h. No change.

ITEM 5. Amend subrule 6.13(1) as follows:

**6.13(1) Information required.** A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. ~~The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist patient record system shall be responsible for obtaining, recording, and maintaining~~ contain, at a minimum, the following information:

a. Full name of the patient ~~for whom the drug is intended~~;

b. Address and telephone number of the patient;

c. Patient’s age ~~or~~ date of birth;

d. Patient’s gender;

e. Known allergies;

f. ~~Significant patient information including a~~ A list of all prescription drug orders dispensed by the pharmacy during the two years immediately preceding the most recent entry showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date ~~received~~ dispensed, and the name of the prescriber; and

g. Pharmacist comments relevant to the ~~individual’s drug therapy~~ patient’s health care, including:

(1) Known drug reactions,

(2) Identified idiosyncrasies,

(3) Known chronic conditions or disease states of the patient,

(4) The identity of any other drugs, over-the-counter drugs, herbals, supplements, other alternative medications, or devices currently being used by the patient that may relate to prospective drug review.

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

ITEM 6. Amend rule 657—6.14(155A) as follows:

**657—6.14(155A) Patient counseling and instruction.** Every general pharmacy that is open to the public and located in Iowa shall post in every prescription pickup area, including in every drive-through prescription pickup lane, in a manner clearly visible to patients, a notice that Iowa law requires the pharmacist to discuss with the patient any new prescriptions dispensed to the patient that are new or a change in drug therapy. ~~The board shall provide a general pharmacy with the required signage. A pharmacy that provides no direct patient access to the pharmacy department, commonly referred to as a “closed-door pharmacy,” shall not be required to post the counseling notice.~~

**6.14(1) Counseling required.** Upon receipt of a new prescription drug order, or upon receipt of a change in drug therapy including but not limited to a change of dose, directions, or drug formulation, and following a prospective drug use review pursuant to rule 657—8.21(155A), a pharmacist or pharmacist-intern shall counsel each patient or patient’s caregiver. An offer to counsel shall not fulfill the requirements of this rule. Patient counseling shall be on matters which, in the pharmacist’s professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

*a. to j.* No change.

**6.14(2) and 6.14(3)** No change.

**6.14(4) Oral counseling not practicable.** If in the pharmacist’s professional judgment oral counseling is not practicable, the pharmacist may select and use alternative forms of patient information which shall include information for the patient or patient’s caregiver to contact the pharmacist for further consultation. The manner in which the patient or caregiver contacts the pharmacist shall not cause the patient to incur any expense. “Not practicable” refers to patient variables including, but not limited to, the absence of the patient or patient’s caregiver, the patient’s or caregiver’s hearing impairment, or a language barrier. “Not practicable” does not include pharmacy variables such as inadequate staffing, technology failure, or high prescription volume. ~~Alternative forms of patient information may include written information leaflets, pictogram labels, video programs, or information generated by electronic data processing equipment. When used in place of oral counseling, alternative forms of patient information shall advise the patient or caregiver that the pharmacist may be contacted for consultation in person at the pharmacy by toll-free telephone or collect telephone call.~~ A combination of oral counseling and alternative forms of counseling is encouraged.

**6.14(5)** No change.

**6.14(6) Refusal of consultation.** A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation. A patient’s or caregiver’s refusal of consultation shall be documented by the pharmacist. The absence of any record of a refusal of the pharmacist’s attempt to counsel shall be presumed to signify that ~~the offer was accepted and that~~ counseling was provided.

ITEM 7. Amend rule 657—6.15(124,126) as follows:

**657—6.15(124,126) Return of drugs and other items devices.** For the protection of the public health and safety, prescription drugs and devices, ~~controlled substances, and items of personal contact nature~~ may be returned to the pharmacy for reuse or resale only as herein provided:

**6.15(1) Integrity maintained.** Prescription drugs and devices may be returned, exchanged, or resold only if, in the professional judgment of the pharmacist, the integrity of the prescription drug or device has not in any way been compromised.

**6.15(2) and 6.15(3)** No change.

**6.15(4) Personal contact items.** ~~Pharmacy personnel shall not accept for reuse or resale any items of personal contact nature that have been removed from the original package or container after sale.~~

ITEM 8. Amend rule 657—6.16(124,155A) as follows:

**657—6.16(124,155A) Records.** Every ~~inventory or other~~ record required to be kept under Iowa Code chapters 124 and 155A or rules of the board shall be kept by the pharmacy and be available for inspection

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

and copying by the board or its representative for at least two years from the date of the ~~inventory or record or last activity~~ except as specifically identified by law or rule. Controlled substances records shall be maintained in a readily retrievable manner in accordance with federal requirements and 657—Chapter 10. ~~Original hard-copy prescription and other pharmacy records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department unless such remote storage is prohibited under federal law. A remote storage area shall be located within the same physical structure containing the licensed pharmacy department.~~

**6.16(1)** No change.

**6.16(2)** *Prescriptions maintained* ~~Storage of records.~~ The original prescription drug order shall be maintained for a period of two years following the date of last activity on the prescription. Original hard-copy prescriptions and other pharmacy records shall be maintained by the pharmacy for a minimum of two years from the date of the record in accordance with this subrule.

*a.* Records shall be maintained within the licensed pharmacy department for a minimum of 12 months, except as provided herein. Pharmacy records less than 12 months old may be stored in a secure storage area outside the licensed pharmacy department, including at a remote location, if the pharmacy has retained an electronic copy of the records in the pharmacy that is immediately available and if the original records are available within 48 hours of a request by the board or its authorized agent, unless such remote storage is prohibited under federal law.

*b.* Records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department, including at a remote location, if the records are retrievable within 48 hours of a request by the board or its authorized agent, unless such remote storage is prohibited under federal law.

**6.16(3)** *Number imprinted.* The original hard-copy prescription shall be imprinted with the prescription or control number assigned to the prescription drug order, except as provided in 657—subrule 21.5(1).

**6.16(4)** *Alternative data retention system.* Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

*a. and b.* No change.

*c.* The information maintained in the alternative system is not obscured or rendered illegible due to security features of the original ~~hard-copy~~ record.

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3639C**

**PHARMACY BOARD[657]**

**Adopted and Filed**

**Rule making related to dispensing of prescription refills**

The Board of Pharmacy hereby amends Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 155A.27.

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

*Purpose and Summary*

The amendment provides clarification for pharmacists in dispensing remaining refills of prescriptions after the prescriber has ended a relationship with a patient, such as with discontinuation of practice or relocation to another state, so that a pharmacist is authorized to provide adequate and appropriate care to a patient while the patient is seeking the care of a new provider.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 11, 2017, as **ARC 3371C**. The Board received one written comment from the Iowa Osteopathic Medical Association (IOMA) regarding the proposed amendment. The Board considered the suggestions from IOMA, which requested the addition of language at the end of the amendment that would hamper the ability of the pharmacist to exercise professional discretion, in the best interests of the patient, in continuing to dispense prescription drugs when authorized by the prescriber before the prescriber becomes unavailable to the patient. IOMA's proposal would limit continued dispensings to the duration of the remaining refills authorized by the prescriber or 90 days of therapy, whichever is less. The intent of the Board's rule making is to ensure that, while the patient engages a new provider, the patient's health and well-being are not jeopardized because of the denial of needed drug therapy that was authorized by the patient's most recent health care provider. The dispensing pharmacist knows the current status of health care provider availability in the area and knows the patient and the patient's drug therapy. The pharmacist is in a good position to use the pharmacist's professional judgment to determine, for each individual patient, the need to continue an authorized drug therapy while the patient schedules with a new provider. IOMA further requested that language be added to require the pharmacist to inform the patient that no additional fills can be dispensed and to advise the patient to seek care from another provider. Pharmacists currently counsel patients regarding the need to seek another provider in such a situation. The Board believes that the prescriber should be providing this advice to the patient before the prescriber retires or otherwise becomes unavailable to treat the patient. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on January 17, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

*Review by Administrative Rules Review Committee*

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



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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making action is adopted:

Amend rule 657—8.20(155A) as follows:

**657—8.20(155A) Valid prescriber/patient relationship.** Prescription drug orders and medication orders shall be valid as long as a prescriber/patient relationship exists. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or oversee the patient's use of a prescription drug, ~~the order loses its validity and the pharmacist, on becoming aware of the situation, shall cancel the order and any remaining prescription refills. The pharmacist shall, however, exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the prescribed drug to continue treatment until the patient can reasonably obtain the service of another prescriber~~ may be dispensed at the discretion of the pharmacist for a suitable amount of time so that the patient can establish care with a new provider and a new order can be issued. In determining the duration of which prescriptions may be dispensed, the pharmacist shall consider the patient's health care status and access to health care services.

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3640C**

**PHARMACY BOARD[657]****Adopted and Filed****Rule making related to electronic data and automated systems in pharmacy practice**

The Board of Pharmacy hereby rescinds Chapter 9, "Automated Medication Distribution Systems and Telepharmacy Services," and Chapter 21, "Electronic Data in Pharmacy Practice," and adopts new Chapter 21, "Electronic Data and Automated Systems in Pharmacy Practice," Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 124.301, 124.306, 124.308, 147.107, 155A.27, 155A.33 and 155A.35.

*Purpose and Summary*

Pursuant to Iowa Code section 17A.7(2), this rule making is the result of an overall review of administrative rules relating to automated medication distribution systems and electronic data in pharmacy practice. Chapter 9 is rescinded to remove any overlap or inconsistencies of rules for telepharmacy practice found in 657—Chapter 13, "Telepharmacy Practice," recently adopted by the Board. Further, automated systems are increasingly commonplace in pharmacy practice, with safety and security measures well-established, and the Board wishes to pare down the rules to identify the core minimum standards for pharmacies utilizing such systems. Minimum standards for automated systems are added to Chapter 21. Several rules relating to notice and reports to the Board are not continued in the rule making to lessen the burden on pharmacies using such automated systems.

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

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 27, 2017, as **ARC 3329C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on January 17, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

- ITEM 1. Rescind and reserve **657—Chapter 9**.
- ITEM 2. Rescind 657—Chapter 21 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 21

## ELECTRONIC DATA AND AUTOMATED SYSTEMS IN PHARMACY PRACTICE

**657—21.1(124,155A) Purpose and scope.** The purpose of this chapter is to provide the minimum standards for the utilization of electronic data and automated systems in the practice of pharmacy and shall apply to all pharmacies located in Iowa.

**657—21.2(124,155A) Definitions.** For the purpose of this chapter, the following definitions shall apply:  
“Automated data processing system” means an application that is used for prescription, patient, drug, and prescriber information; installed on a pharmacy’s computer or server; and controlled by the pharmacy.

“Automated medication distribution system” or “AMDS” includes, but is not limited to, an automated device or series of devices operated by an electronic interface with one or more computers that is used to prepare, package, or dispense specified dosage units of drugs for administration or dispensing. “AMDS” does not include electronic storage devices that do not have an electronic interface with one or more computers of the pharmacy.

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

“DEA” means the U.S. Department of Justice, Drug Enforcement Administration.

“*Electronically prepared prescription*” means a prescription that is generated utilizing an electronic prescription application.

“*Electronic device*” means an electronic, mechanical, or other device which is used to intercept communications and includes but is not limited to network, file and print servers; desktop workstations; laptop computers; tablets; mini-computers; smart phones; and similar devices.

“*Electronic prescription*” means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.

“*Electronic prescription application*” means software that is used to create electronic prescriptions and that is intended to be installed on a prescriber’s computers and servers where access and records are controlled by the prescriber.

“*Electronic signature*” means a confidential personalized digital key, code, number, or other method used for secure electronic data transmissions which identifies a particular person as the source of the message, authenticates the signatory of the message, and indicates the person’s approval of the information contained in the transmission.

“*Electronic transmission*” means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber’s electronic prescription application to a pharmacy’s computer, where the data file is imported into the pharmacy prescription application.

“*Facsimile transmission*” or “*fax transmission*” means the transmission of a digital image of a prescription from the prescriber or the prescriber’s agent to the pharmacy. “Facsimile transmission” includes but is not limited to transmission of a written prescription between the prescriber’s fax machine and the pharmacy’s fax machine; transmission of an electronically prepared prescription from the prescriber’s electronic prescription application to the pharmacy’s fax machine or printer; or transmission of an electronically prepared prescription from the prescriber’s fax machine to the pharmacy’s fax machine, computer, or printer.

“*Intermediary*” means any technology system that receives and transmits an electronic prescription between the prescriber and the pharmacy.

“*Pharmacist verification*” or “*verified by a pharmacist*” means the accuracy of a prescription drug is verified by a pharmacist, pharmacist-intern, or technician in an approved tech-check-tech program.

“*Prescription drug order*” or “*prescription*” means a lawful order of a practitioner for a drug or device for a specific patient that is communicated to a pharmacy, regardless of whether the communication is oral, electronic, via facsimile, or in printed form.

“*Readily retrievable*” means that hard-copy or electronic records can be separated out from all other records within 48 hours of a request from the board or other authorized agent.

“*Written prescription*” means a prescription that is created on paper, a prescription that is electronically prepared and printed, or a prescription that is electronically prepared and transmitted from the prescriber’s electronic device to a pharmacy via facsimile. A written prescription for a controlled substance shall be manually signed by the prescriber in compliance with federal and state laws, rules, and regulations.

**657—21.3(124,155A) System security and safeguards.** To maintain the integrity and confidentiality of patient records and prescription drug orders, any system, computer, or electronic device utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders. Authentication credentials shall be securely maintained by the individual to whom the credentials are issued and shall not be shared with or disclosed to any other individual. Once a drug or device has been dispensed, any alterations in either the prescription drug order data or the patient record shall be documented and shall include the identification of all pharmacy personnel who were involved in making the alteration as well as the responsible pharmacist. An automated data processing system used for the receipt and processing of electronic transmissions from a prescriber’s electronic prescription application shall comply with DEA requirements relating to electronic prescriptions and shall be certified compliant with DEA regulations.

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

**657—21.4** Reserved.

**657—21.5(124,155A) Automated data processing systems.** An automated data processing system may be used, subject to the requirements contained in this rule, for the storage and retrieval of prescription, patient, prescriber and drug data as well as data relating to the pharmacy staff utilization of the system.

**21.5(1) *Electronic storage of hard-copy prescriptions.*** A pharmacy that maintains an electronic copy of an original hard-copy prescription for a noncontrolled substance shall retain, in a readily retrievable format, the original hard-copy prescription as required in rule 657—6.8(155A) but shall be exempt from the requirement to record on the original hard-copy prescription the date and unique identification number of the prescription.

**21.5(2) *Data retrievable and printable.*** Any automated data processing system shall be capable of immediate retrieval (via computer monitor or hard-copy printout) of, at a minimum, any prescription, patient, prescriber, and drug data as well as data relating to pharmacy staff utilization of the system.

**21.5(3) *Auxiliary procedure for system downtime.*** A pharmacy utilizing an automated data processing system shall have a procedure that will maintain security and confidentiality of all data as well as ensure the legal dispensing of any prescription drug order in the event the system experiences downtime.

**657—21.6(124,155A) Electronic prescription applications.** A prescriber may initiate and authorize a prescription drug order utilizing an electronic prescription application that has been determined to maintain security and confidentiality of patient information and records and, if prescribing controlled substances via an electronic prescribing system, certified compliant with DEA regulations for electronic prescribing of controlled substances. The prescription drug order shall contain all information required by Iowa Code sections 155A.27 and 147.107(5). The receiving pharmacist shall be responsible for verifying the authenticity of an electronically prescribed prescription pursuant to rule 657—8.19(124,126,155A). A prescription that is electronically generated may be transmitted to a pharmacy via electronic or facsimile transmission or printed in hard-copy format for delivery to the pharmacy. A prescription that is transmitted by a prescriber's agent via electronic or facsimile transmission shall include the first and last names and title of the agent responsible for the transmission.

**21.6(1) *Electronic transmission.*** A prescription prepared pursuant to this rule may be transmitted to a pharmacy via electronic transmission. A pharmacy shall be certified compliant with DEA regulations relating to electronic prescriptions prior to electronically receiving prescriptions for controlled substances. The electronic record shall serve as the original record and shall be maintained for two years from the date of last activity on the prescription. Any annotations shall be made and retained on the electronic record.

*a.* An electronically prepared and transmitted prescription that is printed following transmission shall be clearly labeled as a copy, not valid for dispensing.

*b.* The authenticity of a prescription transmitted via electronic transmission between a DEA-certified electronic prescription application and a DEA-certified electronic automated data processing system shall be deemed verified by virtue of the security processes included in those applications.

*c.* A pharmacy shall ensure that no intermediary has the ability to change the content of the prescription drug order or compromise its confidentiality during the transmission process. The electronic format of the prescription drug order may be changed by the intermediary to facilitate the transmission between electronic applications as long as the content of the prescription drug order remains unchanged.

*d.* In addition to the information requirements for a prescription, an electronically transmitted prescription shall identify the transmitter's telephone number for verbal confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission as well as any other information required by federal or state laws, rules, or regulations.

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*e.* If the transmission of an electronic prescription fails, the prescriber may print the prescription, manually sign the printed prescription, and deliver the prescription to the pharmacy via facsimile transmission in accordance with subrule 21.6(2).

**21.6(2) Printed (hard-copy) prescriptions.** An electronically generated prescription may be printed in hard-copy format for facsimile transmission or delivery to the pharmacy.

*a.* A prescription for a controlled substance shall include the prescriber's manual signature. Printed or hard-copy prescriptions for Schedule II controlled substances shall not be transmitted to a pharmacy via facsimile transmission, except as authorized in rule 657—21.7(124,155A).

*b.* If the prescriber authenticates a prescription for a noncontrolled prescription drug utilizing an electronic signature, the printed prescription shall be printed on security paper. Security features of the paper shall ensure that prescription information is not obscured or rendered illegible when transmitted via facsimile or when scanned into an electronic record system.

*c.* If the facsimile transmission of a printed prescription is a result of a failed electronic transmission, the facsimile shall indicate that it was originally transmitted to the named pharmacy, the date and time of the original electronic transmission, and the fact that the original transmission failed.

**657—21.7(124,155A) Facsimile transmission of a prescription.** A pharmacist may dispense noncontrolled and controlled drugs, including Schedule II controlled substances only as provided in this rule, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner's agent. The means of transmission via facsimile shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The faxed prescription shall serve as the original record, except as provided in subrule 21.7(1), shall be maintained for a minimum of two years from the date of the last activity on the prescription, and shall contain all information required by Iowa Code sections 155A.27 and 147.107(5), including the prescriber's signature. If the prescription is transmitted by an agent of the prescriber, the facsimile transmission shall include the first and last names and title of the agent responsible for the transmission. The pharmacist shall be responsible for verifying the authenticity of the prescription as to the source of the facsimile transmission.

**21.7(1) Schedule II controlled substances—emergency situations.** A pharmacist may, in an emergency situation as defined in 657—subrule 10.26(1), dispense a Schedule II controlled substance pursuant to a facsimile transmission to the pharmacy of a written, signed prescription from the prescriber or the prescriber's agent pursuant to the requirements of rule 657—10.26(124). The facsimile shall serve as the temporary written record required by 657—subrule 10.26(2).

**21.7(2) Schedule II controlled substances—compounded injectable.** A prescription for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a prescriber or the prescriber's agent to a pharmacy via facsimile.

**21.7(3) Schedule II controlled substances—long-term care facility patients.** A prescription for any Schedule II controlled substance for a resident of a long-term care facility, as "long-term care facility" is defined in rule 657—23.1(155A), may be transmitted by the prescriber or the prescriber's agent to a pharmacy via facsimile. The prescription shall identify that the patient is a resident of a long-term care facility.

**21.7(4) Schedule II controlled substances—hospice patients.** A prescription for any Schedule II controlled substance for a patient in a hospice program licensed pursuant to Iowa Code chapter 135J or a program certified or paid for by Medicare under Title XVIII may be transmitted via facsimile by the prescriber or the prescriber's agent to the pharmacy. The prescription shall identify that the patient is a hospice patient.

**657—21.8 and 21.9** Reserved.

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**657—21.10(124,155A) Automated medication distribution system (AMDS).** Any pharmacy that utilizes an AMDS shall comply with these rules in addition to all applicable federal and state laws, rules, and regulations.

**21.10(1) Policies and procedures.** Pursuant to the requirements regarding policies and procedures in 657—subrule 8.3(5), each pharmacy utilizing an AMDS shall have policies and procedures that address all aspects of the operation of the AMDS to include, at a minimum:

- a. Access to drugs and patient information,
- b. Pharmacy personnel training in the proper operation of the AMDS,
- c. Methods to ensure accurate stocking of the AMDS pursuant to subrule 21.10(2),
- d. Confidentiality of patient information,
- e. Routine and preventative maintenance of the AMDS according to manufacturer recommendations,
- f. Packaging and labeling of prescription drugs loaded into or dispensed from the AMDS that is in compliance with federal and state laws, rules, and regulations, and
- g. Security and control of the prescription drugs maintained and utilized in the AMDS to include:
  - (1) Drug loading, storage, and records.
  - (2) Drugs removed from system components but not used.
  - (3) Inventory.
  - (4) Cross contamination.
  - (5) Lot number control.
  - (6) Wasted or discarded drugs.
  - (7) Controlled substances.

**21.10(2) Stocking the AMDS.** The pharmacy shall have adequate procedures in place to ensure the accurate stocking of drugs into an AMDS using barcode scanning technology. Only a pharmacy technician, pharmacist-intern, or pharmacist shall be allowed to participate in the stocking of the AMDS.

**21.10(3) Pharmacist verification of drugs dispensed from AMDS.**

a. When an AMDS only dispenses drugs that were prepackaged and verified by a pharmacist prior to being stocked in the AMDS and there was no further manipulation of the drug or package other than affixing a patient-specific label, such drugs shall not require additional pharmacist verification prior to administration or dispensing to the patient or authorized representative.

b. When a drug is stocked in an AMDS and undergoes further manipulation, such as counting and packaging, such drugs shall require pharmacist verification prior to dispensing to the patient. Such verification shall be documented.

**21.10(4) Placement of AMDS.**

a. An AMDS placed outside a pharmacist's direct supervision shall only dispense pharmacist-verified packages in compliance with paragraph 21.10(3) "a."

b. An AMDS that manipulates, including but not limited to counting, packaging, or labeling, prescription drugs for subsequent patient dispensing shall only be utilized in a pharmacy under the direct supervision of a pharmacist, except in an approved telepharmacy pursuant to 657—Chapter 13.

**657—21.11(124,155A) Pharmacist verification of controlled substance fills—daily printout or logbook.** The individual pharmacist who makes use of the pharmacy prescription application shall provide documentation of the fact that the fill information entered into the pharmacy prescription application each time the pharmacist fills a prescription order for a controlled substance is correct. If the pharmacy prescription application provides a hard-copy printout of each day's controlled substance prescription order fill data, that printout shall be verified, dated, and signed by each individual pharmacist who filled a controlled substance prescription order. Each individual pharmacist must verify that the data indicated is correct and sign this document in the same manner as the pharmacist would sign a check or legal document (e.g., J. H. Smith or John H. Smith). This document shall be maintained in a separate file at that pharmacy for a period of two years from the dispensing date. This printout of the day's controlled substance prescription order fill data shall be generated by and available at each pharmacy using a computerized pharmacy prescription application within 48 hours of the date on

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which the prescription was dispensed. The printout shall be verified and signed by each pharmacist involved with such dispensing. In lieu of preparing and maintaining printouts as provided above, the pharmacy may maintain a bound logbook or separate file. The logbook or file shall include a statement signed each day by each individual pharmacist involved in each day's dispensing that attests to the fact that the prescription information entered into the pharmacy prescription application that day has been reviewed by the pharmacist and is correct as shown. Pharmacist statements shall be signed in the manner previously described. The logbook or file shall be maintained at the pharmacy for a period of two years after the date of dispensing.

These rules are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 147.107, 155A.27, 155A.33, and 155A.35.

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3641C**

**PHARMACY BOARD[657]**

**Adopted and Filed**

**Rule making related to agency procedure for rule making**

The Board of Pharmacy hereby rescinds Chapter 28, "Agency Procedure for Rule Making," Iowa Administrative Code, and adopts a new Chapter 28 with the same title.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 17A.22.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 17A.1 to 17A.9A.

*Purpose and Summary*

This amendment rescinds current Chapter 28 and adopts new rules regarding the procedures for rule making in line with the requirements of Iowa Code chapter 17A and current practices. The new rules address recent changes regarding rule-making actions and activities including emergency adoption of rules, regulatory analyses, fiscal impact statements, jobs impact statement, five-year review, and electronic filing, recording, and tracking of agency rule-making actions.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 11, 2017, as **ARC 3373C**. No public comments were received. The adopted amendment is identical to the one published under Notice, except that the cross reference to 2017 Iowa Acts, Senate File 1, was changed to Iowa Code section 17A.4B in subrule 28.6(8).

*Adoption of Rule Making*

This rule making was adopted by the Board on January 17, 2018.

*Fiscal Impact*

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

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*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making action is adopted:

Rescind 657—Chapter 28 and adopt the following **new** chapter in lieu thereof:

CHAPTER 28  
AGENCY PROCEDURE FOR RULE MAKING

**657—28.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the board of pharmacy, hereinafter referred to as “board,” are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**657—28.2(17A) Definitions.**

“*Administrative rules review committee*” or “*ARRC*” means a bipartisan standing committee composed of five senators and five representatives that meets on a regular basis for the purpose of selectively reviewing rules whether proposed or in effect.

“*ARC*” means the governor’s administrative rules coordinator.

“*ARC number*” means the identification number assigned by the ARC to each rule making document.

“*Iowa Administrative Bulletin*” or “*IAB*” is the official biweekly publication that contains the text or texts of notices of intended action and of all adopted rules.

“*Notice of Intended Action*” means a published notice of the board’s intent to adopt, amend, or rescind one or more rules pursuant to Iowa Code section 17A.4(1).

**657—28.3(17A) Solicitation of comments before notice.** In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action, solicit comments from the public on a subject matter of possible rule making by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**657—28.4(17A) Public rule-making docket.** Proposed rule making is made available for inspection and comment by the public through the websites identified in this rule.

**28.4(1) Proposed rule making.** Each proposed rule making is published in the Iowa Administrative Bulletin and can be found on the state’s administrative rules website at [rules.iowa.gov](http://rules.iowa.gov). Each proposed rule making is identified by agency and by ARC number and shall include information on the opportunity



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to directly submit public comments, suggestions, and objections regarding the proposed rule making, including the deadline for submission of such comments.

**28.4(2) Rules tracker.** The progress and current status of any proposed rule making may be viewed at [www.legis.iowa.gov/law/administrativerules/tracker](http://www.legis.iowa.gov/law/administrativerules/tracker).

**28.4(3) Board notification of proposed rule making.** Persons desiring to receive copies of future Notices of Intended Action may subscribe on the board's website at [pharmacy.iowa.gov](http://pharmacy.iowa.gov).

**28.4(4) Public participation—written comments.** For at least 20 days after publication of the Notice of Intended Action, persons may submit written comments on the proposed rule. Such written submissions shall identify the proposed rule to which they relate and shall be submitted to the Iowa Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or to the person designated in the Notice of Intended Action.

**28.4(5) Public participation—public hearings.** The board may, at any time, schedule a public hearing in accordance with rule 657—28.4(17A) on a proposed rule. The board shall schedule a public hearing on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the ARRC, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. The request shall contain the following information:

*a.* A request by one or more individual persons shall include the printed name, signature, address, telephone number, and email address of each person.

*b.* A request by an association shall contain a statement that the association has at least 25 members and include the printed name, signature, address, telephone number, and email address of an officer or designee of the association.

*c.* A request by an agency or governmental subdivision shall contain the printed name, signature, address, telephone number, and email address of an official having authority to act on behalf of the entity.

**657—28.5(17A) Public hearing proceedings.**

**28.5(1) Applicability.** This rule applies only to those public hearings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b.”

**28.5(2) Scheduling and notice.** A public hearing on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the IAB. That notice shall also identify the proposed rule by ARC number and citation to the IAB.

**28.5(3) Presiding officer.** The board, a member of the board, or another person designated by the board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding.

**28.5(4) Conduct of hearing.** At a public hearing on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the board at least one business day prior to the hearing and indicate the general subject of their presentations. At the hearing, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Hearings shall be open to the public and shall be recorded by stenographic or electronic means.

*a.* At the beginning of the public hearing, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the hearing. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

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- b.* Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.
- c.* To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.
- d.* The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.
- e.* Physical and documentary submissions presented by participants in the hearing shall be submitted to the presiding officer. Such submissions become the property of the board.
- f.* The hearing may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.
- g.* Participants in a public hearing shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in a hearing may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.
- h.* The presiding officer in a hearing may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

**28.5(5) *Additional information.*** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**28.5(6) *Accessibility.*** The board shall schedule public hearings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board, telephone (515)281-5944, in advance to arrange access or other needed services.

**657—28.6(17A) Regulatory analyses.**

**28.6(1) *Definition of small business.*** A “small business” is defined in Iowa Code section 17A.4A(8)“a.”

**28.6(2) *Regulatory analysis—economic impact.*** The board shall issue a regulatory analysis of a proposed board rule in response to a written request from the ARC or the ARRC. The regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A.

**28.6(3) *Regulatory analysis—business impact.*** The board shall issue a regulatory analysis of a proposed board rule in response to a written request from one of the following. The regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A.

- a.* The administrative rules review committee;
- b.* The administrative rules coordinator;
- c.* At least 25 or more persons who sign the request provided that each represents a different small business;
- d.* An organization representing at least 25 small businesses. That organization shall list the name, address, and telephone number of not less than 25 small businesses it represents.

**28.6(4) *Time period for analysis.*** Upon receipt of a timely request for a regulatory analysis, the board shall adhere to the time lines described in Iowa Code section 17A.4A.

**28.6(5) *Contents of request.*** A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A.

**28.6(6) *Contents of concise summary.*** The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A.

**28.6(7) *Publication of a concise summary.*** The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A.

**28.6(8) *Jobs impact statement.*** Pursuant to Iowa Code section 17A.4B, the board shall include in the preamble of each rule making a jobs impact statement, unless such statement is waived by the ARC. The board may seek and shall accept public comments and information from stakeholders relating to a jobs impact statement.

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**657—28.7(17A,25B) Fiscal impact statement.**

**28.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

**28.7(2)** If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**657—28.8(17A) Time and manner of rule adoption.**

**28.8(1)** *Time of adoption.* At least 35 days following publication of a Notice of Intended Action, the board may adopt a rule or terminate the rule making. Within 180 days after the date of publication of the notice or the deadline for public comments, whichever is later, the board shall adopt a rule or terminate the proceeding. Subsequent actions shall be published in the Iowa Administrative Bulletin.

**28.8(2)** *Consideration of public comment.* Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding, or any memorandum summarizing such oral submissions, and any regulatory analysis, jobs impact statement, or fiscal impact statement issued in that rule-making proceeding.

**28.8(3)** *Reliance on board expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**657—28.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**28.9(1)** The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**28.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**28.9(3)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**657—28.10(17A) Exemptions from public rule-making procedures.**

**28.10(1)** *Emergency-adopted rule.* To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, and with the prior approval of the ARRC and ARC, or if a statute so provides, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

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**28.10(2) Notice of emergency-adopted rule.** The board may, at any time, begin a standard rule-making proceeding for the adoption of a rule that is emergency-adopted without notice pursuant to subrule 28.10(1) and that is identical or similar to a rule it adopts in reliance upon subrule 28.10(1). After notice commenced pursuant to this subrule, the board may either readopt the rule it emergency-adopted without benefit of all usual procedures on the basis of subrule 28.10(1) or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**657—28.11(17A) Concise statement of reasons.** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule pursuant to Iowa Code section 17A.4(2). Requests for such a statement shall be in writing and be delivered to the Iowa Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. The request shall indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**657—28.12(17A) Style and form.** In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

**657—28.13(17A) Board rule-making record.**

**28.13(1) Requirement.** The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

**28.13(2) Contents.** The board rule-making record shall contain:

*a.* Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based;

*b.* All written petitions, requests, and submissions received by the board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board and considered by the board, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the board shall identify in the record the particular materials deleted and state the reasons for that deletion;

*c.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

*d.* A copy of any regulatory analysis or fiscal impact statement;

*e.* A copy of the rule and any concise statement of reasons prepared for that rule;

*f.* All petitions for amendment of, or repeal or suspension of, the rule;

*g.* A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(6), and any board response to that objection;

*h.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

*i.* A copy of any executive order concerning the rule.

**28.13(3) Effect of record.** Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

**28.13(4) Maintenance of record.** The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action. The board shall maintain a record of significant written criticism as described in paragraph 28.13(2) "g," "h," or "i," for a period of not less than five years from the date of the written criticism.

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**657—28.14(17A) Filing of rules.** The board shall file each rule the board adopts with the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

**657—28.15(17A) Effectiveness of rules prior to publication.**

**28.15(1) Grounds.** The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**28.15(2) Special notice.** When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b,” the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication.

**657—28.16(17A) Review by board of rules.** Over each five-year period of time beginning July 1, 2012, the board shall conduct an ongoing and comprehensive review of all the board’s rules pursuant to Iowa Code section 17A.7(2). The purpose of the review is to identify and eliminate all rules that are outdated, redundant, or inconsistent or incompatible with statute, other board rules, or rules of other agencies. When the board’s five-year review of its rules is completed, the board shall summarize the results and provide the summary to the ARC and the ARRC.

These rules are intended to implement Iowa Code sections 17A.1 through 17A.9A.

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3642C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

**Rule making related to sharing of information by the board of physician assistants**

The Board of Physician Assistants hereby amends Chapter 327, “Practice of Physician Assistants,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 148C.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 148C.5.

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

*Purpose and Summary*

This amendment implements 2017 Iowa Acts, chapter 60 (House File 591), section 1, that instructed the Board of Physician Assistants to establish specific procedures in rules for consulting with and sharing information with the Board of Medicine about complaints that may involve inadequate supervision by a physician.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 22, 2017, as **ARC 3455C**. A public hearing was held on December 12, 2017, at 7:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board of Physician Assistants on January 17, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making action is adopted:

Adopt the following **new** rule 645—327.8(148C):

**645—327.8(148C) Sharing information.** When the board receives a complaint alleging that inadequate supervision by a physician assistant's supervising physician may have occurred, the board shall forward a copy of that complaint to the board of medicine. Any response to the complaint, filed with the board by the physician assistant, will also be shared with the board of medicine.

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3643C****SECRETARY OF STATE[721]****Adopted and Filed****Rule making related to fee for technology modernization fund**

The Secretary of State hereby amends Chapter 2, “Rules of Practice,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 17A.4 and 2017 Iowa Acts, Senate File 516, section 23.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2017 Iowa Acts, Senate File 516, section 23.

*Purpose and Summary*

This amendment is necessary because the General Assembly enacted 2017 Iowa Acts, Senate File 516. The Secretary of State determined that as a result of this newly enacted law, the following amendment is necessary to fund the Technology Modernization Fund within the Secretary of State’s office. Previously, **ARC 3467C** (IAB 11/22/17) made updates to various chapters under the Secretary of State’s administrative rules, including rule 721—2.3(631) and Chapters 30 and 40. This amendment will harmonize the language found in subrule 2.3(5) for fee increases with the sunset and limiting provisions adopted in **ARC 3467C**.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 20, 2017, as **ARC 3518C**. One comment was received from a constituent asking for clarification about the relationship between **ARC 3518C** and **ARC 3467C**. The Secretary of State’s office responded and received no follow-up comments. No requests for a public hearing were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Secretary of State on January 24, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s

SECRETARY OF STATE[721](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making action is adopted:

Amend rule 721—2.3(631) as follows:

**721—2.3(9,631) Payment for services.** The secretary of state may approve accounts to be used for the payment of services provided by the secretary of state. A user of a service provided by the secretary of state may make payment for the service by authorizing a charge to be made upon an account held by the user.

**2.3(1)** The secretary of state may prescribe and furnish forms for the purpose of authorizing a charge to be made upon an account. The secretary of state may refuse to charge an account for service requested without the appropriate form.

**2.3(2)** Application for account. Application for an account shall be made upon a form prescribed and furnished by the secretary of state. The account holder is subject to the terms and conditions contained in the application. The secretary of state reserves the right to adopt changes to the terms and conditions of the account. The secretary of state reserves the right to close a delinquent account.

**2.3(3)** Account holders will receive a monthly statement of account. The statement will include, for each transaction, the date and amount of the transaction. A transaction may include more than one filing fee.

**2.3(4)** Payment in full is due within 15 days of the date of the statement of account. An account is considered delinquent after the expiration of 30 days from the date of the statement of account. Interest and finance charges may be assessed on delinquent accounts in accordance with Iowa Code chapter 535.

**2.3(5)** An annual fee of \$100 shall be paid by an account holder for the privilege of maintaining an account. The annual fee shall cover a 12-month period measured from the first day of the month in which the account is approved by the secretary of state. An account that is not delinquent one month prior to the expiration of the annual period shall be renewed upon the payment of the annual fee. The secretary of state shall charge the annual fee to the account on the statement of the account for the monthly period prior to the expiration date. The annual fee shall be used for the purpose of offsetting the expenses incurred by the secretary of state in maintaining the account. Upon the expiration of the technology modernization fund in Iowa Code section 9.4A, as created by 2017 Iowa Acts, Senate File 516, section 23, the fee will revert to the amount authorized prior to July 1, 2017. Funds generated by the increase of this fee shall be exclusively used for improving business services technology.

**2.3(6)** Accounts maintained by the secretary of state prior to July 1, 1989, shall be terminated at the close of business on June 30, 1989, unless the holder of the account complies with subrule 2.3(5) and authorizes the secretary of state to continue the account by filing a renewal application on a form prescribed and furnished by the secretary of state.

**2.3(7)** The secretary of state shall assess a fee of \$10 for the receipt of a document filed under Iowa Code section 631.4(1)“d.”

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.



**ARC 3644C****UTILITIES DIVISION[199]****Adopted and Filed****Rule making related to the filing of documents and forms**

The Utilities Board hereby amends Chapter 2, “Forms,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.4, 474.5 and 476.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 474.5, 476.2 and 546.7.

*Purpose and Summary*

This rule making identifies and updates or eliminates rules that are outdated or inconsistent with statutes and other administrative rules.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3417C**. On November 14, 2017, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and the Iowa Communications Alliance (ICA) filed statements on the proposed amendments. OCA stated that it had no objection to the proposed amendments. ICA stated generally that it supports the Board’s efforts to modernize and streamline its rules, and specifically that it supports the proposed amendments to the rules in Chapter 2. No other person filed any statement or comment on the proposed amendments, and no person filed a request for an oral presentation. No changes from the Notice have been made. The Board order adopting the amendments can be accessed in the Board’s electronic filing system as RMU-2016-0030.

*Adoption of Rule Making*

This rule making was adopted by the Utilities Board on January 26, 2018.

*Fiscal Impact*

After analysis and review of this rule making, the Board concludes that the amendments will have no effect on the expenditure of public moneys within the state of Iowa.

*Jobs Impact*

After analysis and review of this rule making, the Board concludes that the amendments will not have a detrimental effect on employment in Iowa.

*Waivers*

Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of any Board rule under 199—1.3(17A,474,476).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s

UTILITIES DIVISION[199](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 199—2.1(17A,474) as follows:

**199—2.1(17A,474) Forms—general Documents filed with the utilities board.** Documents shall be filed with the board in compliance with the provisions of 199—Chapter 14. Documents filed with the board shall be double spaced, except that long quotations may be single spaced and indented. All documents, except exhibits, shall be formatted so as not to exceed 8½ inches by 11 inches in size with inside margins not less than 1 inch in width. Whenever practical, all exhibits of a documentary character should conform to the foregoing requirements of size and margin. Documents should contain the name and address of the filing party and, if the filing party is represented by an attorney, the name and office address of such attorney. The board may reject a document which does not substantially conform with the foregoing requirements, with a statement of reasons for such rejection. The board may, if it deems appropriate, prescribe different or additional requirements for documents to be filed in a particular proceeding.

~~2.1(1) Purpose and scope.~~ These rules shall govern all forms prescribed by the Iowa utilities board (hereinafter referred to as board) for use in all proceedings before the board, provided however, that the board may prescribe additional or different forms to be utilized in a specific case as necessary.

~~2.1(2) Forms compliance.~~ All papers filed with the board shall substantially conform with the requirements set forth below. The board, without prejudice to any party to a proceeding, may reject a paper which does not substantially conform with the requirements of this chapter, giving a statement of reasons for the rejection.

~~2.1(3) General requirements.~~ Documents filed with the board shall be printed, typewritten, or otherwise mechanically reproduced and double spaced, except that long quotations may be single spaced and indented. All papers, except exhibits, shall be cut or folded so as not to exceed 8½ inches by 11 inches in size with inside margins not less than 1 inch in width. Whenever practical, all exhibits of a documentary character should conform to the foregoing requirements of size and margin. Papers should contain the name and address of the party filing the paper and, if represented by an attorney, the name and office address of such attorney. Except as otherwise provided in these rules, the original of all papers and exhibits should be filed with the board. The person filing the paper or exhibit shall also furnish additional copies for each respondent or party to be served by the board and such other copies as the board may request.

This rule is intended to implement Iowa Code section 474.5.

ITEM 2. Rescind rule 199—2.2(17A,474) and adopt the following **new** rule in lieu thereof:

**199—2.2(17A,474) Forms.** The board has made available on its Web site, [iub.iowa.gov](http://iub.iowa.gov), sample forms of documents routinely filed with the board for various purposes. Except to the extent expressly provided by statute or board rule, the use of any such form is not mandatory, and the forms are intended only as examples. To the extent that any statute or board rule prescribes the content of a document, that provision shall govern notwithstanding any sample form. Subject to any such content requirement established by statute or rule, the board may, if it deems appropriate, prescribe specific content requirements for documents to be filed in a particular proceeding.

UTILITIES DIVISION[199](cont'd)

ITEM 3. Rescind and reserve rule **199—2.4(17A,474)**.

[Filed 1/26/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3645C****UTILITIES DIVISION[199]****Adopted and Filed****Rule making related to declaratory orders**

The Utilities Board hereby amends Chapter 4, "Declaratory Orders," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.4, 474.5 and 476.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 17A.9, 476.1 and 546.7.

*Purpose and Summary*

This rule making identifies and updates or eliminates rules that are outdated or inconsistent with statutes and other administrative rules.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3418C**. On November 14, 2017, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and the Iowa Communications Alliance (ICA) filed statements on the proposed amendments. OCA stated that it had no objection to the proposed amendments. ICA stated generally that it supports the Board's efforts to modernize and streamline its rules, and specifically that it supports the proposed amendments to the rules in Chapter 4. No other person filed any statement or comment on the proposed amendments, and no person filed a request for an oral presentation. The Board's order adopting the amendments can be accessed in the Board's electronic filing system as Docket No. RMU-2016-0032. One change has been made to the amendments since publication of the Notice. The paragraphs lettered as "a" to "d" in rule 199—4.3(17A) in the Notice are now numbered as "1" to "4."

*Adoption of Rule Making*

This rule making was adopted by the Utilities Board on January 26, 2018.

*Fiscal Impact*

After analysis and review of this rule making, the Board concludes that the amendments will have no effect on the expenditure of public moneys within the state of Iowa.

*Jobs Impact*

After analysis and review of this rule making, the Board concludes that the amendments will not have a detrimental effect on employment in Iowa.

Waivers

Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of any Board rule under 199—1.3(17A,474,476).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 199—4.1(17A) as follows:

**199—4.1(17A) Petition for declaratory order.** Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the utilities board, ~~at 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069.~~ Except as otherwise expressly provided in this chapter, the rules of procedure applicable to a petition for a declaratory order shall be those set forth in 199—Chapter 7. Additional requirements applicable to a petition for a declaratory order are established by Iowa Code section 17A.9.

**4.1(1)** ~~The petitioner shall file a petition for a declaratory order with the board in the manner provided by 199—Chapter 14. A petition is deemed filed when it is received by that office the board. The utilities board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:~~

STATE OF IOWA	
BEFORE THE IOWA STATE UTILITIES BOARD	
<hr/> IN RE: THE PETITION OF (insert petitioner’s name) FOR A DECLARATORY ORDER ON (insert rule number, statute, etc., for which interpretation is sought). <hr/>	}
	DOCKET NO. ____ (completed by board) PETITION FOR DECLARATORY ORDER <hr/>

~~COMES NOW (insert name of petitioner) and requests a declaratory order on (state rule number, statute, order, decision, or other written statement of law or policy of which an interpretation is sought), and in support petitioner states:~~

**4.1(2)** ~~(The petition shall then be dated and signed by, and shall include appropriate contact information for, the petitioner and shall set forth in separately numbered statements the following information (a sample form of a petition for a declaratory order is available at the board’s Web site, iub.iowa.gov):)~~

- ~~a.~~ The question or questions that petitioner wishes the board to determine, stated clearly and concisely;
- ~~1. b.~~ A clear and concise statement of all relevant facts on which the ruling is requested, including the petitioner’s interest in the issue;
- ~~2. c.~~ A citation to and the relevant language of the specific statutes, rules, policies, decisions, or orders, the that are applicable or whose applicability of which has been questioned, is in question and any other relevant law;
- ~~3. The questions petitioner wants answered, stated clearly and concisely.~~

UTILITIES DIVISION[199](cont'd)

~~4. d. The answers to the questions desired by the petitioner~~ The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers, including a statement of the legal support for the petitioner's position;

~~5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.~~

~~6. e. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;~~

~~7. f. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition; and~~

~~8. g. Any request by A statement whether the petitioner for requests a meeting as provided for by rule 199—4.7(17A).~~

~~[The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.]~~

WHEREFORE, (insert petitioner's name) prays that the board issue a declaratory order on (insert proposed subject of the requested order).

Respectfully submitted,

\_\_\_\_\_  
(Signature of petitioner or representative)  
(Typed or printed name of signer)  
(Address and telephone number)

ITEM 2. Rescind and reserve rule 199—4.2(17A).

ITEM 3. Amend rule 199—4.3(17A) as follows:

**199—4.3(17A) Intervention.** A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to rule 199—7.13(17A,476) within 20 days of the filing of a petition for a declaratory order. The board may at its discretion entertain a late-filed petition for intervention. A petition for intervention in a proceeding on a petition for declaratory order shall be dated and signed by, and shall include appropriate contact information for, the petitioner and shall set forth, in addition to the information required by rule 199—7.13(17A,476), the following:

1. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;

2. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity;

3. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition; and

4. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

**4.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 14 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**4.3(2)** Any person who filed a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the utilities board.

**4.3(3)** A petition for intervention shall be filed at 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069. Such a petition shall be deemed filed when it is received by that office. The utilities board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner

UTILITIES DIVISION[199](cont'd)

provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

STATE OF IOWA  
BEFORE THE IOWA STATE UTILITIES BOARD

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IN RE: THE PETITION OF (insert petitioner's name) FOR A DECLARATORY ORDER ON (insert rule number, statute, etc., for which interpretation is sought).	}	DOCKET NO. ____ (insert docket number) PETITION FOR INTERVENTION
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COMES NOW (insert name of petitioner) and requests intervention in this matter and in support petitioner states:

(The petition shall then set forth in separately numbered statements:)

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

[The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications concerning the petition should be directed.]

WHEREFORE, (insert intervenor's name) prays that the board grant it intervention and issue a declaratory order on (insert proposed subject of the requested order):

Respectfully submitted,

\_\_\_\_\_

(Signature of intervenor or representative)

(Typed or printed name of signer)

(Address and telephone number)

ITEM 4. Amend rule 199—4.4(17A) as follows:

**199—4.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the that party's position urged. The utilities board may request a brief from require that the petitioner; file a brief and may request that any intervenor; or any other person submit a brief concerning the questions raised.

ITEM 5. Rescind and reserve rule **199—4.5(17A)**.

ITEM 6. Amend rule 199—4.6(17A) as follows:

**199—4.6(17A) Service and filing of petitions and other papers documents.**

**4.6(1)** ~~When service required. Except where~~ In a proceeding on a request for a declaratory order, except as otherwise provided by law, every a party shall file with the board a petition for declaratory order, petition for intervention, brief, or any other paper filed in a proceeding for a declaratory order document in the manner provided in rule 199—14.16(17A,476) and shall be served at the same time serve it, in compliance with the requirements of 199—subrule 7.4(6) and rule 199—14.16(17A,476), upon each of the parties of record to the proceeding and on any persons person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law,

## UTILITIES DIVISION[199](cont'd)

~~simultaneously with their filing. The party filing a document is responsible for service on all parties and other required persons. The party filing a petition shall also file with the board a list of all persons served.~~

~~4.6(2) Filing when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers filed in a proceeding for a declaratory order shall be filed with the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the utilities board.~~

~~4.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by 199—subrule 7.6(1).~~

ITEM 7. Amend rule 199—4.7(17A) as follows:

**199—4.7(17A) Agency consideration Informal meeting.** Upon request by petitioner, the utilities board ~~must will~~ schedule a ~~brief and an~~ informal meeting between the ~~original~~ petitioner, all intervenors, and the utilities board, a member of the utilities board, or a designated member of the staff of the utilities board to discuss the questions ~~raised~~ identified in the petition. The utilities board may solicit comments from any person on the questions raised. ~~Also, comments on the questions raised may be submitted to the utilities board by any person.~~

ITEM 8. Rescind and reserve rule ~~199—4.8(17A)~~.

ITEM 9. Amend rule 199—4.9(17A) as follows:

**199—4.9(17A) Refusal to issue order.**

**4.9(1) Grounds.** The utilities board shall not issue a declaratory order ~~where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding.~~ The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

1. ~~The question does not substantially comply with the required form~~ The petitioner requests the board to determine whether a statute is unconstitutional on its face.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the utilities board to issue an order.
3. The utilities board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.
10. ~~The petitioner requests the utilities board to determine whether a statute is unconstitutional on its face.~~

**4.9(2) Content and effect of refusal.** ~~A~~ The board's refusal to issue a declaratory order must indicate will include a statement of the specific grounds for the refusal and constitutes final utilities board action on the petition.

## UTILITIES DIVISION[199](cont'd)

~~4.9(3)~~ Refusal to issue a declaratory order pursuant to this ~~provision rule~~ does not preclude the filing of a new petition that seeks to ~~eliminate remedy~~ the grounds for the refusal to issue an order.

ITEM 10. Rescind and reserve rule ~~199—4.10(17A)~~.

ITEM 11. Rescind and reserve rule ~~199—4.11(17A)~~.

ITEM 12. Amend rule 199—4.12(17A) as follows:

~~199—4.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is~~ The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order shall be binding on the utilities board, on the petitioner, and on any intervenors who consent to be bound, and is applicable only in circumstances where on any persons who would be necessary parties, who are served pursuant to subrule 4.6(1), and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the utilities board. The issuance of a declaratory order constitutes final agency action on the petition.

A declaratory order shall be effective upon the date of issuance.

ITEM 13. Amend ~~199—Chapter 4~~, implementation sentence, as follows:

These rules are intended to implement ~~1998 Iowa Acts, chapter 1202, section 13, and Iowa Code section sections 17A.9 and 476.1.~~

[Filed 1/26/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3646C**

## UTILITIES DIVISION[199]

### Adopted and Filed

#### Rule making related to nonutility activities

The Utilities Board hereby amends Chapter 33, “Nonutility Activities—Record Keeping and Cost Allocations,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.4, 474.5 and 476.2.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 476.2, 476.73 and 546.7.

#### *Purpose and Summary*

The amendments adopted herein are generally intended to update or eliminate rules that are outdated, redundant, or inconsistent or incompatible with statutes and other administrative rules and to clarify provisions that are unclear, vague, or ambiguous. The amendments also include several substantive changes.

The amendment to rule 199—33.2(476) clarifies the definition of “incidental activities” by adding a scale criterion and by replacing an unclear cost-benefit analysis for cost allocation with a practicability standard. The amendment redefines “net book value” and introduces an objective standard in the definition of “nonproductive work time.”



## UTILITIES DIVISION[199](cont'd)

The amendment to rule 199—33.4(476) clarifies provisions on the allocation of costs, among other things, by replacing the terms “utilized” with “involved” and “proportional utilization” with “applicability” (as applied to assets and expenses).

The amendment to rule 199—33.5(476) clarifies the description of changes for which a utility may file specific pages of a cost allocation manual instead of the entire manual. The amendment clarifies provisions requiring a utility to file a description of cost allocation methodology; requiring a utility to explain the basis for allocation of accounts and subaccounts between utility and nonutility operations; requiring a utility to explain the calculation of allocation factors used; and requiring identification of time reporting methods used by each reporting unit.

The amendment to rule 199—33.6(476) replaces ambiguous language with a requirement that a utility or regulated subsidiary pay an affiliate for nonutility services at the same prices the affiliate charges to unrelated entities and also clarifies a provision on the pricing of services provided by a regulated entity to a nonutility affiliate.

The amendment to rule 199—33.7(476) clarifies provisions concerning the allocation of asset costs upon transfer.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 22, 2017, as **ARC 3456C**. On December 12, 2017, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed a statement on the proposed amendments. OCA stated that it had no objection to the proposed amendments. No other person filed any statement or comment on the proposed amendments, and no person filed a request for an oral presentation. No changes from the Notice have been made. The Board’s order adopting the amendments can be accessed in the Board’s electronic filing system as Docket No. RMU-2016-0038.

*Adoption of Rule Making*

This rule making was adopted by the Utilities Board on January 26, 2018.

*Fiscal Impact*

After analysis and review of this rule making, the Board concludes that the amendments will have no effect on the expenditure of public moneys within the state of Iowa.

*Jobs Impact*

After analysis and review of this rule making, the Board concludes that the amendments will not have a detrimental effect on employment in Iowa.

*Waivers*

Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of any Board rule under 199—1.3(17A,474,476).

*Review by Administrative Rules Review Committee*

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

UTILITIES DIVISION[199](cont'd)

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 199—33.2(476) as follows:

**199—33.2(476) Definitions.** All terms used in this chapter shall be defined as the terms are defined in Iowa Code section 476.72 unless further defined in this chapter.

“*Exception time reporting*” is when an employee works predominantly in either utility or nonutility operations and only reports time worked in the less predominant area.

“*Filing threshold*” means that the summation of a utility’s revenues recorded in FERC accounts 415 and 417 equals 3 percent of a utility’s operating revenues recorded in FERC account 400. The revenues in these accounts will be as recorded in the annual FERC Form 1 for electric and combination utilities and FERC Form 2 for gas utilities.

“*Fully distributed cost*” is a costing approach that fully allocates all current and embedded costs to determine the revenue contribution of utility and nonutility services.

“*Incidental activities*” are activities that are so closely related to the provision of utility services and limited in scale that to separate it is impracticable to identify separately the costs of such services would exceed the benefit activities.

“*Net book value*” means the ~~lower of the~~ original purchase price net of depreciation ~~or any transfer price between affiliates.~~

“*Nonproductive work time*” is time for which an employee is paid but which is not productively working specifically attributable either to utility or to nonutility operations.

“*Positive time reporting*” is when productive work time is accounted for and assigned allocated to utility operations or nonutility operations.

“*Study time reporting*” is when periodic studies are done to determine the amount of productive work time being spent on utility versus nonutility operations.

“*Utility operating revenues*” are the dollar amounts recorded in FERC account 400.

ITEM 2. Amend subrule 33.3(2) as follows:

**33.3(2) Records to be maintained.** The records maintained for each nonutility service and made available for inspection shall include, ~~but not be limited to the following:~~ documents depicting accounts payable and vouchers; purchase orders; time sheets; journal entries; source and supporting documents for all transactions; a description of methods used to allocate revenues, expenses, and investments between utility and nonutility operations, including supporting detail; and copies of all filings required by other state and federal agencies.

ITEM 3. Amend rule 199—33.4(476) as follows:

**199—33.4(476) Costing methodology.** Costs shall be allocated between utility and nonutility operations using fully distributed cost.

**33.4(1) Cost causation for utility assets.** Each utility shall identify for each asset ~~involved~~ utilized directly or indirectly, in whole or in part, ~~to~~ in the provision of nonutility services: (a) the type of asset; (b) the use of the asset; (c) the ~~applicability~~ proportional utilization of the asset ~~to~~ between utility operations; ~~and nonutility operations, or both;~~ and (d) the ~~usage~~ characteristics of the asset that allow proper allocation.

**33.4(2) Cost causation for utility expenses.** Each utility shall identify for each expense account wherein any expense related, directly or indirectly, to the provision of nonutility services is recorded: (a) the function causing the expense to be incurred; (b) the procedure used in performing the function; (c) the ~~applicability~~ proportional utilization of the function ~~to~~ between utility operations; ~~and nonutility operations, or both;~~ and (d) the characteristics of the cost that ~~will~~ allow proper assignment allocation.

UTILITIES DIVISION[199](cont'd)

**33.4(3) Time reporting.** Positive time reporting shall be used whenever possible. In situations where positive time reporting cannot be used, exception time reporting or study time reporting may be used. Nonproductive work time shall be allocated between utility and nonutility operations in proportion to the allocation of productive work time.

ITEM 4. Amend rule 199—33.5(476) as follows:

**199—33.5(476) Cost allocation manuals.** Every rate-regulated gas or electric public utility equaling or exceeding the filing threshold in any calendar year shall file with the board a cost allocation manual on or before September 1 of the following year. If the utility has not changed its cost allocation manual since the last filing on September 1, the utility shall file a letter with the board to that effect. ~~Refer to subrule 33.5(3) for information on updating cost allocation manuals.~~ In the event the utility has made only minor changes to its manual ~~regarding to reflect~~ new accounts or new affiliates, or has modified language, the utility may file only the pages affected. ~~The filing shall include together with a cover letter explaining the pages being filed.~~ A utility excused from filing a cost allocation manual for any of the foregoing reasons shall comply with the other requirements of this rule.

**33.5(1) Contents of manuals.** Each cost allocation manual must contain the following information:

a. *Nonutility activities.* A list, the location, and description of all nonutility activities as defined in Iowa Code section 476.72(3).

b. *Incidental activities.* A summary of incidental activities ~~that are incidental to the provision of utility services and minor in size~~ conducted by the utility.

c. *Resource identification.* An identification of the assets and expenses involved directly or indirectly, in whole or in part, ~~to~~ in the provision of nonutility services as identified in subrules 33.4(1) and 33.4(2).

d. *Assignment Allocation methodology.* A description of the cost ~~assignment~~ allocation methodology. ~~This paragraph provides, including an overview, explanation, and justification of the details provided in response to paragraphs “e” through “h.” below.~~

e. *Assignment Allocation rationale.* ~~A list showing the cost assignment method for each account.~~ The list shall show for each A statement identifying, for each asset and expense account and subaccount identified in compliance with subrules 33.4(1) and 33.4(2), the basis for assigning allocating costs in the account or subaccount to utility and nonutility operations, including any allocation factor used by the utility for this purpose.

f. *Accounts and records.* A description of each account and record used by the utility for financial record keeping ~~of~~ for nonutility services, including all subaccounts.

g. *Assignment basis Allocation factors.* ~~An explanation of each assignment basis.—This A paragraph shall contain containing,~~ for each ~~assignment basis contained~~ allocation factor identified in compliance with paragraph “e,” a definition of the basis, an explanation of how the allocation factor is calculated, a description of each study and analysis used in developing the allocation factor, and the frequency with which each allocation factor is recalculated.

h. *Time reporting methods.* ~~An explanation of the time reporting methods used.~~ This A paragraph shall indicate indicating the type of time reporting (positive, exception, or study) used for each reporting organization (e.g., executive, residential sales, and external affairs); and providing a description of how the identified type of time reporting is done performed in that reporting organization.

i. *Training.* A description of the training programs used by the utility to implement and maintain its cost allocation process.

j. *Update process.* A description of the procedures used by the utility to: (1) determine when an update is needed; (2) develop the update; and (3) provide the update to the board.

**33.5(2) Filing Annual filing and approval of manuals.** The following procedure shall be used for the annual filing and approval of manuals.

a. *Filing.* ~~Utilities~~ A utility meeting the filing threshold ~~requirements~~ shall file a ~~manuals~~ manual on or before September 1 of ~~the~~ each year following ~~the~~ a year during which the utility met the threshold requirement was first met.

## UTILITIES DIVISION[199](cont'd)

*b. Notice.* At the time of the initial filing and whenever a manual is updated, each utility shall mail or deliver a written notice to consumer advocate, local trade associations, and customers who have notified the utility in writing of their interest in the filing cost allocation manual. The notice shall state that an objection may be filed with the board within 60 days of the filing of the manual with the board. The utility shall promptly provide copies of the manual upon request.

*c. Objections.* Any interested person may file with the board an objection ~~with the board~~ to a cost allocation manual within 60 days of the filing date.

*d. Docketing.* If the board finds that reasonable grounds exist to investigate the manual, the board will docket the filing as an investigation within 90 days of the date of filing. At the time of docketing, the board will set a procedural schedule which includes a date for an oral presentation and an opportunity to file comments. If the board finds that there is no reason to investigate, the board shall issue an order stating the reasons for the board's decision within 90 days of the date of filing.

*e. Acceptance of manuals.* The board may accept, reject, or modify a utility's manual. However, any board decision is for accounting purposes only and is not binding in any other proceeding.

**33.5(3) Updating of manuals.** All affected sections and pages of a utility's manual shall be updated and filed with the board ~~annually~~ or within 60 days of any of the following conditions:

*a.* A new nonutility business is ~~added~~ commenced or acquired, or an existing nonutility business is ~~dropped~~ eliminated or divested;

*b.* An affiliate relationship changes;

*c.* Operations affecting nonutility businesses change sufficiently to warrant a new allocation method; or

*d.* Accounting practices change.

**33.5(4) Reporting requirements—accounting tables.** ~~The reporting requirements in this subrule must be accompanied by a signed statement from an officer of the utility and an independent auditor certifying that, for the year completed, the utility has followed its manual and that the results fairly reflect the actual operations of the utility.~~ Companies required to file cost allocation manuals shall ~~file~~ include in their annual reports ~~and in electronic form~~ tables showing for each account identified in compliance with subrules 33.4(1) and 33.4(2) the following: (a) the account total; (b) the amount assigned allocated to nonutility services; (c) the amount assigned allocated to utility services; and (d) the value of the allocation factors used to assign allocate costs to utility and nonutility services. Such tables shall be accompanied by a signed statement by an officer of the utility and an independent auditor certifying that, for the year covered by the report, the utility has complied with its cost allocation manual and that the data reported fairly reflect the actual operations of the utility.

ITEM 5. Amend rule 199—33.6(476) as follows:

**199—33.6(476) Standards for costing service transfers within a regulated subsidiary or utility.**

**33.6(1) Nonutility service provided to regulated subsidiary or utility.** ~~Service shall be priced to the utility's operations~~ The utility or its regulated subsidiary shall pay for a nonutility service provided to it by an affiliate at the price actually charged to nonaffiliates. If no such price is available, the service shall be priced at the lower of fully distributed cost, the price actually charged to affiliates, or a the market price of for comparable services.

**33.6(2) Service provided by the utility to nonutility operations.** ~~Service shall be provided at A utility that provides utility service to a nonutility affiliate shall charge such affiliate the tariffed price. If it is not a tariffed service, the service shall be priced at or, if a tariffed price is not available, shall charge the fully distributed cost of the service.~~

ITEM 6. Amend rule 199—33.7(476) as follows:

**199—33.7(476) Standards for costing asset transfers within a regulated subsidiary or utility.**

**33.7(1) Asset** ~~If an asset~~ that is a direct cost of nonutility operations becomes a cost of utility operations. The, the asset shall be transferred or assigned allocated to utility operations at the lesser of

UTILITIES DIVISION[199](cont'd)

net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

**33.7(2)** Asset If an asset that is a direct cost of utility operations becomes a cost of nonutility operations—~~The, the~~ asset shall be transferred or ~~assigned~~ allocated to the nonutility operations at the greater of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

[Filed 1/26/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3647C**

## **WORKFORCE DEVELOPMENT DEPARTMENT[871]**

### **Adopted and Filed**

The Director of the Department of Workforce Development hereby amends Chapter 23, "Employer's Contribution and Charges," Chapter 24, "Claims and Benefits," and Chapter 25, "Benefit Payment Control," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 96.11.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 96.

#### *Purpose and Summary*

These amendments will give the Department a clearer framework from which to operate with regard to technology and modern efficiencies. The amendments will also help eliminate inefficiencies that remain as a result of outdated rules.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 20, 2017, as **ARC 3522C**. Public comment was received from Iowa Legal Aid, expressing opposition to this rule. **ARC 3522C** was reviewed by the Administrative Rules Review Committee at its meeting held on January 5, 2018. Committee members asked questions as to why only wages reported to the Department would be included in computing reported wages. David Steen, who represented the Department, advised that this is to combat fraud and inaccuracy. Likewise, questions were received regarding the stricken language in Item 4 of **ARC 3522C** (Item 2 herein). This is also to prevent fraud and to hold claims the Department has reason to believe are not valid. This Adopted and Filed rule making differs from the Notice of Intended Action. Proposed subrules 23.60(8) and 23.60(9) in Items 2 and 3 of the Notice were not adopted because the Department intends to seek future legislation that addresses those matters. Subsequent items were renumbered accordingly.

#### *Adoption of Rule Making*

This rule making was adopted by the Director of the Department of Workforce Development on January 24, 2018.

#### *Fiscal Impact*

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

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making action is adopted:

ITEM 1. Rescind paragraph **23.6(2)“c”** and adopt the following **new** paragraph in lieu thereof:  
 c. Only wages reported to the Iowa unemployment insurance program may be used in computing the employee's reportable taxable wages in Iowa.

ITEM 2. Amend rule 871—24.3(96) as follows:

**871—24.3(96) Social security number needed for filing.**

**24.3(1)** The correct social security number must be provided by the claimant. The correct social security number is essential in the processing of the claim. ~~Therefore, if the claimant has a social security card, the number must be taken from that card or be provided by the claimant. If the claimant has two or more social security numbers, the claim shall be held until the claimant ascertains which number is correct. A claim cannot be processed without a social security number.~~

**24.3(2)** The claim will not become valid until the identity has been verified by the department. If the claimant has not provided the information to verify identity within seven calendar days of filing of a claim, the claim will be voided. The claimant must submit another claim for benefits. The effective date of the claim would be the Sunday of the week the identity was verified.

ITEM 3. Adopt the following **new** rule 871—25.17(96):

**871—25.17(96) Federal payment offset.** Pursuant to 42 U.S.C. 503 §303(m) and 26 U.S.C. §6402(f), the department shall utilize the treasury offset program in order to collect covered unemployment compensation.

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.

**ARC 3648C**

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

**Adopted and Filed**

**Rule making related to claims**

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

The Director of the Department of Workforce Development hereby amends Chapter 24, "Claims and Benefits," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 96.11.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 96.

*Purpose and Summary*

This amendment updates the reporting requirement for claimants during a continued claim.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 20, 2017, as **ARC 3521C**. **ARC 3521C** was reviewed by the Administrative Rules Review Committee at its meeting held on January 5, 2018. No questions or comments were received from Committee members. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Director of the Department of Workforce Development on January 24, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on March 21, 2018.

The following rule-making action is adopted:

Rescind paragraph **24.2(1)“e”** and adopt the following **new** paragraph in lieu thereof:

*e.* In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

[Filed 1/24/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.